

REVISED CODES
OF THE
TERRITORY OF DAKOTA.

POLITICAL CODE.

CHAPTER I.

SEAT OF GOVERNMENT.

An Act to Establish a Political Code for the Territory of Dakota.

§ 1. **Seat of government located at Yankton.**¹ *Be it enacted by the Legislative Assembly of the Territory of Dakota:* The seat of government is hereby located and established in the city of Yankton, in the county of Yankton.

CHAPTER II.

LEGISLATURE.

§ 1. **Members elected biennially for term of two years.** The members of both branches of the legislative assembly shall be elected at the general election in 1878, and biennially thereafter, and shall hold their respective offices for the term of two years.

¹Since located at Bismarck, county of Burleigh, by the commissioners appointed under an act approved March 8, 1883. See Appendix, c. 1.

§ 2. **Sessions, when and where held.** The regular session of the legislative assembly shall commence on the second Tuesday of January next ensuing the election of its members, and shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger.

§ 3. **Privilege of members.** No member or officer of the council or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest upon civil process.

§ 4. **Punishment by each house for offenses.** Each house may punish as a contempt, by imprisonment, a breach of its privileges, or the privileges of its members, but only for one or more of the following offenses, to-wit: 1. Knowingly arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privileges from arrest. 2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings. 3. That of refusing to attend to be examined as a witness, either before the house or a committee, or before any person authorized to take testimony in legislative proceedings. 4. That of giving or offering a bribe to a member, or of attempting, by menace or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section, shall not extend beyond the same session of the legislature.

§ 5. **Contempt—misdemeanor.** Every person who shall be guilty of any contempt specified in the preceding section shall also be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, at the discretion of the court.

§ 6. **Administering oath to members and officers.** The speaker of the house of representatives and the president of the council, the governor, or any of the justices of the supreme court are authorized to administer the oath of office to the members and officers of the respective houses.

§ 7. **Oath of members.** The members shall be required to take and subscribe the following oath:

You do solemnly swear that you will support the constitution of the United States and the organic act of the territory of Dakota, and that as a member of this house of representatives (or this council, as the case may be) you will not propose or assent to any bill, vote, or resolution which shall appear to you injurious to the people, nor do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared by the constitution of the United States and the organic act of this

territory, but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. So help you God.

§ 8. **Committee may administer oath.** Any member of the council or house of representatives, while acting as a committee of the house of which he is a member, shall have the authority to administer oaths to such persons as shall be examined before the committee of which he is a member.

§ 9. **Contested seats.** In case the right of any person to a seat in either house of the legislative assembly shall be contested, the right of such person to a seat as aforesaid, shall be determined by the house in which he claims such seat as a member; and each house shall, in all cases, be the judge of the qualifications of its members.

§ 10. **Officers of respective houses.** The officers of the respective houses shall consist of a president of the council, who must be a member of that body; a speaker of the house, who must be a member of that body; and for each house one chief clerk, one assistant clerk, one engrossing clerk, one enrolling clerk, one sergeant-at-arms, one doorkeeper, one messenger, and one watchman. (See Appendix, c. 2, *§§ 10a-10e.)

§ 11. **Officers elected *viva voce*—oath.** The said officers shall be elected *viva voce*, by the members of each house, respectively, at such time, after the meeting of said house, as the members thereof shall see proper, and shall be required to take and subscribe the same oath as is provided for other civil officers; but neither house shall transact any business other than the election or appointment of officers, until said officers are elected or appointed *pro tem.*, on motion.

§ 12. **Chief clerks to keep journals, etc.** It shall be the duty of the chief clerk of the council and the chief clerk of the house of representatives, to keep correct journals of the proceedings of their respective houses; to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly, shall deposit for safe-keeping, in the office of the secretary of the territory, all books, bills, documents, resolutions, and papers in the possession of the legislature, correctly labeled, folded, and classified, and, generally, to perform such duties as shall be assigned them by their respective houses: *provided*, the journals of the two houses need not be deposited, as above provided, until the expiration of forty days after the adjournment of the legislative assembly.

§ 13. **Chief clerks to prepare and index journals, etc.** It shall be the duty of the chief clerk of the council and the chief clerk of the house, at the close of each session, to prepare for

the press and superintend the publication of the journals of the proceedings of their respective houses, and to affix an index thereto; and to transcribe into a book kept for that purpose, the documents accompanying the message of the governor, or by him sent to either house, other than those entered on the journal, or the documents reported to either branch of the legislative assembly by any public officer of the territory, in pursuance of law, for which service they shall be allowed such compensation as the legislature shall from time to time determine; but in no event to be less than their regular per diem, for the time actually employed in performing said labor; and the territorial auditor is hereby instructed, on presentation of a verified account for not to exceed forty days, as provided in the preceding section, and of proof that the records have been computed as herein required, to draw his warrant on the territorial treasurer for the amount of such account. (*As amended, Sess. Laws 1883, c. 79.*)

§ 14. **Chief clerks to make roll of members.** It shall be the duty of the said chief clerks, at the opening of every session of the legislative assembly, to make a correct roll of the members of their houses, respectively, to whom certificates of election have been issued by the proper officers, which certificates shall be filed by said secretary and chief clerk.

§ 15. **Sessions called to order by chief clerks of last houses.** In all cases the said chief clerks serving at the close of a session, shall remain in office until the organization of the next regular session of the legislature, and at twelve o'clock, meridian, on the day appointed by law for the meeting of the legislative assembly, the said chief clerks, or, in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the council and house of representatives shall expire with the close of the session at which they were elected, except the chief clerk of the council and the chief clerk of the house, for the purposes herein designated.

§ 16. **Compensation of officers — how certified.** The compensation prescribed by law for the officers of the council shall be certified by the president thereof, and attested by the chief clerk; and the compensation that may be due to the officers of the house of representatives, shall be certified by the speaker thereof, and attested by the chief clerk, which said certificates, when made out as aforesaid, shall be sufficient evidence to the secretary of the territory of each person's claim.

§ 17. **Either house may remove officers.** It shall be competent at any time, during a session of the legislative assembly,

for either house, by a vote of a majority, to remove from office any of the officers provided for in this chapter; but in case of the removal of any officer by either house, his place shall be supplied by an election *vira voce*; and in all elections under the provisions of this chapter, for officers of either house of the legislative assembly, it shall require a majority of all the votes cast to determine a choice.

CHAPTER III.

THE STATUTES.

§ 1. **Secretary to procure printing of laws.** The secretary of the territory shall procure the printing of one thousand copies of the general laws, and five hundred of the memorials, private laws, and resolutions, passed at each session of the legislative assembly, and have the same separately bound, as follows: Of the general laws, five hundred copies in law sheep; two hundred and fifty copies in half binding, with leather backs and corners; and the remaining two hundred and fifty copies, and the memorials, private laws, and resolutions, in durable pamphlet form; and they shall all be prefaced by a table of contents, and shall contain a full and correct index.

See Political Code, c. 43.

§ 2. **Secretary to arrange and correct laws.** In arranging the laws, memorials, and resolutions for publication, the secretary aforesaid is hereby authorized to make such corrections in the orthography, grammatical construction, and punctuation of the same, as in his judgment shall be deemed essential: *provided*, that when any words or clauses shall be inserted, the same shall be inclosed in brackets.

§ 3. **Distribution of laws.** The secretary aforesaid is hereby authorized to distribute the laws, after they shall have been printed and bound, in the manner hereinafter specified.

§ 4. **To whom and how distributed.** The following named officers of this territory, and of the counties therein, and none others, shall be entitled to receive, without cost to the person holding such office, one copy each of the printed volumes of the session laws hereafter published, enacted by the legislative assembly of this territory, to-wit: The chief justice of the supreme court of the district of Dakota; each associate justice of said supreme court; each clerk of the district court; the United States attorney for the district of Dakota; the United States marshal for the district of Dakota; each United States commissioner appointed by any judge of this

territory; the governor of the territory; the secretary of the territory; the auditor; the treasurer; the superintendent of public instruction; the librarian of the historical society of Dakota territory; each district attorney; each judge of the probate court; each sheriff; each register of deeds; each county treasurer; each justice of the peace; each coroner; each county superintendent of public schools; each assessor; each member of the board of county commissioners; each chairman of the board of supervisors of any civil township in this territory; each township clerk; and one copy to each library association organized for the benefit of the public in any county or town in this territory; each township treasurer; and one to each member and officer of the legislative assembly of the session of which he was a member or officer; one copy to the board of trustees of the Dakota hospital for the insane, and one copy to the trustees of the Dakota penitentiary. (*As amended, Sess. Laws 1879, c. 37; and 1881, c. 90.*) (See Appendix, c. 3, *§ 4a.)

§ 5. **Copies to certain officers of United States.** It is hereby made the duty of the secretary of this territory, whenever any volumes of the laws of this territory shall come into his hands, to transmit to each federal and territorial officer and United States commissioner, clerks of the United States district and supreme court, and each district attorney, one volume of such laws, prepaying the postage thereon if sent by mail; and the said secretary shall state an account of his disbursements for postage or carriage of such volumes so sent by him to the auditor of the territory, who is hereby authorized to audit the same, if, in his judgment, it be just and correct; and, when so audited, the treasurer of the territory is authorized to pay the same out of any money in his hands not otherwise appropriated.

§ 6. **County officers—how supplied.** The county clerks of the several counties of this territory shall, on the first Monday of February next succeeding the time when any session of the legislative assembly shall be held, make a requisition upon the secretary of the territory for as many copies of the laws of said session as may be required to supply one copy to each county, district, or township office entitled to the same, and shall forward said requisition to said secretary, who shall thereupon, or as soon thereafter as he shall receive the said volumes of laws, forward the number of copies called for by said requisition, to said clerk, either by express or in any other secure manner, the charges of said carriage to be borne by the county receiving such laws. The county clerk, upon receiving the laws, shall distribute them to the several officers entitled by law to the same, taking, in every instance, the official receipt of the officer to whom they are delivered, said receipt to describe the date of the volume so delivered, and to be thereafter filed in the office of said county clerk.

§ 7. **Officers to deliver laws to successors.** That whenever any person shall be elected to fill any of the county, town, or district offices mentioned in section one of this act, it shall be such person's duty, before taking possession of the said office, to procure from the county clerk of their county a copy of the receipt filed with said clerk by the outgoing officer for any volumes of the laws of this territory, which copy of said receipt the person so elected shall exhibit to his predecessor in office at the time when he shall assume the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by the receipt on file with the county clerk; and it shall be the duty of the said officer, after having received from his predecessor the volumes of laws as heretofore specified, to make out duplicate receipts of the same, one of said receipts to be given to his predecessor in office, and the other to be forthwith transmitted to the county clerk of the county, who is hereby required to file the same in his office.

§ 8. **Offense for failure to deliver statutes to successor.** In case any person holding an office in this territory, or in any county, township, or district thereof, shall, upon relinquishing said office to his successor, fail or refuse to deliver over to his successor in office all the volumes of laws that have come into his possession by virtue of holding such office, such person so failing or refusing shall be liable, upon conviction, to a fine of fifty dollars, or to imprisonment in the county jail not exceeding twenty days; and it is hereby made the duty of the person succeeding to the office of such delinquent to file complaint against him before a justice of the peace: *provided*, that in case the person so failing or refusing to deliver said volumes of law can show, to the satisfaction of the justice, that said volumes have been destroyed or stolen in a manner for which the said delinquent person should not be held responsible, then and in that case no penalty shall be imposed.

§ 9. **Lost volumes of statutes—how supplied.** Whenever any county, township, or precinct officer, entitled to a copy of the laws of this territory, shall, through the neglect or refusal of his predecessor in office to turn such laws over to him, or through loss occasioned by fire, theft, or other cause for which said person cannot be held responsible, be without such laws, such person is hereby authorized to make a written requisition upon the county clerk of his county for such volumes of laws as may be required; and the said clerk is authorized to proceed in the manner hereinbefore provided for the general distribution to supply the said requisition: *provided*, that the secretary shall be authorized to charge the county from which such requisition is made, the cost, with ten per cent. added, for each and every additional volume so furnished, which said amount shall be allowed by the board of commissioners of said county, and

paid over to the secretary, in cash, who shall, in turn, pay the same to the territorial treasurer, taking his official receipt therefor.

§ 10. **Secretary to sell statutes.** The secretary of the territory shall sell, to any party applying therefor, the volumes of laws of this territory, for the cost, and ten per cent. added, per volume, and pay over to the territorial treasurer all sums so received, taking the official receipt of said treasurer therefor.

§ 11. **Copies of laws for territorial library.** Ten volumes of the laws of Dakota, passed by each legislative assembly, shall be placed in the territorial library by the secretary of the territory, and shall be kept therein for the use of any person visiting said library, but shall not be loaned or otherwise disposed of.

CHAPTER IV.

TERRITORIAL SEAL.

§ 1. **Great seal of the territory.** The following described seal is hereby declared to be, and is hereby constituted, the great seal of Dakota territory, to-wit: A tree in the open field, the trunk of which is surrounded by a bundle of rods, bound with three bands; on the right, plow, anvil, sledge, rake, and fork; on the left, bow, crossed with three arrows, Indian on horseback, pursuing a buffalo towards the setting sun; foliage of the tree arched by half circle of thirteen stars, surrounded by the motto: "Liberty and Union, one and inseparable, now and forever;" the words "Great Seal" at the top, and at the bottom, "Dakota Territory;" on the left, "March 2;" on the right, "1861." Seal two inches and a half in diameter.

CHAPTER V.

QUALIFICATIONS FOR OFFICE.

§ 1. **Civil officers to qualify.** Except as otherwise specially provided, all civil officers shall qualify substantially in manner and form as herein set forth.

§ 2. **Certain officers to give bond.** All civil officers, elected by the people, or appointed by the governor or legislative assembly, or by any other authority provided by law, except the superintendent

of public instruction, the territorial superintendent, and all members of the bureau of immigration, stenographers, county commissioners, county surveyors, county superintendent of public schools, county clerks, the officers of the council and house of the legislative assembly, but including township treasurers, clerks, justices of the peace, and constables, shall, before entering upon duty, give bond, conditioned that they will faithfully and impartially discharge the duties of their office, (naming it fully,) and render a true account of all moneys, credits, accounts, and property of any kind that shall come into their hands as such officer, and pay over and deliver the same according to law.

§ 3. **Oath of office on back of bond.** Every civil officer who is required to give bond shall take and subscribe on the back of his bond, or a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States, and the act organizing this territory, and that he will faithfully and impartially, to the best of his knowledge and ability, perform all the duties of his office, (naming it fully,) as provided by the condition of his bond, written within.

§ 4. **Oath on back of commission.** All other civil officers are required to take and subscribe, on the back of their appointment, commission, or certificate of election, an oath to support the constitution of the United States, and the act organizing this territory, and to faithfully and impartially perform all the duties of their office (naming it fully) to the best of their knowledge and ability.

§ 5. **Bonds—how approved.** The bonds of all territorial and district officers shall be given to the territory, shall be approved by the governor or one of the justices of the supreme court of the territory, and shall, together with the oaths of all other such officers, be filed in the office of the secretary of the territory. The bonds of all county, township, and precinct officers shall be given to the county; those of all county and precinct officers under the county shall be approved by the board of county commissioners, and shall, together with the oaths of office of all other such officers, be filed with the county clerk, except the bond and oath of the register of deeds, which shall be filed with the clerk of the district court for the county or judicial subdivision. The bonds of township officers shall be approved by the chairman of the board of supervisors of the township, and shall be filed in the office of the clerk of the district court for the county or judicial subdivision; and the oaths of all other township officers shall be filed in the office of the township clerk.

§ 6. **Bonds of territorial and county officers.** The bond of the territorial auditor shall be in the penal sum of two thousand dollars; of the territorial treasurer, in the penal sum of twenty thousand dollars; of the clerk of the district court, in the penal sum of

one thousand dollars; of the district attorney, in the penal sum of one thousand dollars; of notaries public, in the penal sum of one thousand dollars. The bonds of the county register of deeds, judges of the probate court, sheriffs, coroners, treasurers, and all assessors, justices of the peace, and constables, whether of the county or any township therein, and all township treasurers, shall each be in a penal sum to be fixed by the board of county commissioners; but that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be by him collected in any year is less than two thousand dollars, then in double the amount of taxes to be collected: *provided*, that in no case shall the bond of said county treasurer be less than one thousand dollars. Those of justices of the peace shall not be in a less penal sum than three hundred dollars each, and those of constables shall not be in a less penal sum than two hundred dollars each; and the penalty of the bond shall be uniform within the county for all officers of each class where there is more than one of a class. (*As amended, Sess. Laws 1879, c. 6.*)

§ 7. **Number of sureties to bond.** Every official bond shall be given with at least two sureties, and the bond of the territorial treasurer shall have at least four sureties, and that of the county treasurer at least three sureties.

§ 8. **Approval of bond.** The approval shall in all cases be indorsed upon the bond and signed by the officer approving, or by the chairman of the board of county commissioners; but in case the board of county commissioners or the chairman of the township board of supervisors should decide a bond presented to them to be insufficient, a reasonable time, not to exceed five days, shall be allowed the officer to supply a sufficient bond, and either board may take three days to consider the approval of any bond. If either board refuse or neglect to approve the bond of any county officer or township officer elect, he may present the same to the judge of the district court and serve notice thereof upon the board; and due proof of such service being made to the judge at the time therein named, he shall, unless good cause for delay appear, proceed to hear and to determine the sufficiency of the bond, and may approve the same, and such approval shall be in all respects valid.

§ 9. **When regular term of office begins.** Except when otherwise specially provided, the regular term of office for all county, township, and precinct officers, when elected for a full term, shall commence on the first Monday of January next succeeding their election; but if the office to which he was elected be vacant at the time of election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office.

§ 10. **When officers shall qualify.** Except where otherwise specially provided, all territorial, district, county, township, and precinct officers shall qualify and enter upon the duties of their office on the first Monday of January succeeding their election, or within ten days thereafter.

§ 11. **Office vacant, when.** If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law, such office shall be deemed vacant, and shall be filled by appointment by the authority provided by law to fill such vacancy: *provided, however,* that if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties of such office, the time prescribed in which he shall qualify and enter upon the duties of his office shall not govern, and he shall be allowed twenty days after the day of such decision, or the termination of such preventing or obstructing cause, in which to qualify.

§ 12. **Bonds construed to cover duties.** The bonds and oaths of all civil officers shall be construed to cover duties required by law subsequent to giving them; and no official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein.

§ 13. **Re-elected incumbent to account before qualifying.** When the incumbent of any office is re-elected, he shall qualify as above required; but his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term, to the person or authority to whom he shall account, and the fact and date of such satisfactory exhibit shall be indorsed upon the new bond before its approval.

§ 14. **All officers must deliver public property to successor.** Every officer elected or appointed under the laws of the territory, on going out of office at the expiration of his term thereof, shall deliver to his successor in office all public moneys, books, records, accounts, papers, and documents in his possession belonging or appertaining to such office.

CHAPTER VI.

DEPUTIES.

§ 1. **Certain officers may appoint a deputy.** The territorial auditor, treasurer, and superintendent of public instruction, the county treasurer, sheriff, register of deeds, surveyor, clerk

of the district court, and assessor may each appoint a deputy, for whose acts as such he shall be responsible; and each officer required to give bond may require a bond from his deputy in a penal sum not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection; and the appointment must be in writing, and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal.

§ 2. **Who may appoint additional deputies.** The county assessor may appoint a deputy in each government township, or any number of deputies; and the sheriff may appoint such number of deputies as he may deem necessary; and the district attorney may appoint a deputy in each organized county in which a district court is, or may be, directed to be held.

§ 3. **Oath of deputy.** Each deputy shall take and subscribe the same oath as his principal, (naming his deputyship,) which shall be indorsed upon and filed with his certificate of appointment.

§ 4. **Certain deputies forbidden.** No territorial officer can appoint as his deputy any other territorial or any district officer, nor can a territorial treasurer appoint as his deputy any county treasurer, judge of the probate court, register of deeds, sheriff, or county commissioner; nor can either the clerk of the district court, the register of deeds, or sheriff appoint as his deputy either of the others, or their deputies.

CHAPTER VII.

TERRITORIAL AUDITOR.

§ 1. **Governor to appoint auditor—office at capital.** There shall be nominated by the governor, and by and with the consent of the council shall be appointed, a territorial auditor, who shall hold his office for the term of two years, and until his successor is appointed and qualified. He shall keep his office at the capital of the territory.

§ 2. **All accounts to be audited.** All accounts and claims against the territory, which shall be by law directed to be paid out of the treasury thereof, shall be presented to the auditor, who shall examine and adjust the same, and for the sums which shall be found due from the territory shall issue warrants payable at the territorial treasury, which shall be numbered consecutively, and each shall specify the date of its issue and the name of the person to whom payable;

and the number, date of issue, and name of the person to whom payable, of each warrant, and corresponding thereto, shall be entered upon a stub for each warrant separately, and these stubs shall be carefully preserved by the auditor in his office.

§ 3. **Fractional warrants authorized.** When the amount due from the territory to any one person is ascertained and adjusted, the auditor, if requested, shall divide the sum into amounts of from one to twenty dollars, to suit the convenience of the person entitled thereto, and shall issue warrants for the several amounts separately, into which the sum shall be so divided, and equal to the whole amount thereof; and any warrant already issued that may be returned by the holder thereof to the auditor he may cancel, and issue in lieu thereof small warrants, as herein provided, equal in the aggregate to the face value of the warrants canceled.

§ 4. **Redemption of warrants.** For the redemption of all warrants issued in conformity with the provisions of this chapter, the credit of the territory is hereby pledged.

§ 5. **Warrants to be numbered.** The auditor shall enter in progressive order, in a book or books to be provided by him for that purpose, the number of each warrant by him issued, the amount thereof, the date of its issue, and the name of the person to whom issued, and the fund on which said warrant is drawn.

§ 6. **Method of auditor's accounts.** The auditor shall make and keep in his office, in suitable books, to be procured at the expense of the territory, fair and accurate accounts showing the debits and credits of each separate fund, or appropriation, by giving such funds credit for the full amount appropriated by law, and by charging to such funds severally the amounts drawn against them from time to time; and he shall also keep records of all such public accounts and other documents as have been or may be by law made returnable to his office, and shall keep a file in progressive order of all receipts and warrants returned as redeemed from the territorial treasurer, and other vouchers relative to the business of his office.

§ 7. **Biennial report of auditor.** The auditor shall submit a biennial report to the governor of the territory on or before the fifteenth day of December preceding each regular session of the legislative assembly, which report shall show for the preceding fiscal term, ending on the thirtieth day of November:

1. A statement of date, number, and amount of each warrant, the person in whose favor, and on what fund each warrant was drawn.
2. The total amount of warrants redeemed and returned to him by the territorial treasurer.
3. A statement of the accounts of the several funds and appropriations, which shall show the sums appropriated for each fund, the

amount of warrants on each fund, and the unexpended balances of the same.

4. Such remarks on the finances of the territory as he shall deem proper, which report shall be transmitted by the governor to the legislative assembly.

§ 8. **Auditor to transmit to treasurer statement of assessments.** The auditor shall transmit to the territorial treasurer a statement of the assessments of each county of the territory as soon as practicable after the abstracts of such statements shall be received from the county clerks of the several counties.

§ 9. **Legislative inspection of books.** Whenever required, he shall submit his books, accounts, and vouchers to the inspection of the legislative assembly, or any committee thereof, appointed for that purpose.

§ 10. **List of lands becoming taxable.** He shall transmit to the register of deeds of each county, on or before the first day of March in each year, a list of lands within such county which shall have become subject to taxation within the preceding year, agreeable to the information by him received from the land office or offices in the territory.

§ 11. **Transmit forms and instruction to county clerks.** He shall, from time to time, prepare and transmit to the county clerk of each county such general forms and instructions, in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in assessing, charging, and collecting and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions.

§ 12. **May remit tax penalties.** The auditor is hereby authorized to remit any penalty for the non-payment of taxes when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may from time to time correct all errors which he shall discover in the duplicate of taxes assessed in any county.

§ 13. **Statement of railroad assessments.** The auditor shall, on or before the first Monday in September in each year, transmit to the territorial treasurer a statement of the assessments made by him on the returns of the property of any railroad or other corporation required by law to make such returns, and on which the taxes cannot be properly levied and collected by any organized county, or on which it becomes the duty of the territorial treasurer to levy and collect the taxes.

§ 14. **Certain expenses paid out of contingent fund.** The expense of procuring books, directed by this act to be procured,

and the copies of entries, surveys, and other documents from the land-offices, and all other contingent expenses of his office, shall be paid by the auditor out of the contingent fund appropriated for the use of said office.

§ 15. **Proceedings on default of officers to pay over revenue.** If any officer concerned in the collection of the territorial revenue shall fail to collect, to make proper return, to make settlement, or to pay over all the moneys by him received and belonging to the territory at the time and in the manner required by law, the auditor of the territory shall, after the expiration of fifteen days next after the expiration of the time within which such are by law required to be performed, transmit to the county clerk of the proper county a statement of the sum claimed by the territory from such delinquent officer, with directions for such county clerk to proceed against such delinquent officer and his securities in the manner prescribed by law: *provided*, that when the auditor of the territory shall be satisfied that such default results from some inevitable accident, and not from the negligence of such officer, he may, at his discretion, postpone the instructions for bringing suit for any time not exceeding sixty days.

See chapter 28, § 95.

§ 16. **May administer certain oaths.** The auditor is authorized to administer an oath to accountants and witnesses, in support of the justice of such accounts as may be exhibited to him for liquidation, and to certify the same accordingly.

CHAPTER VIII.

TERRITORIAL TREASURER.

§ 1. **Territorial treasurer appointed by governor.** There shall be nominated by the governor, and by and with the consent of the council shall be appointed, a territorial treasurer, who shall hold his office for the term of two years, and until his successor is appointed and qualified.

§ 2. **Charge and payment of public funds.** He shall have charge of and safely keep all public moneys which shall be paid into the territorial treasury, and pay out the same as directed by law, and perform all such other duties as now are, or may hereafter be, required of him by law.

§ 3. **Accounts of receipts and payments.** He shall keep an accurate account of the receipts and disbursements of the treas-

ury, in books provided for that purpose at the expense of the territory, in which he shall specify the names of persons from whom received, to whom paid, on what account the same is received or paid out, and the time of such receipt or payment.

§ 4. **Account with each county.** He shall also keep an account with each organized county of the territory, in which each county shall be charged with the amount of the tax levied, according to the statements of assessment and levy transmitted to him by the territorial auditor, and credited by the amounts received from the county treasurer of such counties.

§ 5. **Warrants receivable for public dues.** He shall receive in payment for public dues the warrants drawn by the auditor of the territory, in conformity with law, or redeem the same, if there be money in the treasury appropriated for that purpose, and on redeeming such warrant, or receiving the same in payment, he shall cause the person presenting such warrant to indorse the same; and the treasurer shall write on the face of the same "redeemed;" and shall enter in his book, in separate columns, the number of such warrant, its date, amount, and the name of the person to whom payable, the date of payment, and the amount of interest, if any, paid thereon.

§ 6. **Indorsements of warrants not paid.** When any warrant shall be presented to the treasurer for redemption, and there shall be no funds in the treasury appropriated for that purpose, the treasurer of the territory shall indorse thereon the date of its presentation, with his signature thereto, and whenever there shall be funds in the treasury for the redemption of warrants so presented and indorsed, the treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice, the interest on such warrant shall cease.

Interest 10 per cent. on warrants presented and not paid. See Appendix, c. 28, *§ 91b.

§ 7. **Redeemed warrants returned to auditor.** He shall, on the last day of March, June, September, and November, deposit in the office of the auditor of the territory all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor.

§ 8. **Biennial report to governor.** He shall submit to the governor, on or before the fifteenth day of December preceding each regular session of the legislative assembly, a report containing a full and true exhibit of the state of the public accounts and funds, the amount by him received, the amount paid out during the preceding fiscal term, ending on the thirtieth day of November, and the balance remaining in the treasury, together with an exhibit of the several organized counties, as provided in section four of this chapter,

which report shall by the governor be transmitted to the legislative assembly.

§ 9. **Legislative inspection of accounts.** He shall, as often as required, submit his books, accounts, vouchers, and the funds in the treasury to the inspection of either branch of the legislative assembly, or any committee thereof appointed for that purpose.

§ 10. **Must not purchase warrants or accounts.** He shall in no case purchase or receive any warrant redeemable at the treasury, or any audited account, at a less value than is expressed therein; nor shall he receive any fee or reward, aside from his annual salary, for transacting any business connected with the duties of his office.

§ 11. **Treasurer to assess and collect certain railroad taxes.** He shall assess upon and collect the territorial tax from all railroads where the same pass through any unorganized county, or where, for any cause, the said tax shall not have been assessed and collected on any railroad; and such tax may be assessed and collected at any time from the first day of January to the thirty-first day of December; and shall receive for his services five per centum of such taxes so assessed and collected, and shall transmit to the county treasurer of any county in which such tax shall have been collected a statement of the amount of such tax, which shall be subject to the order of the said county treasurer.

See Appendix, c. 28, *§§ 19*a*-19*g*.

§ 12. **Responsibility for delinquencies.** If, in any instance, the treasurer shall neglect to call to account any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes the same as if the funds had actually been paid into his office.

CHAPTER IX.

TERRITORIAL LIBRARY.

§ 1. **Secretary's custody of library.** The territorial library, including statutes, reports, documents, and miscellaneous books of every nature and description belonging to said library, is hereby placed in the care and custody of the secretary of the territory, whose duty it shall be to provide a room for said library, and keep the same open at all reasonable hours for the benefit of the public; to label and arrange the books in a convenient manner; to collect in all books now out; and to let no book go out without first taking the receipt of the person to whom such book is delivered.

§ 2. **Appropriation for same.** There is hereby appropriated the sum of two hundred and fifty dollars annually out of the territorial treasury, to be paid out of any money not otherwise appropriated, to the secretary of the territory, to be disbursed by him for the care and custody of said library and for rent of room.

§ 3. **Auditing of accounts.** It shall be the duty of the territorial auditor to audit all accounts presented to him by the secretary of the territory, when properly verified, and draw his warrants on the territorial treasurer for the same, for all money paid out by the secretary, as express charges or freight, on books donated and sent to the territorial library from abroad.

CHAPTER X.

TERMS OF SUPREME COURT.

§ 1. **Two terms annually at Yankton.** There shall be held, at Yankton, two terms annually of the supreme court, commencing the second Tuesday of May and the first Tuesday of October. (*As amended, Sess. Laws 1879, c. 54.*)

Code Civ. Proc. § 26; Code Crim. Proc. *§ 482a.

CHAPTER XI.

ASSIGNMENT OF JUDGES OF SUPREME COURT.

§ 1. **Assignment of judges.** The justices of the supreme court are assigned as follows:

1. The Honorable G. G. Bennett, associate justice, and his successors in office, to the first judicial district.

2. The Honorable P. C. Shannon, chief justice, and his successors in office, to the second judicial district.

3. The Honorable A. H. Barnes, associate justice, and his successors in office, to the third judicial district.

§ 2. **Justices hold court in any district.** The justices of the supreme court may also, at their pleasure, hold terms of court in any of the several judicial districts, other than those to which they are herein assigned.

§ 3. **Duty of justices to hold court in other districts.** It is hereby made the duty of the several judges, when not

otherwise officially engaged, to hold terms of court in districts other than those to which they are assigned, and to hear and determine all matters at chambers from such other districts, when the judge of such other district shall be, from any cause whatever, unable to act; or in case of temporary vacancy.

CHAPTER XII.

BOUNDARIES OF JUDICIAL DISTRICTS.

(See Appendix, *cc.* 12, 13.)

§ 1. **Boundaries of judicial districts — contingent change.** The territory is divided into three judicial districts, as follows:

1. The counties of Clay, Union, Lincoln, Minnehaha, McCook, Moody, Lake, Brookings, Wood, Duel, Hamlin, Clark, Grant, Greeley, and Stone, and the Sisseton and Wahpeton Indian reservations, constitute the first district.

2. All that portion bounded and described as follows, *viz.*: Commencing at the north-east corner of the Sisseton and Wahpeton Indian reservation; thence along the north line of said reservation to the north-west corner thereof; then southerly along the western boundary of said reservation to its intersection with the forty-sixth parallel of north latitude; thence west along said parallel to the right bank of the Missouri river at low-water mark; thence down along said right bank at low-water mark to the mouth of Grand river; thence up the center of the main channel of Grand river to the mouth of Ree river; thence up the main channel of Ree river to its point of intersection with the one hundred and third meridian of west longitude; thence due west to the Little Missouri river; thence up the main channel of the Little Missouri river to the western boundary of the territory; thence north along the western boundary of the territory to the northern boundary thereof; thence east along the northern boundary of said territory to the north-east corner of said territory; thence southerly along the eastern boundary of said territory to the place of beginning,—constitutes the third district.

3. All that portion of the territory not embraced within the bounds of the first and third districts, as herein defined, constitutes the second district: *provided, however*, that if the congress of the United States shall ratify the agreement with the Sioux Indians, ceding the Black Hills, then, and immediately thereafter, the judicial districts of this territory shall be as follows, and the courts of the said districts shall be held as herein provided:

1. All that portion of the territory of Dakota west of the right bank

of the Missouri river at low-water mark, and south of the forty-sixth parallel of latitude, except the counties of Todd, Gregory, Lyman, and Presho, and so much of Boreman county as lies south of Grand river, shall constitute the first judicial district.

2. All that portion of this territory north of the forty-sixth parallel of latitude, and so much of Boreman county as lies north of Grand river, shall constitute the third judicial district.

3. All that portion of this territory not embraced in the first or third judicial districts, shall constitute the second judicial district.

4. The district court in and for the third judicial district shall be held at Bismarck, in the county of Burleigh, on the third Tuesday of April and the second Tuesday of October in each year; and the district court within and for the first judicial district shall be held at the county seat of Pennington county, on the fourth Tuesday of May and the second Tuesday of September in each year; and the district court in and for the second judicial district shall be held at Yankton, in the county of Yankton, on the second Tuesday of March and November of each year.

§ 2. **Certain courts have United States jurisdiction.** The district courts in and for the counties of Clay, Yankton, and Cass shall have and exercise the powers and jurisdiction appertaining to the district and circuit courts of the United States in and for the several judicial districts in which they are respectively located.

See Appendix, cc. 12, 13; also, Political Code, c. 46.

CHAPTER XIII.

SUBDIVISION OF JUDICIAL DISTRICTS.

(See Appendix, cc. 12, 13.)

§ 1. **First district subdivided.** The first judicial district is subdivided as follows:

1. The county of Clay constitutes one subdivision, and the district court shall be held therein on the first Tuesdays of February and November.

2. The county of Union constitutes one subdivision, and the district court shall be held therein on the first Tuesday of June and the first Tuesday of December; and, in addition thereto, special terms shall be held therein on the second Tuesdays of March and August.

3. The county of Lincoln constitutes one subdivision, and the district court shall be held therein on the first Tuesdays of April and October: *provided, however*, that no April terms shall be held therein except upon the request of the board of commissioners for said county.

4. The counties of Minnehaha and Lake constitute one subdivision, and the district court shall be held therein on the third Tuesday of May, in each year, at the county seat of Minnehaha county, and

the county of Lake shall furnish a proportionate share of the jury-men for said court, and pay the same, but shall pay no other expense of said court unless there shall be at any term of said court business in said court from said county of Lake, in which event said county of Lake shall pay her proportionate share of the expenses of said court as provided by this act.

5. The remainder of the first judicial district not included within the preceding subdivisions constitute one subdivision, and the district court shall be held therein on the first Tuesday of May, at the county seat of Moody county: *provided, however*, that such term shall not be held except upon the order of the judge thereof.

§ 2. **Second district subdivided.** The second judicial district is subdivided as follows:

1. The county of Bon Homme constitutes one subdivision, and the district court shall be held therein on the third Tuesdays of March and September.

2. The county of Turner constitutes one subdivision, and the district court shall be held therein on the first Tuesday of June.

3. The counties of Hutchinson, Armstrong, Hanson and Davison constitute one subdivision, and one term of the district court shall be held therein each year, at such time and place as the judge shall appoint.

4. The county of Yankton, and all other portions of said second judicial district not included in any of the preceding subdivisions, constitute one subdivision, and the district court shall be held therein at the county seat of Yankton county on the second Tuesdays of April and October; and, in addition thereto, special terms shall be held at said county seat on the first Mondays of January, March, May, July, September, and November.

See Appendix, cc. 12, 13.

§ 3. **Third district subdivided.** The third judicial district is subdivided as follows:

1. The counties of Cass, Stutsman, Richland, Ransom, Lamoure, Traill, Grand Forks, Pembina, Barnes, Foster, Ramsey, Cavalier, Gingsras, French, and Rolette constitute one subdivision, and the district court shall be held therein, at the county seat of Cass county, on the fourth Tuesday of May and the first Tuesday of September.

2. All the remaining portions of said third judicial district constitute one subdivision, and the district court shall be held therein, at the county seat of Burleigh county, on the second Tuesday of May and the third Tuesday of September.

§ 4. **Courts held at county seats.** The terms of the district courts for subdivisions composed of a single county only shall be held at their respective county seats.

§ 5. **Judges may appoint terms.** The judges of the district courts respectively have the authority at any time to appoint, by an order to that effect, courts to be holden in any county of a subdivision composed of two or more counties, and, from the time of the making of such order, such county wherein courts are so appointed shall cease to be a part of the subdivision as herein provided, and shall itself constitute a subdivision, and the district courts shall be therein held at the times provided in such order.

§ 6. **Sheriff serves process throughout subdivision.** In subdivisions composed of two or more counties, the sheriff of the county where the court is held shall have authority to execute all proper process in any county or other place embraced within such subdivision, the same as if such subdivision were composed of his county only.

§ 7. **Method paying court expenses in subdivisions.** For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the county clerks of the organized counties therein shall, annually, as soon as the assessment roll is received, transmit to the clerk of the court of that county wherein the court is held a statement of the aggregate amount of the assessment roll of their counties respectively; and at the close of each term of the district court the clerk thereof shall, under the supervision of the judge, calculate the expenses of such term, and the proportionate amount to be paid by each organized county, according to the proportion which the amount of the assessment roll bears to the aggregate amount of all the assessment rolls in such subdivision; and shall certify to the boards of county commissioners of the respective counties, accounts for such proportionate amounts, and in favor of the persons to whom such expenses shall be due, which accounts shall be audited and allowed, and warrants issued accordingly, in like manner as other claims against a county.

§ 8. **Court may compel counties.** If any county shall fail to furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge of the district court may fix the proportionate amount of the expenses of the court which such county shall pay, and may at any time, by *mandamus*, compel the assessment and levy of a tax, or the doing of any other act necessary to carry out the provisions of this chapter.

§ 9. **Additional terms of court—provisions for Black Hills counties.** The judges of the district courts respectively shall have the power, whenever thereunto requested by the board of commissioners of the county wherein terms of court are regularly holden, by an order to that effect, to appoint and hold additional terms of the district court in any county or subdivision; and such judges shall have the power to adjourn the courts from time to time, as they shall

deem expedient for the due administration of justice. The courts herein appointed shall continue as long as the business therein shall require: *provided, however*, that if the congress of the United States shall ratify the agreement with the Sioux Indians ceding the Black Hills, then, immediately thereafter, the first judicial district, as herein provided, shall become a part of the second judicial district, and the district courts of the counties above named shall be held at the time and places herein provided, and the first judicial district shall be subdivided as follows: The county of Lawrence shall constitute one subdivision, and the district court shall be therein held on the first Tuesdays of June and October of each year. The counties of Custer and Pennington shall constitute one subdivision, and the district court shall be therein held on the fourth Tuesday of May and the second Tuesday of September in each year.

See Appendix, cc. 12, 13; also, Political Code, c. 46.

CHAPTER XIV.

CLERK OF DISTRICT COURTS.

§ 1. **Judges appoint clerks.** The judges of the district courts respectively shall have the power to appoint a clerk of the district court in each of the counties of his district, who shall be a resident of the district and a qualified voter thereof, who shall procure and keep a seal of the court for that county, and when courts are appointed therein, shall perform all duties pertaining to that office, and shall keep his office at the county seat of his county.

See Appendix, c. 14.

§ 2. **Clerk responsible on bond for neglect.** Any person who may, at any time, be injured or aggrieved by reason of the violation of the duties of his office, on the part of any such clerk of the district court, or by any willful neglect or refusal to perform any of the duties pertaining to office of clerk of the district courts, as the same are or may be prescribed by law, may institute legal proceedings upon the bond of such clerk, and collect thereon double the amount of damages actually sustained by such aggrieved person, which suit may be brought before any court having competent jurisdiction; and the county treasurer is also authorized and required, for every such violation or neglect of duty, to collect a fine of not less than fifty dollars for any such violation of duty, or refusal, or neglect on the part of said clerk of the district court.

See Appendix, c. 14.

§ 3. **Must perform duties.** It shall be the duty of the clerk of the district court to perform all duties which are or may be assigned him by law, and the rules of the court of which he is clerk, made in pursuance of the statute in such case provided.

See Appendix, c. 14.

§ 4. **Deputy acts in absence of clerk.** In the absence of the clerk of the district court from his office, or from the court, the deputy, appointed in pursuance of law, may perform all the duties pertaining to the office.

See Appendix, c. 14.

§ 5. **Clerk may adjourn term, or judge do so by written order.** The clerk of any district court, whenever the judge, whose duty it may be to preside therein, is hindered or delayed, from any cause, from being at the place of holding the same, on the first, second, or third day of the term thereof, is hereby authorized to adjourn said court from day to day, until the fourth day of said term; then, if said judge does not appear to take his seat to preside therein, and the clerk does not receive a written order of adjournment, the clerk aforesaid shall adjourn said court without day; but

the justice may, by written order to the clerk, have an adjournment of any term of court within the four days as aforesaid, to such other time as he may therein appoint; and such adjourned term shall be considered as a regular term for all lawful purposes whatever.

See Appendix, c. 14.

Compensation. See Political Code, c. 39, § 4.

CHAPTER XV.

DISTRICT ATTORNEY.

§ 1. **Attorney for each judicial district after 1878.** There shall be elected at the general election in 1878, and biennially thereafter, in each judicial district, a district attorney, who shall be a resident of the district for which he shall be elected, and shall hold his office for the term of two years, and until his successor shall have been elected and qualified, and from and after the election and qualification of such district attorneys, the office of county district attorney shall cease, and said county district attorneys shall transfer and turn over to the district attorneys, for the districts in which their counties are severally included, all official business in their hands.

See Appendix, c. 15.

§ 2. **Duties of district attorneys.** It shall be the duty of the district attorneys of the several judicial districts, to appear in the district courts of their respective districts, and prosecute or defend on behalf of the counties in his district, or of the territory, all suits, indictments, applications, motions, or special proceedings, civil or criminal, in which the territory or any county in his district is interested as a party.

See Appendix, c. 15.

§ 3. **To receive only lawful fees.** No district attorney shall receive any fee or reward for services in any prosecution or business to which it shall be his duty to attend, other than what is or may be provided by law.

See Political Code, c. 39, §§ 5, 6, and Appendix, c. 39, §§ 5, 6.

§ 4. **Vacancies filled by governor.** In case the office of district attorney shall become vacant by death, resignation, or otherwise, or in case the person elected to the office shall fail or refuse to qualify, the governor shall forthwith appoint some suitable person to be district attorney until the next general election.

See Appendix, c. 15.

CHAPTER XVI.

COMMISSIONERS.

§ 1. **Governor may appoint—powers.** The governor shall have power to appoint one or more commissioners in any state of the United States, or of the territories belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed or other conveyance, or lease of any lands, lying in this territory, and of any contract, letter of attorney, or any other writing, under seal or not, to be used or recorded in this territory.

§ 2. **Commissioner must have seal.** Each commissioner so appointed as herein provided shall have an official seal, on which shall be engraved the words "Commissioner of Dakota Territory," with his surname at length, and at least the initials of his Christian name; also the name of the state or territory in which he has been commissioned to act; which seal must be so engraved as to make a clear impression on wax or wafer.

§ 3. **Acknowledgments valid.** All acknowledgments and proofs, as herein provided, taken according to the laws of this territory, and certified to by such commissioner under his seal of office, and annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this territory.

§ 4. **May administer oaths and take depositions.** Every commissioner, appointed as before mentioned, shall have power to administer an oath, which may be lawfully required in this territory, to any person willing to take the same, and to take and duly certify all depositions to be used in any of the courts of this territory in conformity to the laws thereof, either on interrogatories proposed under a commission from any court of this territory, or by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a proper officer in this territory.

§ 5. **Qualification, oath, and seal.** Every such commissioner, before performing any duty, or exercising any power by virtue of his appointment, must take and subscribe an oath or affirmation before a judge or clerk of some court of record, having a seal of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the territory of Dakota, with a description and impression of his seal of office, must be filed in the office of the secretary of this territory.

CHAPTER XVII.

NOTARIES PUBLIC.

§ 1. **Governor to appoint notaries.** The governor shall appoint in each of the organized counties in this territory, from among the eligible citizens thereof, one or more notaries public, who shall hold their office for four years, unless sooner removed by the governor, each of whom shall have power and authority anywhere in the territory to administer oaths and perform all other duties required of them by law. (*As amended, Sess. Laws 1879, c. 45, § 1.*)

§ 2. **Qualification, oath, and bond.** Each and every notary public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States and the act organizing this territory, and to faithfully and impartially discharge the duties of his said office, and shall give bond to the people of the territory, to be approved by the clerk of the district court of his county, or judicial subdivision, with one or more sureties, in the penal sum of five hundred dollars conditioned, for the faithful discharge of the duties of his said office.

§ 3. **Vacancy—records deposited with clerk district court.** Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the district court in the county in which the said notary public resides; and any notary public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office, as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any executor or administrator of any deceased notary public shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office, for the space of three months after said records and papers shall come into his possession, he shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars; and if any person shall knowingly destroy, deface, or conceal any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty dollars nor more than five hundred dollars, and shall be moreover liable to an action by the party injured.

§ 4. **Protest of bills and notes.** It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the

maker, and each and every indorser of a bill of exchange, and to the maker or makers of, and each and every security or indorser of, any promissory note or other written instrument, immediately after such protest shall have been made.

§ 5. **Manner of serving notice of protest.** It shall be the duty of every notary public personally to serve the notice upon the person or persons protested against, or by properly folding the notice, directing it to the party to be charged at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post-office most conveniently accessible from the place where the protest was made, and prepaying the postage thereon; that the officer making such protest shall receive the sum of twenty-five (25) cents and postage for each and every notice so made out and served. (*As amended, Sess. Laws 1879, c. 44.*)

§ 6. **Record of notices and copy evidence.** Each and every notary public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record, or a copy thereof, certified by the notary under seal, shall at all times be competent evidence to prove such notice in any trial, before any court in this territory, where proof of such notice may become requisite.

§ 7. **Clerks of court to receive and keep records.** It shall be the duty of the several clerks of the district courts to receive and keep safe all the records and papers directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by the said clerk are hereby declared to be as valid as if the same had been given by the said notaries public. All forfeitures under this act shall be one-half to the use of this territory, and the other half to him or them who shall sue for the same, to be recovered in a civil action in any court having jurisdiction of the same in the county where such notary public shall reside.

§ 8. **Notarial seal—impression of same.** Every notary public, before he enters upon the duties of his office, shall provide an official seal and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the territory.

§ 9. **Notary to file commission, etc., with clerk of court.** Every notary public, before he enters upon the duties of his office, shall file his commission for record with the clerk of the district court of his county or subdivision, and shall deposit with such clerk an impression of his seal, together with his official signature; and the said clerk shall record the same in a book kept for that pur-

pose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. (*As amended, Sess. Laws 1879, c. 45, § 2.*)

§ 10. **Revocation to be noticed to clerk.** Should the commission of any person so appointed be revoked, the secretary shall immediately notify such person, and the clerk of the district court of the proper county or subdivision, through the mail.

§ 11. **Full credit to notarial acts.** Full faith and credit shall be given to all the protestations, attestations, and other instruments of publication of all notaries public now in office, or hereafter to be appointed under the provisions of this chapter.

*§ 12. **Duty of notary in changing residence.** Whenever such notary public shall change his place of residence from the county or subdivision in which he was first appointed to another county or subdivision, it shall be his duty to comply with the requirements of section two (2) of this act, (section nine of this chapter,) before he again enters upon the duties of his office. (*Sess. Laws 1879, c. 45, § 3.*)

CHAPTER XVIII.

ATTORNEYS AND COUNSELORS AT LAW.

§ 1. **Who may be licensed to practice as attorneys.** All persons who, by the laws heretofore in force, were permitted to practice as attorneys and counselors at law, may continue to practice as such; and hereafter any person twenty-one years of age, who is an inhabitant of this territory, who satisfies any court of record, either on examination or by certificate of admission from any other territory or state, that he possesses the requisite learning, and is of good moral character, may, by such court, be licensed to practice as an attorney and counselor: *provided*, that no person shall be admitted to practice in the supreme court unless he shall have been first licensed to practice in some one of the district courts, or on the presentation of a certificate of admission to practice in the supreme court of some other territory or state.

§ 2. **Oath in open court.** Upon being admitted to practice as attorneys and counselors at law, they shall, in open court, take the following oath:

You do solemnly swear that you will support, protect, and defend the constitution of the United States and the organic act of the territory of Dakota; that you shall do no falsehood or consent that any be done in court, and if you know of any, you will give knowledge thereof to the judge of the court, or some one of them, that it may be reformed; you shall not wittingly, willingly, or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you shall delay no man for lucre or malice, but shall act in the office of attorney in this court according to your best learning and discretion, with all good fidelity, as well to the court as to your client. So help you God.

§ 3. **Attorneys from other states.** Any practicing attorney of another state, having professional business in the courts of this territory, may be admitted to practice therein upon taking the oath aforesaid.

§ 4. **Duties of an attorney.** It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.

2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.

3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

§ 5. **Punishment for deceit.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

§ 6. **Power of an attorney.** An attorney and counselor has power:

1. To execute, in the name of his client, a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. To bind his client to any agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement, signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client; and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

§ 7. **Proof of attorney's authority.** The court may, on motion for either party, and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce, or prove by his oath, or otherwise, the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

§ 8. **Attorney must not be surety.** No practicing attorney and counselor shall be a surety in any suit or proceeding which may be instituted in any of the courts of this territory.

§ 9. **Lien for compensation.** An attorney has a lien for a general balance of compensation in and for each case upon:

1. Any papers belonging to his client, which have come into his

hands in the course of his professional employment in the case for which the lien is claimed.

2. Money in his hands belonging to his client in the case.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment.

County to employ counsel for indigent defendant. See Appendix, c. 18, § 4a.

Fees of attorneys in justices' courts. See Justices' Code, c. 1, §§ 39, 69.

See Code Civil Proc. Dak. § 615.

§ 10. **Lien released by bond.** Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the court, conditioned to pay the amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released, unless the attorney, within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item, or written contract, with the party for whom the services were rendered.

§ 11. **Court may revoke or suspend license.** Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceeding shall be had, and an opportunity shall have been given to him to be heard in his defense.

§ 12. **Causes for suspension.** The following are sufficient causes for revocation or suspension :

1. When he has been convicted of a felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is conclusive evidence.

2. When he is guilty of a willful disobedience or violation of the order of the court requiring him to do or forbear an act connected with, or in course of, his profession.

3. For a willful violation of any of the duties of an attorney or counselor, as hereinbefore prescribed.

4. For doing any other act to which such a consequence is by law attached, or upon conviction for any of the offenses mentioned in sections two hundred and one, two hundred and two, two hundred and nine, and two hundred and ten of the Penal Code.

§ 13. **Proceeding to remove or suspend.** The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it.

§ 14. **Accusation—how answered.** To the accusation he may plead or demur, and the issues joined thereon shall, in all cases, be tried by the court, all the evidence being reduced in writing, filed, and preserved.

§ 15. **Judgment on plea of guilty.** If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires.

§ 16. **Appeal from judgment.** In case of removal or suspension being ordered by a district court, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by the district court is final.

§ 17. **Refusal to pay over money.** An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a misdemeanor.

§ 18. **No penalty unless lien secured.** When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section until the person demanding the money or property proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained.

§ 19. **No liability if security be given.** Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole, or any portion thereof, to the claimant, when he is found entitled thereto.

CHAPTER XIX.

JURORS.

§ 1. **Qualifications of jurors.** All male citizens residing in any of the counties of this territory having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not judges of the supreme court or district courts, clerk of the supreme or district courts, sheriffs, coroners, licensed attorneys engaged in the practice, or jailers, and not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries within their counties or subdivisions respectively: *provided*, that persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, registers of deeds, practicing physicians, postmasters, and carriers of the United States mail shall not be compelled to serve as jurors: *and provided further*, that all members in good standing of any regularly organized fire company shall be excused from serving as jurors in the courts of this territory. (*As amended, Sess. Laws 1883, p. 73.*)

§ 2. **Two hundred names from last tax list.** In each of the counties wherein a district court is appointed or directed to be holden, two hundred names of qualified persons shall be selected from the last annual tax list, and furnished to the clerks of the district courts, by the county commissioners, from which to draw the grand and petit jurors; and such number shall at all times be kept full by completing the number after each term of court, when a jury or juries have been drawn and summoned, and at the end of each term of the district court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn, so as to keep the said number of two hundred full; and such county commissioners shall, at their first meeting after receiving such requisition, furnish such number of names, so selected, of persons so qualified, to complete and keep full such number of two hundred: *provided*, that upon discovery by the court or county commissioners of the name of any person who is a non-resident, or disqualified, they shall withdraw such name.

Drawing and summoning of grand and petit jurors in counties organized into civil townships. See Appendix, c. 19, *§§ 2a-2k.

§ 3. **How drawn in subdivisions.** To enable juries to be drawn and summoned in those subdivisions composed of two or more counties, the county clerks of all the organized counties therein shall,

as soon as the assessment roll is returned, and yearly thereafter, furnish to the clerk of the district court of that subdivision the aggregate number of names appearing upon the assessment roll of their counties respectively, if such county shall have such assessment roll, and the clerk of such district court shall thereupon, and yearly thereafter, make requisition upon the county commissioners for the proportionate number of names to be furnished by each county of the subdivision respectively, to make up the number of two hundred,—each county to furnish such proportion as the number of names upon their assessment roll bears to the aggregate of all the assessment rolls of the counties of such subdivision; and thereupon, from time to time, as such requisition shall be made, the county commissioners shall furnish the required number of names, and from the two hundred names so furnished, the grand and petit juries shall be drawn by such district court clerk and sheriff of the county where the court is held, by lot, as therein provided.

§ 4. **When county fails.** If one or more counties shall fail to furnish their proportionate or any number of names, such juries shall be drawn from those names that shall be furnished, and the judges of the district courts, respectively, are authorized and empowered to make any rule or order that shall be by them deemed necessary, or to cause any act or thing to be done to effect the drawing or summoning of either a grand or petit jury for such subdivision, and shall at any time have the power to cause a jury, either grand or petit, to be summoned for such district court from the body of such subdivision, and no omission of any act altogether, or the failure to perform it within the time herein prescribed, shall be the cause of challenge of any individual juror or to the panel.

§ 5. **Jury summoned only on order of district court.** No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of said court that a jury shall be summoned, and in such order shall specify the number of petit jurors that shall be summoned, and the time and place where they shall appear, and such order may be issued at any time within thirty days before the first day of the term of the district court, or at any time during the term of said court. (*As amended, Sess. Laws 1883, c. 74.*)

§ 6. **Grand jury—how summoned.** A grand jury shall be summoned in the same manner provided for summoning petit juries; *provided*, that in all cases a grand jury shall consist of not less than sixteen jurors.

§ 7. **Clerk puts names on tickets.** The clerk or deputy clerk receiving the names from the county commissioners, as herein provided, shall write the name of each person selected on a separate ticket, and place the whole number of tickets in a box, or other suit-

able and safe receptacle, and shall preserve the list of names furnished by the commissioners in the files of his office.

§ 8. **Clerk and sheriff draw jurors by lot.** The clerk of the district court, or his deputy, and the sheriff, or his deputy, or, if there be no sheriff, or, in case of his disability or suspension from office, the coroner, shall, immediately upon, or within two days from, the receipt of the order directing a jury to be summoned, meet together and draw by lot, out of the box or receptacle wherein shall be kept the tickets aforesaid, the number of jurors directed to be summoned by the judge of the district court. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder, drawn in compliance with said order, shall serve as petit jurors.

§ 9. **Clerk issues venires.** The clerk shall, on the day of the drawing as herein provided, issue a *venire*, or *venires*, as the case may be, directed to the proper office of the counties respectively from which the jurors are drawn, commanding such officer to summon the persons whose names are drawn, to appear before the district court at the hour, day, and place designated in the order of the judge. A separate *venire* shall issue for the grand jury when such jury shall be ordered.

§ 10. **Venire, how served.** The officer receiving such *venire* shall forthwith serve the same by reading or delivering a true copy thereof to each person therein named, or by leaving such a copy at his usual place of residence; such copy need contain only the name of the juror served; and shall make return thereof, with his proceedings indorsed thereon, to the clerk as soon as he has executed the same.

§ 11. **Juror must appear.** Each grand and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of the court.

§ 12. **Court may order jury forthwith.** If all persons summoned as grand and petit jurors do not appear before the court, or if for any cause the panel of the grand jurors or petit jurors is not complete, or if no jurors be drawn as above provided, the court may order the sheriff, deputy sheriff, or coroner to summon, without delay, good and lawful men having the qualifications of jurors, and the person or persons summoned shall forthwith appear before the court, and, if competent, shall serve on the grand jury or petit jury, as the case may be, unless such person or persons may be excused from serving or lawfully challenged.

§ 13. **Summons to complete special panel.** Whenever the panel of petit jurors shall be exhausted by challenges of either party, in any action, the judge of the court shall order the sheriff,

deputy sheriff, or coroner to summon without delay a sufficient number of persons possessing the qualifications of jurors, as before provided, to complete the number requisite for a jury in that particular case.

§ 14. **Citizens must be selected in rotation.** It shall be the duty of the county commissioners, in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors, so to select and arrange that no one person shall come on the jury the second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained.

§ 15. **Failure to appear punishable.** If any person summoned to appear as grand juror or petit juror fails, refuses, or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five nor more than fifty dollars; and if any person, when a second order of attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court, not longer than ten days, in the county jail; and if the county commissioners of any county willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five nor more than fifty dollars; and if the clerk of the district court, or deputy clerk, or sheriff, or deputy sheriff, or coroner, so neglect or fail to perform the duties imposed by this act, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office, and contempt in disregarding the provisions of this act, may be imprisoned by the court not longer than thirty days in the county jail.

CHAPTER XX.

ADMINISTRATION OF OATHS.

§ 1. **Officers authorized to administer oaths.** The following officers are authorized to administer oaths:

Each justice of the supreme court.

Clerks of the supreme and district courts, and their deputies, within their respective counties.

County clerks and their deputies, and county commissioners, within their respective counties.

Judges of the probate court, justices of the peace, and notaries public, within their respective counties.

Each sheriff and his deputies, in cases where they are authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisal of property, or are directed as an official duty to have property appraised, or take the answers of garnishees.

Territorial auditor may administer oaths in certain cases. See c. 7, § 16.

***§ 2. Persons may affirm.** Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing.

CHAPTER XXI.

COUNTIES AND COUNTY OFFICERS.

ORGANIZATION OF COUNTIES.

§ 1. **Fifty voters to organize county.** Whenever the voters of any unorganized county in this territory shall be equal to fifty or upwards, and they shall desire to have said county organized, they may petition the governor, setting forth that they have the requisite number of voters to form a county organization, and request him to appoint the officers specified in the next section of this act.

§ 2. **Petition to governor and appointments.** Whenever the voters of any unorganized county in the territory shall petition the governor, as provided in the preceding section, and the said governor shall be satisfied that such county has fifty legal voters, it shall be the duty of the governor, and he is hereby authorized, to appoint three persons, residents thereof, county commissioners for such county, who shall hold their office until the first general election thereafter, and until their successors shall be elected and qualified: *provided*, that all elections held in the odd-numbered years shall be termed *annual* elections, and all elections held in the even-numbered years shall, for the purpose of distinction, be termed *general* elections; and all officers appointed since the last general election, and all officers appointed in the organization of new counties, shall hold their respective offices until the next succeeding general election, unless otherwise specially stated in their commissions. (*As amended, Sess. Laws 1881, c. 70.*)

§ 3. **Commissioners qualify and appoint officers.** Said county commissioners, after having qualified according to law, shall appoint all the county officers of said county required by law, who, after having qualified, shall hold their office until the next general election, and until their successors shall have been elected and qualified.

§ 4. **Commissioners' duties.** The county commissioners appointed under this act shall have the power to locate the county seat of such county temporarily, and shall divide the county into three commissioner districts, which shall be numbered from one to three, and said districts shall not be changed oftener than once in three years, and then only at the regular sessions in January, April, or July, and one commissioner shall be elected from each of said districts at the next general election after such organization, one of whom shall be chosen for the term of one year, one for two years, and the third for three years, and one annually thereafter, as provided by law.

§ 5. **Annexed territory part of county.** Such portions of the territory not organized into counties as are annexed to any organized county, shall, for judicial and other purposes, be deemed to be within the limits and a part of the county to which they are annexed.

LOCATION OF COUNTY SEATS.

§ 6. **County seat located by majority vote.** When any county shall be organized as herein provided, the qualified voters thereof are hereby empowered to select the place of the county seat, by ballot, at the first general election at which the county officers are chosen, and for this purpose each voter may designate on his ballot the place of his choice for the county seat; and when the votes are canvassed the place having the majority of all votes polled shall be the county seat, and public notice of said location shall be given within thirty days by the county commissioners, by posting up notices in three several places in each precinct in the county; and if no one place voted for shall have a majority of all the votes cast, the place as located temporarily by the county commissioners shall remain the county seat until changed, as provided in the next section.

§ 7. **County seat changed by two-thirds vote.** Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the county commissioners, signed by two-thirds of the qualified voters of the county, it shall be the duty of the said board, in the notices for the next general election, to notify said voters to designate upon their ballots, at said election, the place of their choice; and if, upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

§ 8. **County seat on public lands.** Whenever any county seat shall be located upon the public lands, it shall be the duty of the county commissioners to enter or purchase a quarter section of land at the place so designated, at the expense of and for the use of the

county, within three months thereafter, if said land be subject to private entry; if not, the board shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

§ 9. **Commissioners to survey and plat same.** The county commissioners shall, within three months after the selection, cause the same to be surveyed in town lots, squares, streets, and alleys, and platted and recorded in pursuance of law, and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

§ 10. **Surplus lots sold.** The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder, at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one-third cash and the balance on time, as the county commissioners may deem best, and they may dispose of lots at private sale upon terms as above provided.

§ 11. **Certificate to purchaser.** Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warranty deed from the county commissioners, when payment in full shall be made for the same. Any lots sold as above, that shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county and shall be again sold as herein provided.

§ 12. **Net proceeds paid into treasury.** The proceeds of the sales of the aforesaid lots, after deducting the expenses of the surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county, at the county seat, and shall be used for no other purpose whatever.

CORPORATE POWERS AND LIABILITIES.

§ 13. **County body corporate—powers.** Each organized county is a body corporate for civil and political purposes only, and as such may sue and be sued, plead and be impleaded, in any court in this territory; and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold, and the purchase money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase money, shall be instituted in the name of the proper county.

§ 14. When any judgment is obtained against a county, the board of county commissioners shall have power, at any time after the expiration of six months from the rendition thereof, to assess and collect a sufficient amount of revenue, under the provisions of said

chapter twenty-one, to pay off and discharge said judgment, in addition to the ordinary expenses of the county. But the property of the county, and of persons owning property situated or liable to taxation therein, shall in no case be subject to judgment lien or liens, nor to seizure or sale upon execution or other process of any court. (*As amended, Sess. Laws 1881, c. 54.*)

OFFICERS.

§ 15. **Officers of organized counties—election.** Each organized county shall have the following officers, to-wit: Five commissioners, who shall constitute the board of county commissioners, one register of deeds, one county clerk, one clerk of the district court, one sheriff, one assessor, one judge of the probate court, one county treasurer, one county surveyor, one coroner, one superintendent of public schools, four justices of the peace, and four constables, who shall possess the qualifications of electors; and shall be chosen by the qualified electors of their respective counties, at the general election in the year eighteen hundred and seventy-eight, and every two years thereafter, except commissioners, who shall be chosen by the electors of their respective districts, and of which districts such commissioners shall be qualified electors and residents, county clerk, and clerk of district court. (*As amended, Sp. Laws 1883, c. 33, § 3.*)

See Appendix, c. 21, *§§ 15a, 15b. As to election of clerk of district court. See Appendix, c. 14. Where to keep offices. See Appendix, c. 21, *§§ 15c, 15d.

OF THE BOARD OF COUNTY COMMISSIONERS.

§ 16. **Commissioners' terms, succession, and districts.** The commissioners shall hold their office for the term of three years, except as provided in the statute for the organization of counties, and one shall retire and one be chosen annually, and in counties now organized the order of their election and succession shall remain as now established, and commissioner districts in such counties shall continue as now constituted, until changed as provided by law.

§ 17. **County seal.** The board of county commissioners hereby established shall procure and keep a seal, with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk; and the impression of the seal hereby required to be kept, by the stamp, shall be sufficient sealing in all cases where sealing is required.

§ 18. **Sessions of board—time and place.** The county commissioners shall meet and hold sessions for the transaction of business at the court-houses in their respective counties, or at the usual place of holding court, on the first Monday in January, April, July, and October of each year, and may adjourn from time to time; and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days' notice

of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county: *provided*, that in case of a vacancy in the office of the register of deeds, the chairman of the board shall have power to call a special session for the purpose of filling the same.

§ 19. **Election of chairman of board.** At the first meeting of the county commissioners in each and every year, they shall elect one of their number chairman, who shall act as chairman of the board of said commissioners during the year in which he is elected, or until his successor is elected; and in case of a vacancy, from any cause whatever, the board of county commissioners shall elect another chairman.

§ 20. **Duties of chairman.** It shall be the duty of the chairman of the board of county commissioners to preside at the meetings of said board, and all orders made by the board of county commissioners, and all warrants drawn on the county treasurer, shall be signed by the chairman and attested by the county clerk.

§ 21. **Tie vote defers decision.** When the board of county commissioners are equally divided on any question, they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

§ 22. **Copies of proceedings evidence.** Copies of the proceedings of the board of county commissioners, duly certified and attested by the county clerk, under seal, shall be received as evidence in all courts of this territory.

§ 23. **Board power to preserve order.** The board of county commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fines not exceeding five dollars, or by imprisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by attachment or other compulsory process, and when fines are assessed by them the same may be collected before any justice of the peace having jurisdiction, and shall be paid over, as other fines, within ten days after they are collected.

§ 24. **Board to keep account with treasurer.** The said commissioners shall keep a distinct account with the treasurer of the county, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all warrants returned and canceled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited on ac-

count; and the said board shall, in their settlement with the treasurer, keep the general, special, and road tax separate, that any citizen of the county may see how the same is expended.

§ 25. **Board shall keep record.** They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money from the county treasury shall state on what account, and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

§ 26. **Record as to bridges and roads.** They shall keep a book for the entry of all proceedings and adjudications relating to bridges, and the establishment, change, or discontinuance of roads.

§ 27. **Warrant register.** They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount, and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant-book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

§ 28. **Board may prosecute civil actions.** They shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

§ 29. **Specific powers of board.** They shall have power to make all orders respecting property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and, for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale, and a deed is executed in the name of the county, by the chairman of the board of commissioners, reciting the order, and signed and acknowledged by him, for and on behalf of the county: *provided, however,* that the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as hereinafter provided, and sanctioned by a majority vote thereof.

2. They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness.

3. To audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county, or appropriated for its benefit.

4. To construct and repair bridges, and to open, lay out, vacate, and change highways; to establish election precincts in their county and appoint the judges of election, and to equalize the assessment roll of their county, in the manner provided by law.

5. To furnish the necessary blank-books, blanks, and stationery for clerks of the district court, county clerk, register of deeds, county

treasurer, and probate judge of their respective counties, to be paid out of the county treasury; also a fire-proof safe, when in their judgment the same shall be deemed advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board.

6. To do and perform such other duties and acts that boards of county commissioners are now, or may hereafter be, required by law to do and perform.

The board of county commissioners constitute the board of health in their respective counties. See Appendix, *c.* 21, § 29, *7.

For regulations governing board of health, see Political Code, *c.* 23, §§ 50-58.

Special authority granted to levy tax for county purposes. See Appendix, *c.* 21, § 29, *8. To grant licenses in unorganized counties. See Political Code, *c.* 35, § 7; and Appendix, *c.* 35, *§§ 7*a*, 7*b*. To examine county treasurer's "tax-sale book" and "stub receipts," and ascertain amount of redemption money in the treasury. See Appendix, *c.* 21, § 29, *9.

§ 30. **Superintendence of county affairs.** They shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts and expenditures of the county, and on the first Monday of July, annually, they shall cause a full and accurate statement of the assessments, receipts, and expenditures of the preceding year to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their sessions, and at one public place in each precinct of the county.

§ 31. **Board may procure original field-notes.** Said board is authorized to procure for their county a copy of the field-notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be constructed therefrom, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field-notes to be deposited in the same office.

§ 32. **Submit extraordinary outlay to vote.** They shall submit to the people of the county, at any regular or special election, any question involving an extraordinary outlay of money by the county, or any expenditure greater in amount than can be provided for by the annual tax, or whether the county will construct any courthouse, jail, or other public buildings, or aid or construct any road or bridge, and may aid any enterprise designed for the benefit of the county, whenever a majority of the people thereof shall authorize the same as hereinafter provided.

§ 33. **Depreciated warrants.** When county warrants are at a depreciated value, the said commissioners may, in a like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, or for constructing or ordering to be constructed any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

§ 34. **Mode of submitting propositions.** The mode of submitting questions to the people, contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

§ 35. **Proposition to tax must accompany.** When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a proposition to lay a tax for the payment thereof, in addition to the usual taxes under section fifteen [twenty-nine] of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

§ 36. **Such tax annually not to exceed three mills.** The rate of tax levied in pursuance of the last four sections of this chapter, shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct, or aid in constructing, any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes, levied in pursuance of this chapter, becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue laws of this territory.

§ 37. **Record of vote—board cannot rescind.** The said commissioners being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast in

favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

§ 38. **Money specifically applied.** Money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged.

§ 39. **Warrants, how signed and attested.** All warrants upon the county treasury shall be issued upon the order of the board of county commissioners, signed by the chairman thereof, and attested by the signature of the county clerk, with the county seal attached, and shall designate the fund upon which they are drawn.

§ 40. **Sessions public at county seat.** They shall hold their sessions with open doors, and transact all business in the most public manner, and, where the county has no court-house, or the court-house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of commissioners in session only, but they may continue any business from any regular session to an intermediate day.

§ 41. **What constitutes record.** The books required to be kept by this chapter shall constitute the record of the board of county commissioners.

§ 42. **Board provides offices, jail, court-room, etc.** In any county where there is no court-house or jail erected by the county, it shall be the duty of the board of county commissioners to provide for court-room, jail, and offices for the several officers by law required to be furnished by such county, in a suitable building or buildings, for the lowest rent to be obtained, at the county seat; or to secure and occupy suitable rooms at a free rent within the limits of the county seat, or any of the additions thereto, until such county builds a court-house. They shall also provide the courts appointed to be held therein with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

§ 43. **Power to erect buildings from current revenue.** Said board shall have authority and power, under the pro-

visions of this chapter, to provide for the erection and repairing of court-houses, jails, and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building or repairing of the same; but no expenditure, for the purpose herein named, greater than can be paid out of the annual revenue of the county for the current year, shall be made, unless the question of such expenditure shall have first been submitted to a vote of the qualified voters of such county, and shall have been approved by a majority of the votes so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose.

§ 44. **Duty to use building fund.** After a building fund has been accumulated, either from the proceeds of the sale of town lots, or from any other source, it shall be the duty of the board of county commissioners, within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings, including a jail, if such fund shall in the judgment of the board be sufficient for that purpose.

§ 45. **Contracts let only on competitive bids.** The board shall cause an advertisement for bids for the erection of such buildings to be printed in some newspaper published in the county, for at least three months prior to the opening of the bids, and in such other newspaper in the territory and for such period as the board may deem advisable. Such advertisements shall state where the plans and specifications may be examined, and the time allowed for the completion of such buildings, and when the bids will be opened and passed upon by the board, which must be at one of the regular sessions of the board, and must be public. The lowest responsible bid must in all cases be accepted, and the contracts for such buildings shall be so conditioned that not more than one-half the payment for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board. Said board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract, with approved security, for the performance of the work in accordance with the plans and specifications, in case his bid is accepted.

§ 46. **Appeals allowed from decisions of board.** From all decisions of the board of commissioners, upon matters properly before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties, to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court; said bonds shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein: *provided*, that any district attorney, upon the written demand of at least seven tax-payers of the county, shall take an ap-

peal from any action of the board of county commissioners of any county within his district, when said action relates to the interests or affairs of the county at large, or any portion thereof, in the name of the proper county, when he deems it to the interest of the county so to do; and in such case no bond shall be required or given; and upon serving the notice provided for in section (47) forty-seven, the county clerk shall proceed the same as if a bond had been filed, and his fees for making the transcript shall be paid as other claims by the county. (*As amended, Sess. Laws 1883, c. 5.*)

§ 47. **Appeal in twenty days, on notice.** Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall, upon the filing of the bond and the payment of his fees allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

§ 48. **Filing of appeal.** Said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term.

§ 49. **Trial de novo on appeal.** All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo*.

§ 50. **Power of district court.** The district court may make a final judgment, and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by *mandamus*, or attachment, as for contempt.

§ 51. **Official settlements required promptly.** All treasurers, sheriffs, clerks, constables, and other officers, chargeable with money belonging to any county, shall render their accounts to and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

§ 52. **Penalty for neglect to deliver money.** If any person thus chargeable shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor; and such delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county.

§ 53. **Interest on county warrants.** All county orders hereafter drawn by the proper authorities of any county shall, after having been presented to the county treasurer of the respective counties and by him indorsed "Not paid for want of funds in the treasury," from said date, draw interest at the rate of seven per cent. per annum. (*As amended, Sess. Laws 1881, c. 139.*)

Interest on territorial warrants. See Appendix, c. 28, *§§ 91a-91e.

§ 54. **Record of proceedings to be printed or posted.** It shall be the duty of the board of county commissioners of the several counties in this territory, to cause to be published in some newspaper printed in their respective counties, or, in case no newspaper be printed in their respective counties, then to be posted up in three public places in said county, one of which shall be posted up in the office of the county clerk, a full and complete report of all their official proceedings, of each regular and special meeting held; such proceedings to be so published or posted as soon after any meeting of the commissioners as practicable. And the board of county commissioners are hereby authorized to pay for such publication: *provided*, that such payment shall not exceed the rate of one-half the amount authorized by law for publications of a legal character.

§ 55. **County clerk reports proceedings.** It is hereby made the duty of the county clerk to make out a full and complete report of the proceedings of each regular and special meeting of the board, and to transmit the same to the publisher of the newspaper selected by such board to publish such proceedings, said report to be made out and transmitted by such clerk within one week from the time such proceedings are had. Such clerk shall be allowed by the board a reasonable compensation for such service.

§ 56. **Printed in next issue of paper.** It shall be the duty of the publisher of any newspaper selected to publish any proceedings of the board of commissioners of the several counties, to cause any proceedings as aforesaid, received by him from any county clerk, to be published in the issue of his paper next succeeding the time of their reception.

OF THE REGISTER OF DEEDS.

§ 57. **Instruments recorded—indorsements and foot-notes.** The register of deeds shall keep a full and true record, in proper books kept for that purpose, of all deeds, mortgages, bills of sale, chattel mortgages, and all other instruments, authorized by law to be admitted to record, filed with him for that purpose, provided the person so filing them for record shall first pay him the fees provided by law for recording the same. When an instrument is filed with him for record, he shall indorse thereon the date and hour and

FORM OF SECTIONAL SYSTEM OF NUMERICAL INDEX TO REAL ESTATE.

TOWNSHIP No..... RANGE No..... SECTION No.....

No. of Section.	Quarter Sec.	Part Qr. Sec.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1	N. E.....	N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	N. W.....	N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	S. W.....	N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
S. E.....	N. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	N. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	S. W. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	S. E. Quarter.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

§ 60. **Compensation for making index—certain counties excepted.** For the making and preparing of the index to the instruments now of record, the registers of deeds shall be allowed by the county commissioners, and paid out of the county treasury of their respective counties, such just sum as shall be reasonable and proper, and for keeping such indexes hereafter they shall receive no compensation beyond their fees now allowed, or that may hereafter be allowed, for the recording of instruments, the indexing being a part of their duties in recording the instrument: *provided, however,* that it shall be discretionary with the board of county commissioners of the counties of Union, Bon Homme, Minnehaha, Brookings, Burleigh, and Clay, as to whether they will adopt the foregoing provisions relating to a numerical index.

OF THE COUNTY CLERK.

§ 61. **Register of deeds is county clerk.** The register of deeds, and his deputies duly appointed, shall be *ex officio* county clerk and deputies thereof respectively; and he shall be liable on his official oath and bond as register of deeds for the due and faithful performance of the duties of county clerk.

§ 62. **Must keep record of board.** The county clerk shall attend the sessions of the board of county commissioners, and keep

a true and full record of their proceedings in books to be provided for that purpose.

§ 63. **General duties of clerk.** He shall do, perform, and transact all county business without any extra or greater compensation than is allowed by law; and shall keep all the books required to be kept by the county commissioners; shall file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

§ 64. **Duties of county clerk—may call special election.** The county clerk shall perform all the duties required of him by law relative to the making out and delivering notices of special and general elections, making abstracts of and canvassing the votes cast at any special or general election, issuing certificates of election to members of the legislative assembly, county and precinct officers, and forwarding the abstracts of votes cast at general or special elections to the secretary of the territory; and whenever the county commissioners for any cause shall fail or refuse to call special elections, the county clerk shall have authority to provide for and call any special election, under any of the statutes of the territory, in force within his county, upon the petition of a majority of all the legal voters of the county, to be determined by the poll lists of the last general election preceding such call. (*As amended, Sess. Laws 1881, c. 73.*)

OF THE SHERIFF.

§ 65. **Sheriff—general duties.** The sheriff shall keep and preserve the peace within his county, for which purpose he is empowered to call to his aid such persons, or the power of his county, as he may deem necessary. He must also pursue and apprehend all felons; and must execute all writs, warrants, and other process from the district court, or from a justice of the peace, which shall be directed to him by legal authority. He shall attend at the district court, and the sessions of the board of county commissioners, when required by the latter to attend.

§ 66. **Must post election notices.** He shall serve or post up all notices he may receive from the county clerk or the board of county commissioners, give notice of special and general elections, and shall keep his office at the county seat.

OF THE CORONER.

§ 67. **Coroner succeeds sheriff, when.** When there shall be no sheriff or deputy sheriff in any organized county, it shall be the duty of the coroner in such county to exercise all the powers and duties of that office until the same shall be filled as provided by law;

and when the sheriff shall be committed to jail or otherwise disqualified, the coroner shall be the keeper of the jail, and perform the duties of sheriff during the continuance thereof. When the sheriff is sued, the coroner shall serve the papers on him, and his return on all papers served by him shall have the same credit as the sheriff's return; and he shall receive the same fees as the sheriff for like services.

§ 68. **When to hold inquest, and proceedings.** The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to the sheriff, or to any constable of his county, requiring him to summon forthwith three electors, having the qualifications of jurors of the county, to appear before the coroner at a time and place named in the warrant, or, when the services of such sheriff or constable cannot be conveniently procured, then the coroner may summon said electors from the by-standers. (*As amended, Sess. Laws 1881, c. 55.*)

§ 69. **Warrant for jurors.** That warrant may be in substance as follows:

TERRITORY OF DAKOTA, } ss.
 _____ County.

To the Sheriff or any Constable of said County: In the name of the people of the territory of Dakota, you are hereby required to summon forthwith three electors, having the qualifications of jurors, of your county, to appear before me at, (name the place,) at, (name the day and hour, or say forthwith,) then and there to hold an inquest on the dead body of _____, there lying, and find by what means he died.

Witness my hand this _____ day of _____, 18—.

A. B., Coroner of _____ County.

§ 70. **Completing jury, and oath.** If any juror fails to appear, the coroner shall cause the proper number to be summoned and returned from the by-standers, immediately proceed to impanel them, and administer the following oath, in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body herelies dead came to his death, according to your knowledge and the evidence given you.

§ 71. **Witnesses' attendance—contempts.** The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner has the same authority to enforce attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the territory.

§ 72. **Oath to witnesses.** An oath shall be administered to the witnesses, in substance as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead shall be the truth, the whole truth, and nothing but the truth. So help you God.

§ 73. **Testimony subscribed.** The testimony shall be reduced to writing under the coroner's order, and be subscribed by the witnesses.

§ 74. **Return by jury—form.** The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

TERMINITY OF DAKOTA, }
 _____ County } ss.

An inquisition holden at _____, in _____ county, territory aforesaid, on the _____ day of _____, A. D. 18—, before _____, coroner of the said county, upon the body of _____, (or person unknown,) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say, (here state, when, how, by what person, means, weapon, or accident he came to his death, and whether feloniously.)

In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid.

(Which shall be attested by the coroner.)

§ 75. **Criminal's name not disclosed.** If the inquisition find that a crime has been committed on the deceased, and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section.

§ 76. **Coroner may order arrest.** If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace.

§ 77. **May issue warrant.** If the person charged be not present, and the coroner believe he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace.

§ 78. **Warrant returnable to justice.** The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, the same proceeding shall be had as in other cases under complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases.

§ 79. **Warrant to recite verdict.** The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant

shall be sufficient foundation for the proceedings of the justice, instead of a complaint.

§ 80. **Return by coroner.** The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testified material matter.

§ 81. **Disposition of body—payment of expenses.** The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if any there be; but if not, he shall cause him to be decently buried, and the expenses to be paid from any property found with his body; or, if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them, if deemed reasonable, and paid as other claims on the county.

§ 82. **When justice may act as coroner.** When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself by his warrant, and may proceed with him as a justice of the peace.

§ 83. **Physicians may be summoned.** In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow, in such case, a reasonable compensation instead of witness fees.

§ 84. **Disposition of property on body.** The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the mean time by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

§ 85. **Treasurer's duty with property.** Upon the delivery of money to the treasurer, he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

§ 86. **Money, when and how paid.** If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasury must pay it to them, after deducting the fees and expenses of the coroner of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners or supervisors.

§ 87. **Statement by coroner.** Before auditing and allowing the account of the coroner, the board of county commissioners must require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

OF THE ASSESSOR.

§ 88. **Duties of assessor.** The assessor shall perform, all and singular, the acts and duties which now are or may be hereafter prescribed by law for assessors to perform.

OF THE PROBATE COURT AND THE JUDGE THEREOF.

§ 89. **Probate courts—record—seal.** There shall be a probate court held by the judge of the probate court in each organized county, which shall have the jurisdiction, and proceed in the manner provided in the law governing proceedings in probate courts, and of guardian and ward. They shall be courts of record, and shall have a seal, and the judge thereof shall also be clerk of the said court.

§ 90. **Court always open—terms.** The court shall be always open for the transaction of probate business; and the judge thereof shall especially attend his office and hold terms of the probate court, beginning on the first Mondays of January, March, May, July, September, and November of each year, and continuing so long as shall be necessary.

§ 91. **Office furniture—records.** The judge of the probate court shall keep his office at the county seat in such rooms as the county may provide, and his office shall be kept open at reasonable hours. He shall safely keep all the papers, books, and records of his office, or relating to any case or business of the probate court, or before him as judge thereof, and receive and pay out, according to law, any money which, by law, may be payable to him. The county shall provide such tables, desks, cases for books and papers, and all necessary books and papers, and books of record, and other property or furniture required for the office.

§ 92. **Judge not counsel, when.** A judge of the probate court shall not be counsel or attorney in any civil action for or against any executor, administrator, guardian, trustee, minor, or other person over whom or whose accounts he has, or by law would have, jurisdiction, whether such action relates to the business of the estate or not.

OF THE TREASURER.

§ 93. **Treasurer's general duties.** It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and other moneys which by law are directed to be paid to him, and all moneys received by him for the use of the county shall be paid by him only on the warrant of the board of county commissioners drawn according to law, and all other moneys shall be paid over by him as provided by law.

§ 94. **Method and publicity of accounts.** He shall be the collector of taxes; shall keep his office at the county seat; and shall attend his office three days in each week. He shall be charged with the amount of all tax-lists in his hands for collection, and credited with the amounts collected thereon, and the delinquent list, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom, and on what account received, in cash, warrants, county or road orders; and, if in warrants or orders, their kind, number, or other designation, amounts for which they were drawn, interest due thereon, and the amounts of the receipts thereon indorsed, if any; also of all disbursements by him made, showing the time when, to whom, on what account, and the amount paid; and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation shall be exhibited in separate and distinct columns or accounts, and so as to show whether the same was received or paid in cash, or warrants, or orders; and if either of the latter, their designation and other particulars, as above required; and the county treasurer shall at all times exhibit such accounts, when desired, to the territorial, county, or school officers entitled to receive the same, and shall at any time pay over the balance in his hands to them, upon receiving proper vouchers.

§ 95. **Board examines and settles accounts.** The books, accounts, and vouchers of the county treasurer, and all moneys, warrants, or orders remaining in the treasury, shall at all times be subject to the inspection and examination of the board of county commissioners, and at the regular meetings of the board in January and July of each year, and at such other times as they may direct, he shall settle with them his accounts as treasurer, and, for that purpose, shall exhibit to them all his books, accounts, and moneys, and all vouchers relating to the same to be audited and allowed, which vouchers shall be retained by them for evidence of his settlement; and, if found correct, the accounts shall be certified; if not, he shall be liable on his bond.

§ 96. **To insure county property.** When directed by the board of county commissioners he shall cause to be insured, at the charge of the county, any or all of the public buildings and property

belonging to the same, in the name of himself as treasurer and his successors in office, or otherwise, as said board may direct; and in case of the destruction or damage of the buildings or property so insured, such treasurer shall demand and receive the moneys due on account of such insurance, and pay the same into the county treasury, and such moneys shall be applied to the fund for rebuilding or restoring such buildings or property.

Collection of personal taxes. See Political Code, c. 28, § 57; and Appendix, c. 28, §§ 57a, 57b.

OF THE COUNTY SURVEYOR.

§ 97. **Surveyor's general duties.** The county surveyor shall make, in good and professional manner, all surveys of lands within his county which he may be called upon by the owner thereof, or his representative, or directed by the district or probate courts, or the board of county commissioners, to make; and also all lands, tracts, or lots owned by the county, and public roads, when so directed by said board; and his surveys shall be held as presumptively correct.

§ 98. **Record of notes and plats.** He shall transcribe the field-notes and plats of such surveys into convenient and substantial record-books, to be furnished by the county, when the board of commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office. They may be kept in the office of the county clerk, and said record shall be competent evidence in all courts of the facts therein set forth.

§ 99. **Method of resurvey and subdivision.** The resurvey and subdivision of lands by all surveyors shall be according to the laws of the United States, and the instructions issued by the officers thereof in charge of the public land surveys, in all respects; and in the subdivision of fractional sections, bounded on any side by a meandered lake or river, or the boundary of any reservation or irregular survey, the subdivision lines running towards and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey.

§ 100. **Sworn chainmen in disputed cases.** Whenever the survey made is of lines and monuments in dispute between parties, or by order of the district or probate courts, the chainmen must be disinterested persons, approved and sworn by the surveyor to measure justly and impartially to the best of their skill and ability.

§ 101. **Fullness and accuracy of notes and plats.** The record of the field-notes and plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present, the date of the survey, the names of the chainmen, and that they were approved and sworn by the surveyor, when so required by law. The courses shall be taken according to

the true meridian, and the variation of the magnetic needle therefrom shall be noted, and also whenever any material change therein shall occur.

§ 102. **Retracing lines to avoid errors.** In retracing lines or making any survey, he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidences or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments.

§ 103. **Assistants—how paid.** All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed.

Land drainage. See Appendix, c. 46.

CHAPTER XXII.

VACANCIES IN OFFICE AND SUPPLYING SAME.

RESIGNATIONS.

§ 1. **Resignations, to whom made.** Resignations may be made as follows:

1. Of all territorial and district officers, to the governor.
2. Of all members of the legislative assembly, to the presiding officer of their branches respectively, when in session; and when not in session, to the governor; and when made to the presiding officer, he shall at once notify the governor thereof.
3. All the officers of the legislative assembly, to the respective branches thereof.
4. Of all elective county officers by filing or depositing such resignation, in writing, in the office of the county clerk, except that of county clerk, which shall be filed or deposited with the board of county commissioners, which resignations, unless a different time is fixed therein, shall take effect upon such filing or deposit. (*As amended, Sess. Laws 1881, c. 137.*)
5. Of officers of civil townships, to the board of supervisors of the township, except of members of said board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the clerk of the district court of the resignation of all officers whose bonds are filed with that officer.
6. Of all officers holding their office by appointment, to the body, board, court, or officer that appointed them.

OF VACANCIES.

§ 2. **Events causing vacancies.** Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent.
2. His resignation.
3. His removal from office.
4. Failure to qualify as provided by law.
5. His ceasing to be a resident of the territory, district, county, township, or precinct in which the duties of his office are to be exercised, or for which he may have been elected.
6. His conviction of any infamous crime, or of any offense involving a violation of his official oath.
7. Whenever a judgment shall be obtained against him for a breach of his official bond.

OF REMOVALS.

§ 3. **Causes for removal of certain classes of officers.** All elective county, township, and precinct officers may be charged, tried, and removed from office for either of the causes following:

1. Habitual or willful neglect of duty.
2. Gross partiality.
3. Oppression.
4. Extortion.
5. Corruption.
6. Willful maladministration in office.
7. Habitual drunkenness.
8. For a failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized by law.

§ 4. **Who may bring action.** The board of county commissioners, in the name of the county, or any person in his own name, may make such a charge and bring the action, and the district court shall have exclusive original jurisdiction thereof. The proceedings shall be as provided in the Codes of Civil and Criminal Procedure.

§ 5. **Court may suspend officer.** At any time after the commencement of the action the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony or affidavits then presented; and, if such suspension take place, the board of county commissioners shall temporarily fill the office by appointment. (*As amended, Sess. Laws 1881, c. 123.*)

See sec. 10 of this chapter.

§ 6. **Question tried as in other actions.** The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant, or as provided for in the Code of Criminal Procedure; and a copy thereof shall be certified to the board of county commissioners, and the county clerk shall enter the same upon the proper record.

§ 7. **Property delivered to successor.** Upon the death, resignation, suspension, or removal from office of any officer, all books and papers belonging to his office, and all moneys in his hands, and all property of whatever kind, held by him by virtue of his office, shall be delivered to his successor.

OF FILLING VACANCIES.

§ 8. **Vacancies filled by appointment.** All vacancies, except in the offices of members of the legislative assembly, shall be filled by appointment, as follows:

1. In the territorial and district officers, by the governor.
2. In county and precinct officers, by the board of county commissioners, except vacancies in said board.
3. In officers of civil townships, by the justices of the peace of the township, together with the board of supervisors, or a majority of them, by warrant under their hands; and if a vacancy occurs from any cause in the foregoing board of appointment, the remaining officers of such board shall fill any vacancy therein.

§ 9. **Filling vacancy in county board.** When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining member or members of said board, with the judge of the probate court and county clerk, to immediately appoint some suitable person to fill such vacancy from the district where the vacancy occurs.

§ 10. **Brief vacancies not to be filled.** If a vacancy occurs thirty days previous to an election day, at which it may be filled, no appointment shall be made unless it be necessary to carry out said election and the canvass of the same according to law; in that case an appointment may be made at any time previous to said election, to hold until after said election, or until his successor is elected and qualified.

§ 11. **Appointments in writing—term.** Appointments under the provisions of this act shall be made in writing, and made to continue until the next general election at which the vacancy can be filled, and until a successor is elected and qualified, to be filed with the secretary of the territory, or in the proper county offices respectively.

§ 12. **Appointees—how qualified.** Persons appointed to offices as herein provided, shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment.

CHAPTER XXIII.

CIVIL TOWNSHIPS.

Part I.—Township Organization.

I.—TOWNSHIPS, HOW ORGANIZED AND NAMED.

§ 1. **When county board to fix boundaries of town.** Whenever a majority of the legal voters of any congressional township in this territory, containing twenty-five legal voters, petition the board of county commissioners to be organized as a town under this chapter, said board shall forthwith proceed to fix and determine the boundaries of such new town, and to name the same; and said board shall make a full report of all their proceedings in relation to laying off said town, and file the same with the county auditor or county clerk. (*Sess. Laws 1883, c. 112, § 1.*)

§ 2. **May attach fragment of congressional township to adjoining town.** A fraction of a township may be attached by said commissioners to an adjoining town, or be divided between two or more towns, or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers or lakes or creeks so divide a township as to make it inconvenient to do town business, the said commissioners may dispose of any fraction so formed by annexing the same to an adjoining township in the same county, if it shall seem to them proper whenever petitioned to do so, by not less than two-thirds of the legal voters residing in such fraction; and the fact that any such petition is so signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction having knowledge of the fact, and townships having two or more villages or cities, each containing two hundred or more inhabitants, may petition the county commissioners for a division; and whenever the county commissioners are so petitioned, they may, if they think the interest of such town will be subserved thereby, proceed to divide such townships in such manner as will best suit the convenience of the territory: *provided, however, that at least twenty days' notice shall be given by the county commissioners to the chairman of the board of supervisors of each township affected by the change, before action is taken thereon.*

provided, further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached from any tax levied or assessed prior to such division being made: *provided*, that the part or portion of any town annexed to any other town, and any village or city separated from any town under the provisions of this act, shall not be released from, or in any way discharged from, the payment of any bonded or other indebtedness that may exist against the town from which separation has been made. (*Id.* § 2.)

§ 3. **Name of town.** Towns thus formed shall be named in accordance with the expressed wish of a majority of the legal voters resident therein; but if they fail to so designate the name, the county commissioners may select a name. (*Id.* § 3.)

§ 4. **First town meeting.** The county commissioners shall thereupon make out notices designating a suitable place for holding the first town meeting in each town, which shall be holden within twenty days after said town is organized; and the auditor or county clerk shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township not less than ten days before the day set for such town meeting. (*Id.* § 4.)

§ 5. **County clerk to transmit name to editor.** Each county auditor or county clerk shall, within thirty days after such town is organized, transmit by mail to the auditor of the territory an abstract of such report, giving the bonds of each town and the name designated; and said county auditor or county clerk shall record in a book for that purpose a full description of each town. (*Id.* § 5.)

§ 6. **Where similar names are adopted.** If the auditor of the territory, on comparing the abstract of the reports from the several counties, finds that any two or more townships have the same name, he shall transmit to the auditor or county clerk of the proper county the name of the town to be altered; and the board of commissioners shall, at their next meeting thereafter, adopt for such town some name different from those heretofore named, so that no two towns organized under this chapter shall have the same name, and when such name is adopted the auditor [or] clerk of the county shall inform the territorial auditor as before directed. (*Id.* § 6.)

§ 7. **Present boundaries to remain.** The limits and boundary lines of every organized township shall remain as now established, until otherwise provided by the board of county commissioners under the authority of law. (*Id.* § 7.)

II.—CORPORATE POWERS OF TOWNS.

§ 8. **Powers of town.** Each town is a body corporate and has capacity:

1. To sue and be sued.

2. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the powers of the Legislature.

3. To make such contracts, purchase and hold such personal property, as may be necessary for the exercise of its corporate or administrative powers.

4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its own inhabitants. (*Sess. Laws 1883, c. 112, § 8.*)

§ 9. **Same.** No town shall possess or exercise any corporate powers except such as are enumerated in this chapter, or are especially given by law or necessary to the exercise of the power so enumerated or granted. (*Id. § 9.*)

§ 10. **Actions to be in corporate name.** All acts or proceedings by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the town by name. (*Id. § 10.*)

III.—ANNUAL TOWN MEETINGS.

§ 11. **Citizens shall hold town meetings.** The citizens of the several towns of this territory, qualified to vote at general elections, shall annually assemble and hold town meetings in their respective towns on the first Tuesday of March, at such place in each town as the electors thereof, at their annual town meetings, from time to time appoint; and notice of the time and place of holding such meeting shall be given by the town clerk by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting: *provided*, that before any change of place of holding town meetings is made, notice of such contemplated change may be given by any member of the town board to the town clerk, who shall, in his regularly printed or written notices, as provided hereinabove, incorporate the special notice of the contemplated change of place of holding said town meeting. (*Id. § 11.*)

§ 12. **What officers to be chosen.** There shall be elected at the annual town meeting in each town, three supervisors,—one of whom shall be designated on the ballots as chairman,—one town clerk, one treasurer, one assessor, two justices of the peace, two constables, and one overseer of highways for each road district in said town; but justices of the peace and constables shall be elected only once in two years, except to fill vacancies. (*Id. § 12.*) (See App., c. 23, *§ 12a.)

§ 13. **Powers of electors.** The electors of each town have power at their annual town meeting:

1. To determine the number of pound-masters and the location of pounds.

2. To select such town officers as are required to be chosen.

3. To direct the institution or defense of actions in all controversies where such town is interested.

4. To direct such sums to be raised in such town for prosecuting or defending such actions as they may deem necessary.

5. To make all rules and regulations for impounding of animals.

6. To impose such penalties on persons offending against any rule or regulation established by said town as they think proper, not exceeding ten dollars for each offense, unless herein otherwise provided.

7. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the town.

8. To vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for other necessary town charges, as they deem expedient.

Provided, that they may, at their annual town meeting, direct such an amount of the poll or road tax of the town to be expended on the highways in an adjoining town as they deem conducive to the interests of the town, which labor and tax shall be expended under the direction of the supervisors of the town furnishing the same: *Provided, further*, that where more than one entire congressional township is included within an organized town, the poll and road tax raised within the limits of each of such congressional townships shall be expended within such congressional township, unless raised to be expended outside of such organized town, in an adjoining town. (*Sess. Laws 1883, c. 112, § 13.*)

IV.—BY-LAWS.

§ 14. **By-laws—when to take effect.** No by-law made by any town shall take effect before the same is published by posting up copies thereof in three of the most public places in the town; and such by-laws, duly made and so published, are binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent town meeting. (*Id.* § 14.)

§ 15. **Town clerk shall post by-laws.** The town clerk shall post in three of the most public places in his town, copies of all by-laws made by such town, and shall make an entry in the town records of the time when, and the place where, such by-laws were posted. (*Id.* § 15.)

V.—SPECIAL TOWN MEETINGS.

§ 16. **When special meetings may be held.** Special meetings may be held for the purpose of electing town officers to fill vacancies that occur, also for the purpose of transacting any lawful business, whenever the supervisors, town clerk, and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, file in the office of the town clerk a written

statement that a special meeting is necessary to the interest of the town. (*Sess. Laws 1883, c. 112, § 16.*)

§ 17. **Town clerk to give notice.** Every town clerk with whom such statement is filed, as required in the preceding section, shall record the same, and immediately cause notice to be posted up in five of the most public places in the town, giving at least ten days' notice of such special meeting; and if there is a newspaper printed in said town, he shall cause a copy of said notice to be published therein at least three days before the time appointed for such meeting. (*Id.* § 17.)

§ 18. **What notice shall specify.** Every notice given for a special town meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting, the notices shall specify in what office vacancies exist, how they occurred, who was the last incumbent, and when the legal term of each office expires. (*Id.* § 18.)

VI.—MODE OF CONDUCTING TOWN MEETINGS.

§ 19. **Organization.** The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual town meeting, or special town meeting, shall be called to order by the town clerk, if there is one present; in case there is none present, then the voters may elect, by acclamation, one of their number chairman, and three of their number judges, of town meeting, who shall be duly sworn and be judges of the qualifications of township electors. They shall then proceed to choose one of their number to preside as moderator of such meeting. The town clerk last before elected, shall be clerk of the meeting, and keep full minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by the meeting. If the town clerk is absent, then such person as is elected for that purpose shall act as clerk of the meeting. (*Id.* § 19.)

§ 20. **Duty of moderator—reconsideration, etc.** At the opening of every town meeting, the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business or stated by the moderator, and no proposition to reconsider any vote shall be entertained at any town meeting, unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll-list at such election up to the time such motion is made; and all questions upon motions made at town meetings shall be determined by a majority of the electors voting; and

the moderator shall ascertain and declare the result of the votes on each question. (*Sess. Laws 1883, c. 112, § 20.*)

§ 21. **Opening of polls.** Before the electors proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the moderator, and proclamation shall, in like manner, be made of the adjournment and of the opening and closing of the polls, until the election is ended. (*Id. § 21.*)

§ 22. **Who are voters.** No person is a voter at any town meeting unless he is qualified to vote at general elections, and has been for the last ten days an actual resident of the town wherein he offers to vote. (*Id. § 22.*)

§ 23. **Challenge.** If any person offering to vote at any election, or upon any question arising at such town meeting, is challenged as unqualified, the judges of the town meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the town meeting. (*Id. § 23.*)

§ 24. **Certain officers to be elected by ballot.** The supervisors, treasurer, town clerk, assessor, justices of the peace, constables, and overseer of the poor in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays, or by a division, as the electors determine. (*Id. § 24.*)

§ 25. **The ballot.** When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to one of the judges so folded as to conceal its contents. (*Id. § 25.*) (See App., c. 23, *§ 12a.)

§ 26. **Poll-list.** When the election is by ballot, a poll-list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received. (*Id. § 26.*)

§ 27. **Judges to deposit ballot.** When the election is by ballot, one of the judges shall deposit the ballot in a box provided for that purpose. (*Id. § 27.*)

§ 28. **Judges to canvass.** At the close of every election by ballot, the judges shall proceed publicly to canvass the votes, which canvass, when commenced, shall continue without adjournment or interruption until the same is completed. (*Id. § 28.*)

§ 29. **Manner of canvassing.** The canvass shall be conducted by taking a ballot at a time from the ballot-box and counting until the number of ballots is equal to the number of names on the poll-list, and if there are any left in the box, they shall be immediately destroyed, and the person having the greatest number of votes for

any office shall be declared duly elected: *provided*, that if two or more persons have an equal and the highest number of votes for any office, the judges of election shall at once publicly, by lot, determine who of such persons shall be declared elected. If, on opening the ballots, two or more ballots are found to be so folded that it is apparent that the same person voted them, the board shall destroy such votes immediately. (*Sess. Laws 1883, c. 112, § 29.*)

§ 30. **Result to be read to meeting.** The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election to every person whose name is entered on the poll-list as a voter. (*Id. § 30.*)

§ 31. **Minutes to be filed.** The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the town clerk within two days after such town meeting. (*Id. § 31.*)

§ 32. **Notice of election.** The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name is not entered on the poll-list as a voter, notice of his election. (*Id. § 32.*)

VII.—ANNUAL TOWN MEETING FAILING TO ELECT.

§ 33. **Proceedings when town meeting fails to elect.** In case any town refuses or neglects to organize and elect town officers at the time fixed by law for holding annual town meetings, twelve freeholders of the town may call a town meeting for the purpose aforesaid, by posting up notices in three public places in such town, giving at least ten days' notice of such meeting, which notice shall set forth the time and place and object of such meeting; and the electors, when assembled by virtue of such notice, shall possess all the powers conferred upon them at the annual town meeting. In case no such notice is given, as aforesaid, within thirty days after the time for holding the annual town meeting, the board of county commissioners of the county shall, on the affidavit of any freeholder of said town, filed in the office of the clerk of the board, setting forth the facts, proceed, at any regular or special meeting of the board, and appoint the necessary town officers of such town, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same powers and be subject to the same duties as if they had been duly elected. (*Id. § 33.*)

VIII.—QUALIFICATION OF OFFICERS.

§ 34. **Voter eligible to office.** Every person qualified to vote at town meetings is eligible to any town office. (*Id. § 34.*)

§ 35. **Oath of officers.** Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer, or constable, within ten days after he is notified of his election or appointment, shall take and subscribe, before the town clerk or justice of the peace, an oath to support the constitution of the United States, and of the organic act of this territory, and faithfully to discharge the duties of his office (naming the same) to the best of his ability. Such oath shall be administered without fee, and certified by the officer before whom it was taken, with the date of taking the same. (*Id.* § 35.)

§ 36. **Certificate to be filed.** The person taking such oath shall immediately, and before entering upon the duties of his office, file the certificate of such oath in the office of the town clerk. (*Id.* § 36.)

§ 37. **Justice to take oath and give bond.** Every person elected or appointed to the office of justice of the peace, shall, within ten days after receiving notice thereof, take and subscribe before any other officer duly authorized to administer oaths, an oath to support the constitution of the United States and the organic act of the territory of Dakota, and faithfully and impartially to discharge the duties of his office according to the best of his ability. He shall also execute a bond to the board of supervisors, with two or more sufficient sureties, to be approved by the chairman, in the penal sum of not less than five hundred dollars, nor more than one thousand dollars, conditioned for the faithful discharge of his official duties. Said chairman shall indorse thereon his approval of the sureties named in such bond, and such justice shall immediately file the same, together with his oath of office, duly certified, with the clerk of the district court of the proper county, for the benefit of any person aggrieved by the acts of said justice, and any person aggrieved may maintain an action on said bond in his own name against said justice and his sureties. (*Id.* § 37.)

§ 38. **Bond of treasurer.** Every person elected or appointed to the office of treasurer, before he enters upon the duties of his office, shall execute and deliver to the supervisors of the town, and their successors in office, a bond, with one or more sureties, to be approved by the chairman of the board, in double the probable amount of money to be received by him, which amount shall be determined by said board, conditioned for the faithful execution of his duties as such treasurer. (*Id.* § 38.)

§ 39. **Bond to be filed.** The said chairman shall, within six days thereafter, file such bond, with said approval indorsed thereon, in the office of register of deeds, who shall record the same in a book provided for that purpose. (*Id.* § 39.)

§ 40. **Constable's oath and bond.** Every person chosen to the office of constable, before he enters upon the duties of his office,

and within eight days after he is notified of his election or appointment, shall take and subscribe the oath of office prescribed by law, and execute a bond to the board of supervisors in such penal sum as the supervisors direct, with one or more sufficient sureties, to be approved by the chairman of said board or the town clerk, conditioned for the faithful discharge of his duties. The chairman of said board or the town clerk shall, if such bond is approved, indorse his approval thereon, and cause such bond to be filed with the town clerk for the benefit of any person aggrieved by the acts or omissions of said constable, and any person so aggrieved, or the town, may maintain an action on said bond against said constable and sureties. (*Id.* § 40.)

§ 41. **What deemed refusal to serve.** If any person elected or appointed to the office of treasurer or constable does not give such security and take such oath as is required above within the time limited for that purpose, such neglect shall be deemed a refusal to serve. (*Id.* § 41.)

§ 42. **Same.** If any person elected or appointed to any town office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office. (*Id.* § 42.)

§ 43. **Penalty for neglect to take oath.** If any town officer who is required by law to take the oath of office enters upon the duties of his office before taking such oath, he forfeits to such town the sum of fifty dollars. (*Id.* § 43.)

§ 44. **Road overseer and pound-master to file acceptance.** Every person elected or appointed to the office of overseer of highways or pound-master, before he enters upon the duties of his office, and within ten days after he is notified of his election or appointment, shall file in the office of the town clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal [to] serve. (*Id.* § 44.)

§ 45. **Term of office.** Town officers, except justices of the peace and constables, hold their offices for one year, and until their successors are elected or appointed to their places and are qualified. The justices of the peace and constables shall hold their offices for two years, and until others are chosen and qualified. (*Id.* § 45.)

IX.—FILLING VACANCIES.

§ 46. **Board may accept resignation.** The board of supervisors of any town may, for sufficient cause shown to them, accept the resignation of any town officer in their town, and whenever they accept any such resignation, they shall forthwith give notice thereof to the town clerk. (*Id.* § 46.)

§ 47. **Vacancies—how filled.** Whenever any town fails to elect the proper number of town officers, or whenever any person

elected to a town office fails to qualify, or whenever any vacancy happens in any town office from death, resignation, removal from town, or other cause, the justices of the peace of the town, together with the board of supervisors, or a majority of them, shall fill the vacancy by appointment, by warrant under their hand, and the persons so appointed shall hold their offices until the next annual town meeting, and until others are elected and qualified in their places, and shall have the same power and be subject to the same duties and penalties as if they had been duly elected. (*Id.* § 47.)

§ 48. **Vacancies in appointing board.** Whenever a vacancy occurs from any cause in any of the offices enumerated in the foregoing section, composing the board of appointment for the appointment of town officers in case of vacancy, the remaining officers of such appointing board shall fill any vacancy thus occurring. (*Id.* § 48.)

§ 49. **When county clerk to appoint assessor.** When any township assessor is elected and fails or refuses to qualify to discharge the duties of his office, or if the electors of said township fail, from any reason whatever, to elect an assessor, and the town board of said township fails or refuses to appoint an assessor for said township on or before the first day of March of that year for which said assessor is to serve, then it shall be the duty of the county auditor or county clerk to appoint an assessor for said township, who shall be a resident of said county. (*Id.* § 49.)

X.—BOARD OF HEALTH.

§ 50. **Board of health.** The town supervisors shall constitute a board of health, and within their respective towns shall have and exercise all the powers necessary for the preservation of the public health. (*Id.* § 50.) (See Appendix, c. 21, § 29, *7.)

§ 51. **Powers.** The board of health may examine into all nuisances, sources of filth, and causes of sickness, and make such regulations respecting the same as they may judge necessary for the public health and safety of the inhabitants; and every person who shall violate any order or regulation made by any board of health, and duly published, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months. (*Id.* § 51.)

§ 52. **Public notice.** Notice shall be given by the board of health of all orders and regulations made by them, by publishing the same in some newspaper, if there is one published in such town or the county; if there is none, then by posting up such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons. (*Id.* § 52.)

§ 53. **Penalty for refusal to obey order.** Whenever any nuisance, source or filth, or cause of sickness is found on private

property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant thereof neglects so to do, he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the town. (*Id.* § 53.)

§ 54. **In case of refusal to obey order.** Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as has caused or permitted the same. (*Id.* § 54.)

§ 55. **Board to enter infected premises—proceedings if opposed.** Whenever the board of health thinks it necessary, for the preservation of the health of its inhabitants, to enter any building or vessel in their town for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his town, stating the facts in the case so far as he has knowledge thereof. (*Id.* § 55.)

§ 56. **Same.** Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and, being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove, or prevent, under the direction of the members of such board of health. (*Id.* § 56.)

§ 57. **Quarantine.** When any person coming from abroad, or residing in any town or city in this territory, is infected, or lately has been infected, with the small-pox or other contagious disease dangerous to the public health, the board of health of the town or city where such sick or infected person is may immediately cause such person to be removed to a separate house, if it can be done without danger to his or her health, and shall provide for such person or persons, nurses, medical attendance, and other necessaries, which shall be a charge in favor of such town or city upon the person so provided for, his parents, guardian, or master, if able; otherwise, upon the county to which he belongs, or upon the territory, if said person be a non-resident of the territory. (*Id.* § 57.)

§ 58. **Same.** If such infected person cannot be removed without danger to his or her health, the board of health shall make provision, as directed in the preceding section, for such person in the house where he may be; and in such case they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants. (*Id.* § 58.)

§ 59. **Board to provide hospital.** When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and, with all its inmates, subject to the regulations of the board. (*Id.* § 59.)

XI.—POWERS AND DUTIES OF SUPERVISORS.

§ 60. **Powers of supervisors.** The supervisors shall have charge of such affairs of the town as are not by law committed to other town officers; and they shall have power to draw orders on the town treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and for all moneys raised by the town to be disbursed for any other purpose. (*Id.* § 60.)

§ 61. **Improving streets.** Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the town supervisors are authorized to cause improvement to be made in any street that may be needed as a highway, if the corporate authorities of said village or town neglect to make such improvements. (*Id.* § 61.)

§ 62. **Board to prosecute actions.** The supervisors shall, by their name of office, prosecute for the benefit of the town, all actions upon bonds given to them, or their predecessors in office; and shall also sue for and collect all penalties and forfeitures, in respect to which no other provision is made, incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure, highway, or property belonging to the town, and shall pay all moneys collected under this section to the town treasurer. (*Id.* § 62.)

§ 63. **Quorum.** Any two of the supervisors constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided. (*Id.* § 63.)

XII.—DUTIES OF TOWN CLERK.

§ 64. **Clerk may administer oath.** The town clerks of the several towns, city clerks of all cities, and recorders of all villages in this territory, are hereby authorized to administer all oaths and take all acknowledgments of instruments authorized or required by law. (*Id.* § 64.)

§ 65. **May appoint deputy, etc.** The town clerk shall have the custody of the record-books and papers of the town, when

no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. He may, at his discretion, appoint a deputy town clerk, for whose acts he shall be responsible. Before any deputy town clerk shall enter upon the duties of his office he shall take and subscribe the oath required by law, which oath shall be filed in the office of the clerk of the court. (*Id.* § 65.)

§ 66. **Keep record.** He shall record in the book of records of his town minutes of the proceedings of every town meeting, and he shall enter therein every order or direction, and all rules and regulations, of any such town meeting; and shall also file and preserve all accounts audited by the town board or allowed at a town meeting, and enter a statement thereof in such book of records. (*Id.* § 66.)

§ 67. **Oath and bond.** Every person elected or appointed to the office of town clerk in any of the towns of this territory shall, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, execute a bond, with two or more sufficient sureties, to be approved by the town treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Said bond so approved shall be filed in the office of the clerk of the district court for the benefit of any person aggrieved by the acts or omissions of said town clerk, and any person so aggrieved, or the town, may maintain an action on said bond against said town clerk and sureties. (*Id.* § 67.)

§ 68. **Clerk to send name to district court clerk.** Every town clerk, immediately after the qualification of any constable elected or appointed in his town, shall transmit to the clerk of the district court of the county the name of such constable. (*Id.* § 68.)

§ 69. **Clerk to send certain notice to district court clerk.** Each town clerk shall, immediately after the election of any justice of the peace in his town, transmit a written notice thereof to the clerk of the district court of said county, stating therein the name of the person elected, and the term for which he is elected; and if elected to fill a vacancy, he shall state in said notice who was the last incumbent of the office. (*Id.* § 69.)

§ 70. **Penalty for neglect.** If any town clerk willfully neglects to make such return, such omission is hereby declared a misdemeanor, and on conviction thereof the person so offending shall be adjudged to pay a fine not exceeding \$10. (*Id.* § 70.)

XIII.—DUTIES OF TOWN TREASURER.

§ 71. **Treasurer's duties.** The town treasurer shall receive and take charge of all moneys belonging to the town, or which are by law required to be paid into the town treasury, and shall pay over and account for the same upon the order of such town, or the officers.

thereof, duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law. (*Id.* § 71.)

§ 72. **Account of receipts and disbursements.** Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office on demand, after such successor has qualified according to law. (*Id.* § 72.)

§ 73. **Town treasurer to draw moneys from county.** The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver proper vouchers therefor. Each town treasurer shall be allowed and entitled to retain 2 per centum of all moneys paid into the town treasury for receiving, safe-keeping, and paying over the same according to law, except such moneys as are appropriated for bounty to soldiers, of which he shall only be allowed to retain 1 per cent. (*Id.* § 73.)

§ 74. **Town treasurer's statement.** Each town treasurer, within five days preceding the annual town meeting, shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer, and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person, and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk, and shall be by such clerk carefully preserved and recorded in the town book of records. (*Id.* § 74.)

§ 75. **Penalty for neglect.** Every town treasurer who refuses or neglects to comply with the provisions of the four preceding sections, shall forfeit not more than \$2,000, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court, if there is no jury impaneled, and may be recovered by a civil action, in the name of the person who prosecutes the same, with costs of the suit; one-half shall go to the person so prosecuting, and the remainder to the town of which such delinquent is or has been treasurer. (*Id.* § 75.)

§ 76. **Treasurer's record—warrants.** Each and every town treasurer in this territory shall keep a suitable book, to be pro-

vided at the expense of the town, in which he shall enter the town orders that he cannot pay for want of funds when presented to him for payment, which orders when presented shall be indorsed by such treasurer by putting upon the back of the same the words, "Not paid for want of funds," giving the date of such indorsement, signing the name as town treasurer, which order, when so indorsed, shall bear interest from that date until paid. All town orders shall be paid in the order that they are registered, out of the first moneys that come into the town treasurer's hands for such purposes. (*Sess. Laws 1883, c. 112, § 76.*)

XIV.—TOWN BOARD OF AUDITORS.

§ 77. **Supervisors to audit accounts.** The supervisors constitute a town board for the purpose of auditing all accounts payable by said town; and if for any cause there are not three supervisors present to constitute said board, the chairman, and, in his absence, either of the supervisors, may notify any one or so many of the justices of the peace of the town as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the town board. (*Id.* § 77.)

§ 78. **Meetings of town board.** The town board shall meet annually on the Tuesday next preceding the annual town meeting to be held in said town, and at such other times as they deem necessary and expedient, for the purpose of auditing and settling all charges against said town; and they shall state on each account the amount allowed by them, but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof. (*Id.* § 78.)

§ 79. **Board to audit accounts at annual meeting.** The board shall also, at their annual meeting in each year, examine and audit the accounts of the town treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town by virtue of their office. (*Id.* § 79.)

§ 80. **Shall draw up report.** Such board shall draw up report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the town, and an estimate of the sum necessary for the current expenses thereof, the support of the poor, and other incidental expenses for the ensuing year. (*Id.* § 80.)

§ 81. **Report to be read.** Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting, and the whole or any portion of such report may be referred, by the order of the meeting, to a committee, whose duty it shall be [to] examine the same and report thereon to such meeting. (*Id.* § 81.)

§ 82. **Treasurer to pay orders.** The amount of any account audited and allowed by the town board, and the amount of any account voted to be allowed at any town meeting, shall be paid by the town treasurer on the order of said board, signed by the chairman and countersigned by the clerk; and all orders issued to any person by the town board for any sum due from such town, shall be receivable in payment of town taxes of said town. (*Id.* § 82.)

§ 83. **Clerk of board.** The town clerk shall be clerk of the town board, and shall keep a true record of their proceedings in his office. (*Id.* § 83.)

XV.—TOWN BOARD OF REVIEW.

§ 84. **Reviewing assessment, corrections, etc.** The board of supervisors of each town, the assessor, recorder, and president of each incorporated village, and the assessor, recorder, and mayor of each city, (except cities whose charter provides for a board of equalization,) shall meet on the fourth Monday of June, at the office of the town clerk or recorder [or] city clerk, for the purpose of reviewing the assessment of property in such town or district, and they shall immediately proceed to examine, ascertain, and see that all taxable property in their town or district has been properly placed upon the list and duly valued by the assessor, and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of said board to place the same upon the list, with the true value thereof, and proceed to correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property, shall be entered on the assessment list at the true and full value thereof; but the assessment of the property of any person shall not be raised until such persons have been duly notified of the intent of the board so to do. And on the application of any person considering himself aggrieved, they shall review the assessment and correct the same as shall appear to them just. Any two of said officers are authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day. All complaints and grievances of individuals, residents of the town or district, in reference to the assessment of personal property, shall be heard and decided by the town board: *provided*, that the complaints of non-residents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of the town board of review, shall be heard and determined by the county board. (*Id.* § 84.)

§ 85. **Assessor to give notice of meeting.** The assessor shall cause at least ten days' previous notice of the time and place of the meeting of the town board of review, by posting notices in at least three public places in his town or district, but the failure to give such notice or hold such meeting shall not vitiate such assessment,

except as to the excess of valuation of tax thereon shown to be unjustly made or levied. (*Sess. Laws 1883, c. 112, § 85.*)

XVI.—FEES OF TOWN OFFICERS.

§ 86. **Pay of officers.** The following town officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the town, in the duties of their respective offices. The town assessors shall receive for their services three dollars per day while engaged in their respective duties as such assessors: *provided*, that compensation received by such assessor shall not exceed the sum of sixty dollars in any one year. The town clerks and supervisors shall receive for their services one dollar and a half per day when attending to business in their town, and two dollars when attending to business out of the town; no town supervisors shall receive more than thirty-five dollars compensation in any one year: *Provided*, that the town clerk shall be paid fees for the following, and not a *per diem*: For serving notices of election upon town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or any instrument or writing authorized by law, ten cents for each hundred words; for copying any record of instrument on file in his office and certifying the same, ten cents for each hundred words, to be paid for by the person applying for the same: *Provided, further*, that at any town meeting, before the electors commence balloting for officers, they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent. (*Id.* § 86.)

XVII.—CLAIMS AGAINST TOWNS.

§ 87. **Accounts, how stated.** Before any account, claims, or demands against any town or county of this territory, for any property or services for which such town or county shall be liable, shall be audited or allowed by the board or officers authorized by law to audit and allow the same, the person in whose favor such account, claim or demand shall be, or his agent, shall reduce the same to writing in items, and shall verify the same to the effect that such account, claim, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the property therein charged was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged were actually rendered and of the value therein charged, or in case such services were official, for which fees are prescribed by law, then that the fees or amounts charged therefor are such as are allowed by law, and that no part of such account, claim, or demand has been paid: *provided*, that the provisions of

this act shall not apply to any claim or demand for an annual salary or *per diem* of jurors or witnesses fixed by, or in pursuance of, any statute. (*Sess. Laws 1883, c. 112, § 87.*)

§ 88. **Accounts to be verified.** The verification required by the preceding section may be made before any officer authorized by law to administer oaths, or before any member of the board to which the account, claim, or demand shall be presented to be audited, and every member of such board is hereby authorized to administer the proper oath in such cases; and every person who shall willfully or knowingly swear falsely on any such cases, shall be deemed guilty of willful perjury, and be punished accordingly: *provided*, that in case any such account, claim, or demand shall be made or presented by any administrator or executor on behalf of the estate of a deceased person, he shall not be required to verify the same, but may prove the same otherwise to the satisfaction of the board. (*Id.* § 88.)

§ 89. **Consideration of account.** Whenever an account, claim, or demand against any town or county shall have been verified in the manner prescribed in this act, the board of officers to whom the same shall be presented may receive and consider the same, and may allow or disallow the same in whole or in part, as to such board or officers shall appear just or lawful, saving to such claimants the right of appeal. (*Id.* § 89.)

§ 90. **Penalty for auditing account not verified.** Any member of such board who shall audit and allow any account, claim, or demand required by this act to be itemized and verified, without the same having been first duly itemized and verified, shall be deemed guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. (*Id.* § 90.)

XVIII.—SUITS BY AND AGAINST TOWNS.

§ 91. **Proceedings in case of suit.** Whenever any controversy or cause of action exists between towns, or between a town and an individual or corporation, such proceedings shall be had either at law or equity, for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations. (*Id.* § 91.)

§ 92. **Town to sue in its name, except.** In all such actions and proceedings the town shall sue and be sued by its name, except where town officers are authorized by law to sue in their name of office for the benefit of the town. (*Id.* § 92.)

§ 93. **Process must be served as directed.** No town or town officer shall be required to appear, answer, or plead to any such action at the first term of the court after the commencement thereof,

when the same is commenced in the district court, unless the process aforesaid is served, as herein directed, at least thirty days before the commencement of the term. (*Sess. Laws 1883, c. 112, § 93.*)

§ 94. **Service, on whom.** In legal proceedings against a town by name, all papers shall be served on the chairman of the board of supervisors, and in case of his absence, on the town clerk, and whenever any action or proceeding is commenced, said chairman shall attend to the defense thereof, and lay before the electors of the town, at the first town meeting, a full statement of such proceedings, for their direction in regard to the defense thereof. (*Id. § 94.*)

§ 95. **Jurisdiction.** No action in favor of any town shall be brought before any justice of the peace residing in such town. (*Id. § 95.*)

§ 96. **Recovery.** Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it appears on the trial thereof that the actual amount of injury to such town lands, in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage, with costs of suit, shall be recovered in said action, instead of any penalty for said trespass imposed by the town meeting, and such recovery shall be used as a bar to every other action for the same trespass. (*Id. § 96.*)

§ 97. **Court may partition, when.** Whenever by decree or decision, in any action or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the rights of any town are settled and confirmed, the courts in which such proceedings are had may partition such lands according to the rights of parties. (*Id. § 97.*)

§ 98. **Payment of judgment.** When a judgment is recovered against any town or against any town officers, in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the town treasurer upon demand, and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money of such town in his hands not otherwise appropriated. If he fails to do so, he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal. If payment is not made within thirty [days] after the time fixed by law for the county treasurer to pay over to the town treasurer the money in his hands belonging to such town, levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued on such judgment, but only town property shall be liable thereon. (*Id. § 98.*)

§ 99. **When judgment is not satisfied.** If judgment for the recovery of money is rendered against any town, and the judgment is not satisfied, or proceedings thereon stayed by appeal or

otherwise, before the next annual meeting of said town, a certified copy of the docket of the judgment may be presented to said town at said annual meeting. The supervisors of the town shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of said town, and the same certified to the county auditor or county clerk, and collected as other town taxes are collected. (*Sess. Laws 1883, c. 112, § 99.*)

XIX.—TOWN CHARGES—HOW LEVIED.

§ 100. **Town charges.** The following shall be deemed town charges:

1. The compensation of town officers for services rendered their respective towns.

2. Contingent expenses necessarily incurred for the use and benefit of the town.

3. The moneys authorized to be raised by the vote of the town meeting for any town purpose.

4. Every sum directed by law to be raised for any town purpose: *Provided*, that no tax for town purposes shall exceed the amount voted to be raised at the annual town meeting, as provided in subdivision nine, section fifteen (15) aforesaid. (*Id.* § 100.)

§ 101. **How levied.** The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the chapter for raising revenue and other money for territory and county purposes and expenses. (*Id.* § 101.)

XX.—BOOKS AND PAPERS OF OUTGOING OFFICERS.

§ 102. **Successor in office to demand records.** Whenever the term of any supervisor, town clerk, or assessor expires, and another person is appointed or elected to such office, such successor, immediately after he enters upon the duties of his office, shall demand of his predecessor all books and papers under his control belonging to such office. (*Id.* § 102.)

§ 103. **Same.** Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors, or of any person having charge of such books and papers. (*Id.* § 103.)

§ 104. **Records to be delivered on oath.** Every person so going out of office, whenever thereto required pursuant to the foregoing provisions, shall deliver, upon oath, all records, books, and papers in his possession, or in his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. (*Id.* § 104.)

§ 105. **Demand for records of administrator.** Upon the death of any of the officers enumerated, the successor of such officers shall make such demand as above provided, of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon like oath, all records, books, papers, or moneys in their possession or under their control, belonging to the office held by their testator or intestate. (*Sess. Laws 1883, c. 112, § 105.*)

XI.—GUIDE-POSTS.

§ 106. **Shall erect guide-posts.** Every township shall, in the manner provided herein, erect and maintain guide-posts on the highways and other ways, within the township, at such places as are necessary or convenient for the direction of travelers. (*Id. § 106.*)

§ 107. **Report of guide-posts.** The supervisors shall submit to the electors, at every annual meeting, a report of all the places at which guide-posts are erected and maintained within the town, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report, they shall severally forfeit the sum of ten dollars. (*Id. § 107.*)

§ 108. **Penalty for neglect to furnish guide-posts.** Upon the report of the supervisors the town shall determine the several places at which guide-posts are erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide-posts reported to be necessary or convenient by the supervisors, the town shall be estopped from alleging that such guide-posts were not necessary or convenient. (*Id. § 108.*)

§ 109. **Character of guide-posts.** At each of the places determined by the town, there shall be erected a substantial post, of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted, or otherwise marked, the name of the next town or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointed towards the towns or places to which said roads lead: *provided*, that the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for such guide-posts. (*Id. § 109.*)

§ 110. **Forfeit for neglect to furnish guide-posts.** Every town which neglects or refuses to erect and maintain such guide-posts, or some suitable substitute therefor, shall forfeit annually the sum of five dollars for every guide-post which it so neglects or refuses to maintain, which sum may be sued for and collected by any person, before any justice of the peace of the proper county, and the moneys

so collected shall be paid into the town treasury for the benefit of the roads and bridges of the said town. (*Sess. Laws 1883, c. 112, § 110.*)

XXII.—PUBLIC PLACES.

§ 111. **Voters to designate public places.** At the annual town meeting in each year the legal voters present at each meeting shall determine and designate three places in the town as public, or the most public, places of such town, and that all legal notices required to be posted in three public, or the most public, places of a town, shall be posted up at such places at least, and they shall make provision for the erection and maintenance of posts on which to post up notices as aforesaid in all places so designated, in which there is no sufficient natural convenience for that purpose. (*Id.* § 111.)

XXIII.—POUNDS AND POUND-MASTERS.

§ 112. **Pounds.** Whenever the electors of any town determine at their annual town meeting to erect one or more *towns* [pounds] therein, the same shall be under the care and direction of such pound-masters as are chosen or appointed for that purpose. (*Id.* § 112.)

§ 113. **Discontinue pounds.** The electors of any town may, at any annual town meeting, discontinue any pounds therein. (*Id.* § 113.)

§ 114. **Fees of pound-master—sales, etc.** The pound-master is allowed the following fees, to-wit: For taking into pound or discharging therefrom any horse, ass, or mule, and all neat cattle, twenty cents each; for every sheep or lamb, ten cents each; and for every hog, large or small, ten cents; and twenty-five cents for keeping each twenty-four hours in pound. And the pound-master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same is paid; and if the same are not paid and said animals removed within four days after they are impounded, the said pound-master shall give notice by posting the same in three of the most public places in said town that said animals (describing them) are impounded, and that unless the same are taken away and fees paid within fifteen days after the date of such notice, he will sell the same at public vendue, at the place where the town meetings of said town are usually held; and on the day designated in such notice the said pound-master shall expose the said animals for sale, and sell the same to the highest bidder in cash, for which service he shall receive two per cent. of the purchase money for each animal. Out of the money realized from said sale the said pound-master shall deduct all his legal fees and charges, and pay the balance, if any, to the chairman of the town supervisors, at the same time giving to said supervisors an accurate description of the animals sold and the amount received by him for each animal, and shall take a receipt and duplicate therefor, and file one of them with the town clerk: *provided*, that the said supervisors

shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from said pound-master; but if said money is not claimed within that time, then the sum so received shall be retained for the use of said town. (*Sess. Laws 1883, c. 112, § 114.*)

XXIV.—TOWNSHIP DEBTS AND BONDS.

§ 115. **Limit of debt.** No town has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township, and no town shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. (*Id. § 115.*)

§ 116. **Bonds of town.** The board of supervisors of the organized townships of this territory, or those that may hereafter be organized, be and the same are hereby authorized and fully empowered to issue the bonds or orders of their respective towns, with coupons attached, in such amounts and at such periods as they may be directed by two-thirds of the legal voters present and voting at any legally called town meeting held for that purpose; such bonds or orders to be payable in such amounts and at such times, not exceeding six years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed eight per cent. per annum, payable annually; which bonds or orders and coupons shall be signed by the chairman of the board of supervisors, and countersigned by the clerk of said town: *provided*, that nothing herein contained shall be construed to authorize the issuing of said bonds or orders unless the same shall have first been voted for by ballot by two-thirds of all the legal voters present and voting at any annual town meeting, or special town meeting called for that purpose, notice of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in said town for not less than ten days previous to the time of calling the same. (*Id. § 116.*)

§ 117. **Bonds to be sold at par.** No bonds or orders issued under the authority of this act shall be issued or negotiated for less than par value, nor shall said bonds or orders, or the proceeds thereof, be used or appropriated for any purpose whatever other than specified in this act. (*Id. § 117.*)

§ 118. **Levying bond tax.** Said board of supervisors and their successors are hereby authorized, and it is hereby made their duty, on or before the first day of September next after the date of said bonds or orders, and in each and every year thereafter on or before the first day of September, until the payment of said bonds or orders and interest is fully provided for, to levy and in due form to certify to the auditor or county clerk of the county in which such

town is situated, a tax upon the taxable property of said town, equal to the amount of principal and interest maturing next after such levy, and, in the discretion of said board of supervisors, such further sums as it shall deem expedient, not exceeding twenty per cent. of such maturing bonds or orders and interest, which taxes shall be payable in money, and shall constitute a fund for the payment of said bonds or orders and the interest thereon. (*Sess. Laws 1883, c. 112, § 118.*)

XIV.—MISCELLANEOUS PROVISIONS.

§ 119. **Town officer not to have interest in contract.** No town officer shall become a party to, or interested, directly or indirectly, in, any contract made by the board of which he may be a member; and every contract or payment voted for or made contrary to the provisions of this section is void; and any violation of this section hereafter committed shall be a malfeasance in office which will subject the officer so offending to be removed from office. (*Id. § 119.*)

§ 120. **Election district.** Each town organized under this chapter, or any law heretofore in force, constitutes an election district. (*Id. § 120.*)

§ 121. **Incorporated city to have powers of this chapter.** Nothing in this chapter contained shall in any way apply to any portion of the territory which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its powers, the same powers conferred by this chapter upon towns, in the manner prescribed by law. (*Id. § 121.*)

Part II.—Roads, Cartways, and Bridges.

(See Political Code, c. 29.)

I.—PUBLIC HIGHWAYS.

§ 1. **What are public roads.** All public roads and highways within this territory which have been open and in use as such, and included in a road district in the town in which the same are respectively situated, during twenty years next preceding the time when this act shall take effect, are hereby declared to be public roads or highways, and confirmed and established as such, whether the same have been lawfully laid out, established, and opened, or not. (*Sess. Laws 1883, c. 112, pt. 2, § 1.*)

§ 2. **Same.** Every road laid out by the proper authorities, as provided for in this chapter, from which no appeal has been taken within the time limited for taking such appeal, is hereby declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, shall forever be debarred from any further redress. (*Id. § 2.*)

§ 3. **Congressional section lines.** In all townships in this territory in which no public roads have been laid out, or which have not been organized, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines, upon the order of the board of supervisors, without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessment of damages. (*Sess. Laws 1883, c. 112, pt. 2, § 3.*)

II.—ROAD DUTIES OF SUPERVISORS.

§ 4. **Who to have care of roads, etc.** The supervisors in the several towns in this territory shall have the care and superintendence of roads and bridges therein, shall give directions for the repairing of the roads and bridges in their respective towns, regulate roads already laid out, and alter each of them, as they or a majority of them deem proper, as hereinafter provided; divide the respective towns into so many road districts as they deem convenient, by writing under their hands, to be lodged with the town clerk, and by him entered into the town records; such division to be made annually, if they deem it necessary, and in all cases to be made within at least twenty days before the annual town meeting. They shall assign to each of the said road districts such of the inhabitants liable to work on highways as they think proper, having regard to proximity of residence, and require the overseers of highways, as often as they deem necessary, to warn all persons liable to work on roads to come and work thereon, with such tools, carriages, cattle, or teams as the said overseers, or either of them, shall direct. (*Id.* § 4.)

§ 5. **Report of roads.** The supervisors in each town shall render to the annual town meeting an account in writing, stating the labor assessed and performed in such town, the sums received by them for fines and commutation, and all other moneys received under this chapter; a statement of the improvements necessary to be made on the roads and bridges, and an estimate of the probable expense of making such improvements beyond that of the labor to be assessed in that year, that the road tax will accomplish; also a statement in writing of all expenses and damages in consequence of laying out, altering, or discontinuing roads. (*Id.* § 5.)

III.—DUTIES OF OVERSEERS OF HIGHWAYS.

§ 6. **Duties.** The overseers of highways in each town shall repair and keep in order the roads within their respective districts; warn all persons from whom labor is due to work on highways at such times and places within their several districts as they may think proper; collect all fines and commutation money; execute all lawful orders of the supervisors; and deliver to the town clerk within sixteen days after election or appointment a list, subscribed by such over-

seer, of the names of all the inhabitants in his road district who are liable to work on the highways. (*Sess. Laws 1883, c. 112, pt. 2, § 6.*)

§ 7. **When overseer to be appointed.** If any person, chosen or appointed to the office of overseer of highways, refuses to serve, or if his office becomes vacant, the supervisors of the town shall, by warrant under their hands, appoint some person in his stead, and the overseer so appointed shall have the same powers, subject to the same orders, and liable to the same penalties, as overseers chosen at town meetings. (*Id.* § 7.)

§ 8. **Notice.** The supervisors making the appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed, as in other cases. (*Id.* § 8.)

§ 9. **Penalty for neglect to perform duties.** Every overseer of highways who refuses or neglects to perform any of the duties of this chapter, or which may be lawfully required of him by the supervisors of his town, shall, for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the chairman of the board of supervisors of the town, and, when recovered, to be applied by him in making and improving the roads and highways therein. (*Id.* § 9.)

IV.—HIGHWAY LABOR AND ROAD TAX.

§ 10. **Meetings of supervisors.** The supervisors of each town shall meet at the town clerk's office within eighteen days after they are chosen, on such day as they agree upon, and afterwards at such other time and places as they think proper. (*Id.* § 10.)

§ 11. **Make estimate of labor.** The town clerk shall deliver the list filed by the overseers to the supervisors, who shall proceed to ascertain, estimate, and assess the highway, labor, and road tax to be performed and paid in their town the next ensuing year. (*Id.* § 11.)

§ 12. **Who liable to labor.** Every male inhabitant, being above twenty-one years and under the age of sixty, excepting paupers, idiots, lunatics, and such others as are exempt by law, shall be assessed, not less than one day nor more than four days in each year. Supervisors shall assess a road tax on all real estate and personal property liable to taxation of the town to any amount they may deem necessary, not exceeding one dollar on each one hundred dollars of value, as valued on the assessment roll of the preceding year. They shall affix the name of each person named in the list so furnished by the overseers, the number of days assessed to each person for highway labor, and also a description of each tract of land, and the name of the owner, if known, with the valuation thereof, as taken from the assessment roll of the previous year, and the amount of road tax assessed thereon, in a separate column. The list so prepared shall be

signed by the supervisors and deposited with the town clerk to be filed in his office. (*Sess. Laws 1883, c. 112, pt. 2, § 12.*)

§ 13. **Highway tax-list.** The supervisors shall also place on the land road-list the names of all persons against whom road tax on personal property only has been assessed, and place in a separate column, opposite the name of each person on the list, the amount of road tax assessed on personal property, which amount shall be subject to collection or commutation by labor, the same as land road tax assessed on real estate. (*Id. § 13.*)

§ 14. **Copy to be furnished.** The supervisors shall direct the town clerk to make a certified copy of each list, after which the town clerk shall deliver the several copies to the respective overseers of highways of the several districts in which highway labor is assessed, for which he shall receive a fee of twenty-five cents for each copy so delivered. One copy for each overseer shall contain the name and number of days assessed to each person; the other, the land and personal property road tax. (*Id. § 14.*)

§ 15. **Overseer to add certain names.** The overseers of highways shall add the names of persons left out of such list, and of new inhabitants, and they shall be rated in the same proportion to work on the highways as others are rated by the supervisors on such list. (*Id. § 15.*)

§ 16. **Notice.** Overseers of highways shall give at least three days' notice to all persons assessed to work on highways, and living within the limits of their respective districts, of the time and places when and where they are to appear for that purpose and with what implements; but no person being a resident of the town shall be required to work on any highway other than in his own district in which he resides, but may elect to pay any land road tax in labor in the district in which said land is situated, and shall be allowed one dollar and fifty cents for himself and a like amount for the use of his team and wagon, or plow; such labor shall be at the disposition of the overseer of their respective districts. (*Id. § 16.*)

§ 17. **Powers of overseer.** Road overseers have power, and it is hereby made their duty, whenever any public highway becomes obstructed or unsafe from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forth with such tools or teams as the overseer may direct, and work upon such highway in removing obstructions or repairing dangerous places, and for all such labor performed under the directions of the overseers by any person in excess of road tax assessed against him for the year, the road overseer shall give a receipt, stating the value of such labor, and said receipt shall be received in payment of any road tax due from any person to said district in that or any succeeding year, and any road overseer who fails to perform his duty, as required by law,

shall be subject to prosecution therefor by the supervisors of this town, and upon conviction therefor shall be liable to a fine of not less than five nor more than fifty dollars, and justices of the peace shall have jurisdiction, upon complaint made on oath, to hear and determine all causes arising under this section. (*Id.* § 17.)

§ 18. **Commutation of road labor.** Every person liable to work upon the highways shall work the whole number of days for which he is assessed, but every such person other than the overseer of highways may elect to commute for the same, or for some part thereof, at the rate of one dollar and fifty cents per day, in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by the overseer in the improvement of the roads and bridges of the same district. Overseers of highways, when such land tax is paid, either in money or labor, shall write the word "paid" against such name or tract of land in their list on which the same is paid. (*Id.* § 18.)

§ 19. **Payment.** Every person intending to commute for his assessment, or any part thereof, shall, within two days after he is notified to appear and work on the highways, pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as made until such money is paid. (*Id.* § 19.)

§ 20. **Power of overseer.** Every overseer of highways has power to require a team or cart, wagon, or plow, with a pair of horses or oxen and a man to manage them, from any person having the same within his district. (*Id.* § 20.)

§ 21. **Substitute.** Every person assessed to work on the highways, and warned to work, may appear in person or by an able-bodied man as a substitute, and the person or substitute so appearing, shall actually work ten hours in each day, under a penalty of fifteen cents for every hour such person or substitute or *person* is in default, to be imposed as a fine on the person assessed. (*Id.* § 21.)

§ 22. **Fine for neglect.** Every person so assessed and duly notified, who does not commute, and who refuses or neglects to appear as above provided, shall be fined, for every day's refusal or neglect, the sum of two dollars. If he was required to furnish a team, carriage, or implements, and refused or neglected so to comply, he shall be fined as follows:

For wholly omitting to comply with such requisition, four dollars for each day.

For omitting to furnish a cart, wagon, or plow, one dollar for each day.

For omitting to furnish a pair of horses or oxen, one dollar and fifty cents for each day.

For omitting to furnish a man to manage the team, one dollar and fifty cents for each day. (*Sess. Laws 1883, c. 112, pt. 2, § 22.*)

§ 23. **When supervisor to make complaint.** Every overseer of highways, within nine days after any person so assessed and notified is guilty of any refusal or neglect for which a penalty or fine is prescribed in this chapter, unless satisfactory excuse is rendered to him for such refusal or neglect, shall make complaint to one of the justices of the peace of the town or an adjoining town. (*Id. § 23.*)

§ 24. **Duty of justice.** The justice to whom such complaint is made shall forthwith issue a summons directed to any constable of the county, requiring him to summon such delinquent to appear forthwith before such justice, at some place to be specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect, which summons shall be served personally. (*Id. § 24.*)

§ 25. **Fine.** If upon the return of such summons no sufficient cause is shown to the contrary, the justice of the peace shall impose a fine as provided in this chapter, for the offense complained of, and shall forthwith issue a warrant under his hand, directed to any constable of the county in which such delinquent resides, commanding him to levy such fine, with the cost of proceedings, on the goods and chattels of the delinquent, and no other property shall be exempt therefrom. (*Id. § 25.*)

§ 26. **Fine, how disposed of.** The constable to whom such warrant is directed shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice who issued the warrant, who is hereby required to pay the same to the overseer who entered complaint, to be by him expended in improving the roads and bridges in his district. (*Id. § 26.*)

§ 27. **Overseer cannot excuse.** The acceptance by an overseer of any excuse for refusal or neglect, shall not in any case exempt the person excused for commuting for or working the whole number of days for which he is assessed during the year. (*Id. § 27.*)

§ 28. **Compensation of overseer.** Every overseer of highways is entitled to two dollars per day, to be paid out of the fines and commutation money, for every day he is necessarily employed in the execution of his duties as overseer. When there are no funds from fines or commutations, the supervisors may pay the overseers out of any funds in their hands raised for the purpose of repairing and making roads and bridges. (*Id. § 28.*)

§ 29. **Road supervisor to return tax-list.** Every overseer of highways shall deliver to the town clerk of his town, on or before the first day of October in each year, the list furnished by the supervisors, containing the land and personal property road tax, with

his certificate thereon that all taxes in said list opposite which the word "paid" is not written, are due and unpaid, according to the best of his knowledge and belief. (*Sess. Laws 1883, c. 112, pt. 2, § 29.*)

§ 30. **Penalty for refusal.** If any overseer refuses or neglects to deliver such list, with his certificate, as provided in the last section, he shall for every offense forfeit the sum of five dollars and also the amount of tax remaining unpaid, to be recovered by the supervisors of such town, and applied by them in improving roads and bridges of such town. (*Id. § 30.*)

§ 31. **Town clerk to make out delinquent list.** The town clerk of each of the several towns shall receive the lists returned by the overseers of highways pursuant to section twenty-nine, (29,) and keep the same on file in his office, and shall make out and deliver to the auditor or county clerk of the county, on or before the first day of November in each year, a list containing a description of each tract or parcel of land on which the tax is delinquent, together with the name of the owner, if known, and if unknown, so state, and the amount of tax due and remaining unpaid on each, and containing all of the unpaid road taxes levied upon personal property according to the lists on file in his office, and shall make his certificate thereon to the effect that the same is a correct list of delinquent road taxes for the year therein stated, as appears from the several lists returned by the overseers of highways, and on file in his office; and it is hereby made the duty of the county auditor or county clerk to extend such unpaid taxes upon the tax-lists of the current year, to be collected in the same manner as other taxes. Such road tax, when collected, shall be paid to the town treasurer of the proper town upon the proper certificate of the auditor or county clerk of the county, and shall be applied by the supervisors of the town in the construction or repair of roads and bridges, to be paid by the town treasurer upon the order of the supervisors. (*Id. § 31.*)

§ 32. **Duty of road supervisor.** It shall be the duty of every overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to the first day of August in each year. (*Id. § 32.*)

§ 33. **Road supervisor's report.** Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town within the year for which he is elected or appointed, render to one of the supervisors of the town an account in writing, containing:

1. The names of all persons assessed to work on the highways in the district in which he is overseer.
2. The names of all those who have actually worked on the highway, with the number of days they have worked.

3. The names of all those who have been fined, and the sums in which they have been fined.

4. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him. (*Sess. Laws 1883, c. 112, pt. 2, § 33.*)

§ 34. **Pay over moneys.** Every such overseer shall then and there pay to the supervisors all moneys remaining in [his] hands unexpended, to be applied by the supervisors on the roads and bridges in the town. (*Id. § 34.*)

§ 35. **Penalty for refusal.** If any overseer refuses or neglects to render such account, or if having rendered the same he shall refuse or neglect to pay any balance which may be due from him, he shall for every such offense forfeit the sum of five dollars, to be recovered, with the balance of the moneys remaining in his hands, by the supervisors of the town, and applied to the improvement of the roads and bridges in such town. (*Id. § 35.*)

V.—ALTERING, DISCONTINUING, AND LAYING OUT ROADS.

§ 36. **Laying out roads.** The supervisors of the town may alter or discontinue any road, or lay out any new road, upon the petition of not less than six legal voters, who own real estate, or who occupy real estate under the homestead or pre-emption laws of the United States, or under contract from the territory of Dakota, within one mile of the road to be altered, discontinued, or laid out. Said petition shall set forth in writing a description of the road, and what part thereof is to be altered or discontinued, and, if for a new road, the names of the owners of the lands, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate: *and provided further*, that all roads or parts thereof heretofore or hereafter laid out by township supervisors, and not opened to public use within ten (10) years from the time they were laid out, are hereby declared vacant. (*Id. § 36.*)

§ 37. **Copy of petition to be posted.** Whenever any number of legal voters, as aforesaid, determine to petition the supervisors for the alteration or discontinuance of any road, or of laying out any new road, they shall cause a copy of their petition to be posted up in three of the most public places of the town twenty days before any action is had in relation thereto. (*Id. § 37.*)

§ 38. **Notice to all parties to be given.** Whenever the supervisors receive a petition in compliance with the preceding sections for laying out, altering, or discontinuing any highway, they shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall, at least ten days previous to that time, cause such notice to be given to all occupants of the land through which

such highway may pass, which notice shall be served personally or by a copy left at the abode of each occupant. The supervisors shall also cause copies of such notice to be posted in three public places in said town, at least ten days previous to such meeting; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered, or discontinued, and the several tracts of land through which the same may pass. (*Sess. Laws 1883, c. 112, pt. 2, § 38.*)

§ 39. **Examination of highway.** The supervisors, upon being satisfied that the notices required in the preceding section have been duly served, proof of which shall be shown by affidavit, shall proceed to examine personally such highway, and shall hear any reasons for or against the laying out, altering, or discontinuing the same, and shall decide upon the application as they deem proper. (*Id.* § 39.)

§ 40. **Proceedings when road is laid out, changed, or discontinued.** Whenever the supervisors shall lay out, alter, or discontinue any highway, they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued, or laid out, and incorporate the same in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of service of notices, to be filed in the office of the town clerk, who shall note the time of filing the same; but on the refusal of the supervisors to lay out, alter, or discontinue such road, they shall note the fact on the back of the petition, and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, altering, or discontinuing such highway. But the town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed. And after such order is confirmed, and such order, together with the award, has been recorded by such town clerk, the same shall be sent by him to the county auditor or county clerk, who shall file and preserve all such papers thus transmitted to him. And in case the supervisors shall fail to file such order within twenty days, they shall be deemed to have decided against such an application. (*Id.* § 40.)

§ 41. **Order, competent evidence.** The order laying out, altering, or discontinuing any highway, or a copy of the record duly certified by the town clerk, shall be received in all courts as competent evidence of the facts therein contained, and shall be *prima facie* evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter. (*Id.* § 41.)

§ 42. **Damages.** The damages sustained by reason of laying out, altering, or discontinuing any road may be ascertained by the

agreement of the owners and supervisors; and unless such agreement is made, or the owner shall, in writing, release all claim to damages, the same shall be assessed in the manner hereinafter prescribed, before the same is opened, worked, or used. Every agreement and release shall be filed in the town clerk's office, and shall forever preclude such owners of lands from all further claim for damages. In case the supervisors and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered, or discontinued, is unknown, the supervisors shall, in their award of damages, specify the amount of damages awarded by them to all such owner or owners, giving a brief description of such parcel of land in their award. The supervisors shall assess the damages at what they deem just and right to each individual claimant with whom they cannot agree, and deposit a statement of the amount of damages so assessed to each individual, with the town clerk, who shall note the time of filing the same. The supervisors, in all cases of assessing damages, shall estimate the advantages and benefits the new road, or alteration of an old one, will confer on the claimant for the same, as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land-office, shall, for all the purposes of this act, be considered the owner of such land. (*Id.* § 42.)

§ 43. **When damages not allowed.** No damages shall be assessed or allowed, under the provisions of this chapter, to any person, persons, or corporation by the reason of laying out any new road or altering any old one, when the title of the land over which such road passes was vested in the territory or the United States at the time of the location of such road, excepting as otherwise provided in this chapter. (*Id.* § 43.)

§ 44. **Supervisors' determination final.** The determination of the supervisors of any town in refusing to lay out, alter, or discontinue any highway shall be final (unless such determination shall be appealed from as provided in this act) for the term of one year after the filing of such order or determination in the town clerk's office; and no application for laying out, altering, or discontinuing any such highway shall again be acted upon by such within said term of one year, and in case the determination of the supervisors of any town, in laying out, altering, or discontinuing any highway, shall be appealed from, as provided in this chapter, and such determination shall be reversed on such appeal, the said supervisors shall not, within one year after the making of the determination reversed on such appeal, act again upon an application to lay out, alter, or discontinue any such highway. (*Id.* § 44.)

§ 45. **Notice to party owning premises.** Whenever the supervisors or commissioners have laid out any public road through any inclosed, cultivated, or improved lands, in conformity with the

provisions of this chapter, and their decision has not been appealed from, they shall give the owner or occupant of the land through which the road is laid twenty days' notice, in writing, to remove his fences; if such owner does not remove his fences within twenty days the supervisors shall cause such fences to be removed, and direct the road to be opened and worked: *provided*, that no inclosure shall be ordered open between the first day of April and the first day of October. (*Id.* § 45.)

VI.—TOWN-LINE ROAD.

§ 46. **Of road between towns.** Whenever the supervisors of any town receive a petition praying for the location of a new road, or the altering or discontinuing of an old one, on the line between two towns, such road shall be laid out, altered, or discontinued by two or more of the supervisors of each of said towns, either on such line or as near thereto as the convenience of the ground will admit, and they may so vary the same to one side or the other of such line as they think proper. (*Id.* § 46.)

§ 47. **Road districts on town-line road.** The supervisors, when there may be such highways, shall divide such highway into two or more road districts, in such manner that the labor and expense of opening, working, and keeping in repair such highways through each of said districts may be equal, as near as may be, and shall allot an equal number of such districts to each of said towns. (*Id.* § 47.)

§ 48. **Districts, where belonging.** Each district shall be considered as belonging wholly to the town to which it may be allotted, for the purpose of opening the road and keeping it in repair; and the supervisors shall cause such highway, and the petition and the allotment thereof, to be recorded in the office of the town clerk in each of said towns. (*Id.* § 48.)

§ 49. **Town-line roads already laid.** All roads heretofore laid out on the line between any two towns shall be divided, allotted, recorded, and kept in repair in the manner above directed. (*Id.* § 49.)

§ 50. **Appeal.** The decision of the supervisors in relation to town-line roads may be appealed from in the same manner as provided for in this chapter for appeals from the decisions of supervisors in relation to town roads. (*Id.* § 50.)

VII.—PUBLIC CARTWAYS.

§ 51. **Width of roads and cartways.** All public roads to be laid out by the supervisors or county commissioners shall not be less than four rods wide, and may be six rods in width when all residents of land adjoining said road shall petition for the same; and that when any road or portion thereof shall have been used and kept in repair and worked for twenty years continuously as a public highway, the same shall be deemed as having been dedicated to the

public, and be and remain, until lawfully vacated, a public highway, whether the same has ever been laid out as a public highway or not. That the supervisors of the several towns have power to lay out public cartways two rods wide when petitioned by five residents, freeholders of said town, desiring the same. The cost of surveying and locating such cartways shall be paid by the town, as provided by law in the laying out of public roads, and the damages to lands through or upon which cartways may be laid out shall be paid by the town. And the damages in this section mentioned shall be assessed and an appeal had, in the same manner as in the case of other public roads, and the town clerk shall record any cartways so laid out in the same manner and with like effect as other roads are required to be recorded by him: *provided, however*, that when the petitioners, or any of them, propose in the petition their willingness to dedicate any land to which such petitioner has title for the purposes of such cartway, such lands shall be deemed as so dedicated, and no damages shall be assessed therefor; that such cartway, when so laid out and established, shall be deemed a public cartway for public use. (*Sess. Laws 1883, c. 112, pt. 2, § 51.*)

§ 52. **Labor on cartways.** The town supervisors of this territory of their respective towns may, in their discretion, allow any owner or owners of cartways duly and legally established, or hereafter to be laid out by proper authority, to perform his or their highway labor and poll tax, or either, upon said cartway or cartways; and said supervisors, in their discretion, in all cases where any such cartway exceeds one mile in length, may expend upon such cartway any highway labor, poll tax, road tax, road or bridge money, the same as upon any highway in said town. (*Id. § 52.*)

VIII.—ROADS IN CITIES.

§ 53. **Powers of city authorities.** The same powers and duties in and by this chapter conferred and imposed upon town supervisors, are also conferred and imposed upon the city councils of the several cities throughout this territory, and in addition it shall be the duty of the city council to appoint some qualified elector of each road district in the city to be overseer of roads for such district, and the overseers of roads, city clerks, justices of the peace, and the constables of the several cities of this territory shall exercise the same powers and perform the same duties, and be subject to the same liabilities, as are in and by this chapter conferred and imposed upon the town overseers of roads, clerks, town justices of the peace, and town constables, and all the provisions of this chapter shall be applicable to the several cities of this territory, unless otherwise provided for in the several charters, subject, however, to the reservation made in the succeeding section in regard to incorporated cities.

(*Id. § 53.*)

IX.—COUNTY ROADS.

§ 54. **Proceedings for county roads.** If twenty-four freeholders of any county containing one hundred or more legal voters, and twelve freeholders of any county containing less than one hundred legal voters, petition the board of commissioners of such county for the location, establishment, change, or vacation of any highway running into more than one town of said county, and not within the limits of any incorporated city, whether such highway is connected or to be connected with other roads or not, setting forth in such petition the beginning, course, and termination of the highway proposed to be located, established, changed, or vacated, together with the names of the owners of the lands, if known, through which the same may pass, the auditor or county clerk of such county shall lay such petition before the board of county commissioners at their next session thereafter. (*Sess. Laws 1883, c. 112, pt. 2, § 54.*)

§ 55. **Duty of commissioners.** When the board of county commissioners to whom such petition is presented are satisfied that at least thirty days' notice has been given, before the session of said board at which such petition is to be heard, by posting up notices in three public places in each of the towns through which such highway is proposed to be located, changed, or vacated, the board of commissioners shall appoint from the members thereof a committee to examine such proposed location, establishment, change, or vacation, and the board, if necessary, shall designate a time when, and a place where, such committee will meet upon such route. (*Id. § 55.*)

§ 56. **Examination of proposed road.** At the time and place designated such committee shall meet and proceed to examine the highway proposed to be located, changed, or vacated, and in such examination may employ a competent surveyor. (*Id. § 56.*)

§ 57. **Report of committee.** After such committee have completed their examination they shall make a report of their proceedings, setting forth the highway proposed to be located, established, changed, or vacated, by course and distance, and recommending therein, according to the opinion of the majority, either that the prayers of the petitioners be granted or rejected, a copy of which report shall be returned to the board of commissioners at their next session thereafter. (*Id. § 57.*)

§ 58. **Duty of commissioners on report.** At the next meeting of the board of commissioners they shall proceed to determine the prayer of such petition, and such board shall declare it granted if a majority of the board so agree, and shall direct the auditor or county clerk to notify the supervisors of the several towns in which such road is to be located or established, or change or vacation is made, when such supervisors will cause to be opened so much of such highway as lies in their respective towns: *provided*, that all damages

sustained by reason of laying out or altering any county road shall be assessed by the county commissioners laying out such road, and paid by the county. (*Sess. Laws 1883, c. 112, pt. 2, § 58.*)

§ 59. **Remonstrance—damages.** If at the session of the board of commissioners at which the report of the road committee appointed to examine such highway is presented any person over whose land such road passes shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned by the location, change, or vacation of such highway, to the truth of which he takes and subscribes an oath, such board shall determine, from the face of the report and the evidence before them, the amount of damages sustained, and whether the damages so assessed are greater than the utility of the proposed highway or change, and if they deem the road of sufficient advantage to the county to warrant the paying of the damages assessed by the board they shall declare such highway located, changed, or vacated, and all damages declared assessed shall be paid by the county interested; but if they shall determine that the damages assessed are greater than the advantages of the proposed location or change, they shall order the petition dismissed. (*Id. § 59.*)

§ 60. **County or territorial road defined.** Every road located by territorial or county authority is a county road, and shall only be changed or vacated by an order of the county commissioners, as provided for in this chapter. All damages claimed in the location of any territorial road through any of the organized counties of this territory, shall be determined by the provisions of this chapter the same as in the location of a county road, and the organized counties through which any territorial road is located shall be liable for such damages. (*Id. § 60.*)

§ 61. **Road taxes—maximum.** The county commissioners have general supervision of county roads, and have power to appropriate such sums of money from the county treasury as they think advisable, for opening, vacating, resurveying, or otherwise improving such roads, not exceeding in any one year the sum or ratio of one thousand dollars to each five hundred thousand dollars of assessed valuation of real estate in such county: *provided*, that additional sums may be appropriated, but shall not be expended except upon ratification thereof by a vote of the people, to assist in building bridges and opening and repairing county roads, to be expended under their direction: *provided, further*, that the towns through which any county road may pass, shall keep such road in repair, the same as other roads in their towns. (*Id. § 61.*)

§ 62. **Side roads and fords.** The board of county commissioners of each county in this territory shall have power and authority to lay out and establish side roads and ford crossings near or

adjacent to any bridge forming part of any county or town road over any stream of water in their county; said side road on each side of said stream of water to intersect with the adjacent road at the nearest practicable point. In the laying out and establishing such side road and ford crossings the same proceeding shall be had in all respects, including the assessment and payment of damages, as are required by law in laying out and establishing county roads: *provided*, that this act shall not authorize the laying out and establishing side roads or ford crossings near or adjacent to any bridge, the cost of which was less than one thousand dollars. (*Sess. Laws 1883, c. 112, pt. 2, § 62.*)

§ 63. **Damages.** The county commissioners in cases of county roads, and the town supervisors in cases of town roads, may assess and allow damages on application in cases where roads have been previously laid out and no damages have been assessed or allowed or release given, if they consider such assessment just and right: *provided, however*, that no damages shall be allowed or paid unless application for such damages shall have been made within three years from the date of the laying of such roads. (*Id. § 63.*)

X.—JUDICIAL DISTRICT ROADS.

§ 64. **Judges to appoint viewers.** Whenever a petition praying that a road be laid through two or more counties in any judicial district in this territory, signed by twenty legal voters, resident in said counties, shall be presented to the judge of the district court, the said judge is hereby authorized to appoint three commissioners, whose duty it shall be to meet at such times and places as may be necessary, and to immediately proceed to lay out a road as directed by the judge, in accordance with the prayer of the petition: *provided*, that no road shall be ordered by any judge to extend more than six miles outside the judicial district in which the application is made, and such road shall be extended beyond the district only for the purpose of commencing or ending at some village or public road. (*Id. § 64.*)

§ 65. **Posting notice.** Notices of the presentation of any such petition as that mentioned in the preceding section, to any district judge, shall be posted at least thirty days prior to such presentation, in at least three of the most public places in said judicial district, and there shall be one of said notices posted at each county seat of the counties through which the road prayed for is to pass. (*Id. § 65.*)

§ 66. **Assistance in laying out road.** The commissioners shall appoint a surveyor, one axeman, and two chainmen to make a survey of such a road. The compensation of the commissioners shall be three dollars each per day, and that of surveyor shall be four dollars per day, and the axemen and chainmen shall each receive two dollars per day, such compensation to be paid only for the time the parties are actually engaged in making such survey. The damages

incurred and the compensation to be paid to the persons over whose land such road shall be laid out, by reason of the laying out of the same, shall be assessed and determined by said commissioners, and the expense of such survey, and the damages and compensation to be paid for right of way, shall be paid by the counties through which said road is laid, without regard to the length located in each county, each county paying therefor its just proportion, and such proportion shall be entirely in the discretion of the court, and shall be by said court determined, regard being had to the benefits to be derived from said road by the different counties through or into which it shall pass. Stakes shall be placed at the starting point which shall be on said public road, and at each of the angles of the road. Witness trees shall be marked wherever stakes are placed: *provided*, that where there are no trees monuments shall be erected. (*Id.* § 66.)

§ 67. **Surveyor to make plats.** The surveyor shall follow the lines of the United States surveys where practicable, and shall make two or more plats of the location of such road, in which the county lines and all stakes, trees, and monuments, together with the distances, shall be written, and said surveyor shall forward one of such plats to the register of deeds of each county through which said road is located, and such plats shall be placed on file by such registers of deeds, and be part of the records of their office. The surveyor shall receive two dollars for each plat so made and forwarded by him as aforesaid. (*Id.* § 67.)

§ 68. **Report to district court.** The commissioners appointed as herein provided shall make a report of all proceedings had by them under this act to the term of the district court held in the county next after the completion of their duties, and any person feeling aggrieved may appear and be heard thereat. The confirmation of the report of the commissioners by the judge of the district court shall in all cases be final. (*Id.* § 68.)

XI.—ROAD APPEALS.

§ 69. **Appeals.** Any person who shall feel himself aggrieved by any determination or award of damages made by the supervisors of any town or towns, or by the commissioners of any county, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, may, within thirty days after the filing of such determination or award of damages, as provided in this act, appeal therefrom to a justice of the peace of the county for a jury to hear and determine such appeal: *provided*, the amount of damages allowed in such appeal does not exceed \$100. (*Id.* § 69.)

§ 70. **Bond, insurance, etc.** Every application to a justice of the peace for an appeal shall be in writing, and shall briefly state the grounds on which it is made, and whether it is brought in relation to damages assessed, or in relation to laying out, altering, or

discontinuing, or refusal to lay out, alter, or discontinue any highway, or whether it is brought to reverse entirely the decisions of the supervisors or commissioners, or any part thereof; if the latter, what part? Upon filing such application, and a bond executed to the supervisors of the town, or the commissioners of the county, with sufficient sureties, to be approved by the justice, conditioned to pay all costs arising from such appeal, provided that the determination of the supervisors or the county commissioners (as the case may be) shall be sustained, such justice shall issue a summons specifying therein a time and place for the hearing of such appeal, which summons shall be served on one or more of the supervisors (or commissioners, if a county road) at least six days before such time, and, at the time and place so appointed, the justice shall proceed as in other cases of trial by jury. If upon the trial it is deemed necessary by the jury, or either party in the action, that a personal examination by the jury of the road in controversy is necessary, the justice may, on motion of the jury or either party in the action, direct the jury to view and examine the highway described in the application, and consider the determination of the supervisors or commissioners in laying out, altering, or discontinuing, or refusing to lay out, alter, or discontinue, the same, and to make return to him in writing within ten days. (*Sess. Laws 1883, c. 112, pt. 2, § 70.*)

§ 71. **Filing return, costs, etc.** The justice shall file the return of the jury in the office of the town clerk, if the appeal was taken from the decision of the board of supervisors of the town, and in the office of the county auditor, if the appeal was taken from the decision of the county commissioners; and if the determination of the supervisors or commissioners shall be affirmed by the jury, the party appealing shall pay all costs; but if such determination shall be reversed or altered, or a greater amount of damages awarded, then the costs in the case shall be a charge against the town or county, as the case may be. (*Id.* § 71.)

§ 72. **When appeal to be taken to district court.** In case the amount of damages claimed exceed one hundred dollars, appeal may be taken within thirty days to the district court of the county in which said damages are sustained, by filing in the office of the clerk of such court a bond, to be approved by the judge of such district court, or the court commissioner, or the county auditor of the county, of the same nature as provided in the two preceding sections of this chapter, and by the service of a written or printed notice of such appeal upon the chairman of the board of supervisors or county commissioners, as the case may be, signed by the party making the appeal, or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages, and all matters referred to in such notice of appeal. Unless the parties otherwise

agree the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid, and make the verdict conform to the justice and facts in the case; but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same, and upon judgment being rendered the clerk of said court shall serve a certified transcript of such judgment upon the chairman on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said district court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified, or reversed in said district court, otherwise than as to the amount of damages, said costs and disbursements shall be paid by the town or county, as the case may be; said costs and disbursements to be taxed and adjusted as in other cases in said district court, and judgment entered therefor in like manner. (*Id.* § 72.)

§ 73. **When appeal sustained, duty of board.** When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, shall proceed to lay out, alter, or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter, or discontinue such highway. The amount of damages finally determined and awarded, whether by the supervisors, or by the court and jury, together with all the charges of officers and other persons necessarily employed in laying out, altering, or discontinuing any town road, shall be audited by the supervisors, specifying the amount of damages and charges due each individual, and the respective amount shall be certified to by the said supervisors and by them deposited with the town clerk and paid by the town. Before any road shall be opened or used, an amount of town orders, equal to the damages assessed to each individual, shall be duly issued and deposited with said town clerk for the use and benefit of said individual, and shall be delivered to him upon demand. The issuing and depositing of said orders shall be deemed to be sufficient security for the payment of said damages. In no case shall a town be compelled to pay any damages that may be awarded in laying out and altering, or discontinuing, any county road. (*Id.* § 73.)

XII.—OBSTRUCTING HIGHWAYS.

§ 74. **Penalty for obstructing highways.** Whoever at any time obstructs any of the public highways in this territory in any

manner with intent to prevent the free use thereof by the public, or whoever shall do, or cause to be done, any planting or plowing thereon within the width of one full rod on each side of the center line of said highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs attending such conviction, and on failure to pay such fine and cost, may be committed to the county jail, there to remain until such fine and costs are paid, or until discharged according to law; and it is hereby made the duty of the board of supervisors of the several towns in this territory to make complaint and prosecute in their official capacity all violations of the provisions of this section. (*Sess. Laws 1883, c. 112, pt. 2, § 74.*)

§ 75. **Jurisdiction of justices.** Justices of the peace shall have jurisdiction, on complaint made on oath, to hear and determine all cases arising under the preceding section. (*Id.* § 75.)

§ 76. **Fines, how disposed of.** All fines recovered under the provisions of this chapter shall be paid into the treasury of the town wherein the offense was committed, to be used in repairing the public highways within such town. (*Id.* § 76.)

XIII.—BRIDGE PENALTIES.

§ 77. **Notices on bridges.** It shall be the duty of the county commissioners of each and every county in this territory to cause notices to be posted at both ends of all bridges in their respective counties, where the span of such bridge shall be fifty feet or more, stating the number of cattle, horses, or other animals that may be driven onto or across said bridge at any one time. (*Id.* § 77.)

§ 78. **Driving cattle on bridges.** Any person or persons driving or having charge of any drove of cattle, horses, or other animals, who shall drive or permit more of said animals to enter upon or cross said bridge at one time than is specified in said notices provided for in section two (86) [77] of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court having jurisdiction, shall be fined in any sum not exceeding one hundred dollars nor less than ten dollars. (*Id.* § 78.)

§ 79. **Penalty for driving across bridge faster than a walk.** Whoever drives or rides upon any bridges belonging to any incorporated bridge company, or upon any bridge which has been or may be erected by any county or town, or upon any bridge which has been or may be erected by any individual, and upon which the notice hereinafter prescribed is conspicuously displayed, faster than a walk, shall forfeit and pay for the use and benefit of the county wherein such bridge is located, in whole or in part, as a penalty therefor, the sum of not less than five nor more than ten dollars for each and every such offense. (*Id.* § 79.)

§ 80. **Proceedings on complaint.** Upon complaint made to any justice of the peace in any county where such bridge is located in whole or in part, that any such offense has been committed, the said justice shall issue his warrant reciting the substance of the complaint, requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice, or some other justice of the same county, to be dealt with according to law. If the name of the person committing the offense is not known to the complainant or the justice, the complainant may give the justice such description as may enable the person accused to be identified, and the warrant shall recite such description, and shall justify the officer to whom it is directed in arresting the person prescribed and bringing him before the justice. (*Sess. Laws 1883, c. 112, pt. 2, § 80.*)

§ 81. **Upon conviction, judgment.** In all cases of conviction under the provisions aforesaid, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county. (*Id.* § 81.)

§ 82. **Fine imposed only when notice posted.** No fine shall be imposed under the provisions aforesaid, unless there was at each end of said bridge, at the time when such offense was committed, a conspicuous signboard upon which was printed the following words and figures: Ten dollars fine for riding or driving on this bridge faster than a walk. (*Id.* § 82.)

§ 83. **Penalty for running toll-gate.** When any bridge or ferry company, or individual, is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who willfully runs the toll-gate of such company or individual and passes over such bridge or ferry with the intention of avoiding the payment of the toll prescribed by law, or who refuses to pay such toll when thereto lawfully requested, shall forfeit and pay, for the use and benefit of the county wherein such bridge or ferry is located, a fine of five dollars for each and every such offense, which fine shall be prosecuted and collected, together with the costs, in the same manner as the penalties prescribed in the preceding section. (*Id.* § 83.)

XIV.—WATERING PLACES ON HIGHWAYS.

§ 84. **Watering-trough bounty.** Any person in any city, town, or township in this territory, who shall construct and maintain and keep in repair a watering trough beside the highway, which shall be above the ground and made easily accessible for horses and carriages, shall be allowed by the city, town, or township five dollars out of his highway tax for each year during which he shall furnish the same. (*Id.* § 84.)

§ 85. **Well or spring exemption.** Any person in any city, town, or township who shall construct and maintain and keep in repair a good well or spring beside the highway, and easily accessible, and provide it with a suitable pail or bucket, and keep the same so supplied and in good repair, shall be allowed by the city, town, or township three dollars out of his highway tax for each year during which he shall furnish the same. (*Sess. Laws 1883, c. 112, pt. 2, § 85.*)

§ 86. **Proceedings to furnish watering place.** Any person upon any highway or road, in any district or ward, wishing to furnish such watering trough, well, or spring, shall make application to the alderman of the city, or supervisors of the town, who shall decide where such trough, well, or spring shall be located, and the number that shall receive the benefits of this act. (*Id.* § 86.)

XV.—DITCHES FOR DRAINING HIGHWAYS.

§ 87. **Proceedings for draining or ditching.** Whenever any overseer of highways shall file with the chairman of the board of supervisors of the town in which his road district is located, his affidavit stating that a certain road, passing through or into the district of which he is overseer, runs into or through swamp, bog, or meadow or other low land, and that it is necessary or expedient that a ditch or ditches should be opened through land belonging to any person, stating the probable length of such ditch or ditches, and the width and depth of the same as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate, and the names of persons owning the land, if known, and a description of the land over which said ditch or ditches must pass, and that the road at that point cannot be made passable without extraordinary expense unless such ditch or ditches be laid out and opened,—thereupon it shall be the duty of the chairman of the board of supervisors immediately to make out a notice and fix therein a time, not less than six nor more than sixty days from the date thereof, [when] the board of supervisors will meet at the place described in said affidavit and personally examine the premises; which notice, together with the affidavit, he shall cause to be filed in the office of the town clerk, and the clerk shall make true copies of said notice and deliver them to the overseer of highways making the affidavit, whose duty it shall be to personally serve the same upon each of the owners of the land, if residents of the county, or upon the occupants of the land, if the owners are residents of the county through which it is proposed to open such ditch or ditches, which notice may be in the following form :

TERRITORY OF DAKOTA, }
County of ———. }

Mr. ———.

Notice is hereby given that, whereas, it appears by the affidavit of overseer of road district No. ———, in the town of ———, that the road running from ——— to ——— runs into or passes through a swamp, bog, pond, or low land,

which swamp, bog, pond, or low land is situated on section ———, in said town, and that it is the opinion of said overseer that a ditch or ditches should be opened through land belonging to ———, for the purpose of draining said swamp; therefore, you are hereby notified that the board of town supervisors will, on the ——— day of ———, A. D. 18—, personally examine the premises over which said ditch or ditches are to pass, and decide upon said application, and will also hear any objections which may be made in the matter, and will consider the amount of damages which, in their opinion, will be just compensation to the owners of land in consequence of the opening of such ditch or ditches.

Signed ———, Chairman of the Board of Supervisors.

————, Clerk of Town of ———."

Provided, that such ditch or ditches shall be laid out upon the lines that the owner or owners of the land over which they are to pass may desire, whenever it can so be done without extra cost. (*Id.* § 87.)

§ 88. **Notice and publication.** The overseer serving such notice shall make return thereon to the town clerk, stating the facts, and if it shall appear from the returns of the overseer that the owners of said lands do not reside in the county, and that no occupant resides thereon, the town clerk shall order the publication of the notice for three successive weeks in a newspaper printed and published in said county; or, if there be no paper printed and published in said county, then he shall post or cause to be posted up the notice in three of the most public places in the county, for three weeks prior to the meeting of the supervisors, and such publication shall be considered as sufficient notice to all parties. (*Id.* § 88.)

§ 89. **Supervisors to examine.** At the time specified in the notice the supervisors shall proceed to examine the road and premises over which such ditch must pass, and hear any reasons for or against laying out the same, and shall decide upon the application as they deem proper, and shall assess the amount of damages which in their judgment will be an equitable compensation to the owners of the land for the opening of said ditch or ditches through their land, and in all cases they shall estimate the advantage and benefits the laying out and opening of such ditch or ditches will confer upon the owner of any land through which such ditch may run, as well as the disadvantages: *provided*, the damages sustained by reason of laying out and opening such ditch or ditches may be ascertained by the agreement of the owners and the supervisors, in which case every agreement and release shall be in writing, and filed in the town clerk's office, and shall forever preclude such owners of lands from all further claims from damages. If, after taking all the circumstances into consideration, the supervisors shall be satisfied that the opening of such ditch or ditches is necessary or advantageous to the public interest, they shall cause the same to be laid out and opened, and shall give such directions in the matter as shall be necessary for the effectual draining of said swamp, pond, bog, or low land, and shall file a statement in writing of all their doings, including the amount of damages

allowed, in the office of the town clerk, who shall copy the same into a book to be kept by him especially for that purpose; and if the order and proceedings be not appealed from within ten days from the filing thereof, as hereafter provided for, then said judgment, order, and findings shall be final, and the overseer may proceed to open the ditch or ditches, in accordance with the directions and under the instructions of the said board of supervisors. (*Sess. Laws 1883, c. 112, pt. 2, § 89.*)

§ 90. **Appeals.** Any party through whose land said ditch shall pass may appeal from the decision of the supervisors to the district court of the county in which the premises are situated, by filing with the town clerk, within ten days after the decision of the supervisors, shall have been made and filed, a recognizance of the appellant, with sureties, to be approved by the said board or chairman, in a sum not less than one hundred dollars, conditioned that the appellant will appear at the next term of the district court, and prosecute his suit to final judgment, if the court shall not otherwise order for good cause; and further, that he will abide the decision of the court, and pay all costs and damages that may be assessed against him therein; or, if the appeal shall be dismissed or discontinued, that he will pay the costs of appeal. The proceedings of the district in the appeal shall be the same as an appeal in civil action from a justice of the peace, as nearly as practicable, and costs shall be awarded for or against either party in the same manner as upon an appeal in civil actions. (*Id.* § 90.)

§ 91. **Keeping drains in repair.** At any time after such ditch or ditches shall have been opened, it shall be lawful for the overseer of highways of the road district, from time to time as it may become necessary, to enter upon the lands through which such ditch or ditches have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour the same in such manner as to keep them open and in good order and condition. (*Id.* § 91.)

§ 92. **Penalty for injuring ditch.** Any person who shall dam up, obstruct, or in any way injure any ditch or ditches as opened, shall be liable to pay to the overseer of highways of such road district double the damages which shall be assessed by the jury or court trying the case for such injury, and shall further be deemed to have committed a misdemeanor, and shall upon conviction thereof be punished by imprisonment of not more than three months, or by fine of not more than one hundred dollars, and such sums of damages and fines shall be by such overseer expended on the roads in his district. (*Id.* § 92.)

§ 93. **Payment of damages.** When the amount of damages or compensation to be paid to any one or more of the owners of land taken for such ditch or ditches shall have been finally determined by proceedings under the provisions of this act, the board of town supervisors shall provide for the payment of and pay the same in the man-

ner provided by law for the payment of like damages or compensation for land taken for a public highway, and may in their discretion deduct the amount so paid from money belonging to or to be paid over to the road district in which such ditch or ditches shall have been constructed. (*Sess. Laws 1883, c. 112, pt. 2, § 93.*)

See Appendix, c. 56.

XVI.—SEEDING DOWN HIGHWAYS.

§ 94. **Seeding highways to grass.** Any person living upon or owning land fronting on any of the public highways of this territory, may, for the purpose of seeding the same down to grass, plow and level the said highways for said purpose, and seed the same to grass to within eight feet of the center of the same: *provided*, that nothing herein contained shall be construed to authorize the said parties to work upon the same to the hindrance or detriment of the travel upon said roads, or to authorize any compensation for the same. (*Id.* § 94.)

XVII.—ROADS ON LINES OF CITY OR VILLAGE.

§ 95. **Town and city line road.** Whenever the supervisors of any town, and the trustees or common council of any incorporated city or village, shall receive a petition praying for the location of a road, or for the altering or discontinuing of any road, on the line between such town and incorporated city or village, such road shall be laid out, altered, or discontinued by two or more of the supervisors of such town, and a majority of the common council or trustees of such incorporated city or village. (*Id.* § 95.)

§ 96. **Appeals.** The decision of such supervisors and common council or trustees in relation to such road may be appealed from in the manner as provided in the laws of this territory for appeals from the decisions of supervisors in relation to town roads. (*Id.* § 96.)

§ 97. **Laws applicable.** The laws of this territory which apply to a road on the line between two towns, shall be applicable to all roads on the line between any town and an incorporated city or village. (*Id.* § 97.)

XVIII.—RECORDING TERRITORIAL AND COUNTY ROADS.

§ 98. **Field-notes to be furnished.** That upon the written request of the board of supervisors of any township in this territory, the county auditor of the county wherein such township is situated shall furnish a copy of the description and field-notes and plat (if any) of each territorial, state, and county road running into or through such township, as appears by the description, field-notes, and plat on file or of record in his office. (*Id.* § 98.)

§ 99. **Record of field-notes.** Upon the filing of such copy in the town clerk's office, the town clerk shall record the same in the road record-book of the township, and such record shall be *prima facie* evidence of the existence of such road according to the description and plat so on file. (*Id.* § 99.)

§ 100. **When act to take effect.** This act shall not take effect until January 1, 1884, and on and after that date townships organized and acting under present laws shall be wholly subject to the provisions of this act. (*Sess. Laws 1883, c. 112, pt. 2, § 100.*)

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shall be verified by the affidavit of such surveyor, and shall be annexed thereto.

§ 2. **Census to be taken.** Such persons shall cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

§ 3. **Survey, map, and census subject to examination.** Such survey, map, and census, when completed and verified as aforesaid, shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days.

§ 4. **Application for incorporation to be by petition.** Such application shall be by petition, subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained, according to said census taken; and the said petition shall have attached thereto, or written thereupon, affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such

application, or as soon thereafter as the board can receive and consider the same.

§ 5. **County commissioners to make order of incorporation.** The board of county commissioners, in hearing such application, shall first require proof, either by affidavit or by oral examination of witnesses before them, that the said survey, map, and census were subject to examination in the manner and for the period required by section three of this act; and if said board be satisfied that the requirements of this act have been fully complied with, they shall then make an order declaring that such territory shall, with the assent of the qualified voters thereof, as hereinafter provided, be an incorporated town, by the name specified in the application aforesaid, which name shall be different from that of every other town in this territory; and they shall also include in such order a notice for a meeting of the qualified voters resident in said proposed town, at a convenient place therein, to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated town.

§ 6. **Notice of meeting to be given.** The board shall cause ten days' notice of such meeting, by publication in a newspaper, if one be published in the county, and by posting up copies of said notice, not less than ten in number, at the most public places in said proposed incorporated town.

§ 7. **Opening of polls.** At the meeting of the qualified voters, as herein provided, polls shall be opened at nine o'clock in the forenoon of such day, and shall be kept open until four o'clock in the afternoon, when they shall be closed.

§ 8. **Election of inspectors.** The voters at such meeting shall first proceed to the election of three inspectors, who, after being duly chosen and qualified, and one of their number elected clerk, shall, without delay, proclaim to the meeting that the poll is now opened, and that they are ready to receive the ballots of the voters.

§ 9. **Manner of voting.** The qualified voters of said proposed incorporated town shall vote by ballot, having thereon the words, "For incorporation, yes;" or the words, "For incorporation, no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such proposed town shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated town, to have continuance thereafter, by the name and style specified in the order made by the board of county commissioners, as hereinbefore provided, and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting,—

the number having the word "yes" thereon, and the number having the word "no" thereon,—which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners at their next session, who, if satisfied of the legality of such election, shall make an order declaring that said town had been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation, by the name and style aforesaid, shall thereafter be judicially taken notice of in all courts and places in this territory without specially pleading or alleging the same.

§ 10. **Division of town into districts.** Such inspectors, when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than three, nor more than seven, districts, having due regard to the equitable apportionment of the population among the same, and the convenience and continuity of such district.

§ 11. **Notice of election.** They shall also give ten days' notice by publication in a newspaper, if one be printed within such town, and by posting such notices in five public places therein, of an election to be held in such town for the purpose of electing officers thereof, naming the place therein, and the day upon which the same shall be had; but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town.

§ 12. **Annual election—when held.** An election for officers of said town, after the first election, shall be held annually on the first Monday of May of each year, and at every such election the preceding board of trustees, or any three of them, shall act as the inspectors thereof.

§ 13. **How long polls shall remain open.** At all elections in said town, the polls shall be open at nine o'clock in the forenoon, and shall not be finally closed until four o'clock in the afternoon of said day.

§ 14. **Inspectors to be the judges of election.** Such inspectors shall preside at such first election, and be the inspectors thereof, and, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable, for the election of county officers.

§ 15. **What town officers to be elected.** There shall be elected at the first, and at every subsequent election, one trustee from each district in said town, and also a clerk, assessor, treasurer, marshal, and justice of the peace, who shall respectively hold their offices until the first Monday in May next following, or until their successors are elected and qualified: *provided, however, that nothing*

herein contained shall prevent the respective offices of clerk, treasurer, assessor, and marshal from being held by one and the same person.

§ 16. **Persons having the highest number of votes to be elected—duty of inspectors.** The persons having the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons who receive the highest number of votes respectively for clerk, marshal, assessor, treasurer, and justice of the peace, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected. And it shall be the further duty of such inspectors to make a certified statement over their own signatures of the persons elected to fill the several offices in said town, and file the same with the county clerk in the county thereof within ten days after the date of such election, and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

§ 17. **County clerk to make record of statement.** It shall be the duty of the county clerk of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases.

§ 18. **Vacancies in the board of trustees—how filled.** A vacancy occurring in the board of trustees or in any corporation office shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district, if a trustee be appointed, in which the vacancy has occurred, and shall in no case extend beyond the annual elections provided for in this act.

§ 19. **Officers to take oath.** The board of trustees chosen as aforesaid shall elect a president from their own body, and such president, trustees, and all other officers elect shall, within five days after such election, take and subscribe, before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices.

§ 20. **Board of trustees a body corporate.** The president and trustees of such town, and their successors in office, shall constitute a body politic and corporate, by the name of the town of ———, and shall be capable in law to prosecute and defend suits to which they are a party.

§ 21. **Notice of special meeting.** Special meetings of the qualified voters may be called by the clerk by order of the trustees of said town, by giving ten days' notice thereof in a newspaper, if any be printed in such town; otherwise by posting up such notices in

five public places therein; and such notice shall state the object for which each meeting is called.

POWERS OF THE BOARD OF TRUSTEES.

§ 22. **Powers of board of trustees.** The board of trustees shall have the following powers, viz.:

1. To have a common seal and alter the same.
 2. To purchase, hold, or convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by this act.

3. To organize fire companies, hook and ladder companies; to regulate their government, and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets, which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure, or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice, the trustees may procure and deliver the same to him; and in default of payment therefor, may recover of said owner the value of such ladder, or fire buckets, by suit before the justice of the peace of the town incorporated by the provisions of this act, and costs accrued thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of ashes; and may, under any order by them, entered upon the proper book of the board, visit, or appoint one or more fire wardens to visit, and examine, at all reasonable hours, dwelling-houses, lots, yards, inclosures, and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove-pipes; to prevent out-fires, and the use of fire-works, and the discharge of fire-arms within the limits of said corporation, or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire, and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps, and other water-works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires, as they shall deem proper.

4. To declare what shall constitute a nuisance, and to prevent, abate, and remove the same, and take such other measures for the preservation of the public health as they shall deem necessary.

5. To restrain from running at large, cattle, swine, or other animals.

6. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; and to authorize the seizure and destruction of gambling apparatus.

7. To license, regulate, or restrain auction establishments, traveling peddlers, public exhibitions, and the sale of intoxicating liquors within the corporation.

8. To establish and regulate markets, and build market-houses, and direct the location of slaughter-houses.

9. To lay out, open, grade, and otherwise improve the streets, alleys, sewers, sidewalks, and crossings, and to keep them in repair, and to vacate the same.

10. To appoint street commissioners, and also fire-wardens, not exceeding three.

11. To prohibit incumbrance of the sidewalks of said town, and riding or driving thereon, except to cross the same.

12. To provide means for keeping and preserving the peace and quietness of such town.

13. To insure the public property of such town.

14. To purchase, lay out, and regulate cemeteries.

15. To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation, and to inclose any public square or other public ground within said corporation.

16. To levy and collect annual taxes not exceeding fifty cents on the hundred dollars valuation, and twenty-five cents poll tax on all property subject by law to taxation.

17. To levy and collect annually a tax of one dollar on each male dog, and two dollars on each female dog owned and kept within such town.

18. To make and establish such by-laws, ordinances and regulations, not repugnant to the laws of this territory, as may be necessary to carry into effect the provisions of this act, and to repeal, alter, or amend the same as they shall seem to the board of trustees of such town to require; but every by-law, ordinance, or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect.

19. To enact fines, penalties, and forfeitures for violations of this act, or of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty, or forfeiture: *provided*, that the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

§ 23. **Jurisdiction of trustees over public grounds.** The trustees shall have jurisdiction over any commons or public grounds belonging to said town, and shall have power to regulate, with the consent of the majority of the owners thereof, the banks, shores,

and wharves of that portion of any navigable streams within the corporate limits, but no ferries heretofore, or which may hereafter be, established by law, shall be prejudiced or in any manner affected by the provisions of this act.

OF THE AUDITING AND PAYMENT OF ACCOUNTS.

§ 24. **Appropriation of moneys.** All moneys, however derived, belonging to such corporation shall only be appropriated for such objects, and defraying such expenses, as accrue, or necessarily arise, in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book, to be kept for that purpose by such board.

§ 25. **Of auditing accounts.** No account or claim against said town shall be audited or allowed by the board of trustees, unless it be made out fully and itemized, and every such account audited shall be numbered from one, upwards, in the order they were presented, and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

§ 26. **Payment of accounts.** No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant [on] from the treasurer, signed by the president of said town, and attested by the clerk thereof.

OF CORPORATE INDEBTEDNESS.

§ 27. **Contracting of loans.** No incorporated town under this act shall have power to borrow money, or incur any debt or liability, unless the citizen owners of five-eighths of the taxable property of such town, as evinced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan, and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same; and for any debt created thereby, the trustees shall add to the tax duplicate of each year, successively, a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof.

OF THE QUALIFICATION OF OFFICERS.

§ 28. **Certain officers to give bonds.** The clerk, assessor, treasurer, marshal, and justice of the peace, shall, within ten days after their election or appointment, each and severally give bonds payable to the town of ———, with freehold sureties to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year.

§ 29. **Books and vouchers to be delivered successor.** All books, vouchers, moneys, or other property belonging to the corporation, and in charge or possession of any officer of the same, shall be delivered to his successor when qualified.

LEVY AND COLLECTION OF TAXES.

§ 30. **Board of trustees determine amount of tax.** The board of trustees shall, before the third Tuesday in May of each year, determine the amount of general tax for the current year.

§ 31. **Duties of assessor.** The assessor shall assess all property liable to taxation in such town under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday of June of each year.

§ 32. **Notice of opening of assessment roll.** The trustees shall cause the clerk of said corporation to put up notices, in three or more public places in said town, stating that the assessment roll is returned and open for inspection, and that, on a day and at a place to be specified in said notice, the trustees will hear and decide all complaints of, and appeals from, the acts of said assessor.

§ 33. **Correction of tax-list.** When the assessment roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property of said town, to such an amount as they may deem necessary, and shall set opposite the name of each person taxed, a description and valuation of the property charged therewith, and the amount of tax assessed against such person; and when such tax-list shall have been made they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The assessment roll and tax-list shall be deposited with the treasurer of such town, who is hereby charged with the safe custody of the same.

§ 34. **Warrant to marshal to collect and pay over taxes.** Such warrant shall be under the seal of the corporation, signed by the president and trustees, or a majority of them, and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within ninety days, and pay over the same, and make return of said warrant to the treasury of said town. Such trustees may renew such warrant for any period not exceeding thirty days.

§ 35. **Powers of marshal to collect tax.** The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections, and shall be governed by the same rules and regulations, as county treasurers and collectors, and shall have authority in like manner to collect by distress and sale of personal property; but if the tax cannot be so made, and it becomes necessary to sell real estate, such tax shall be certified to

the county treasurer, who shall proceed and collect the same as directed by the statute governing tax sales: *provided*, that this shall not apply to incorporate cities, villages, or towns, for which a different method is provided by their charter.

§ 36. **Tax duplicate may be delivered to collector.** The trustees of such town may, at their option, in the first instance deliver the tax duplicate to the collector of the proper county, on or before the first day of August, in each year, instead of the marshal of such town, and said collector shall enter said tax, and, if delinquent, the interest and penalty thereon, upon his duplicate.

§ 37. **Compensation of collector and treasurer.** The collector of such county shall collect the corporation taxes upon such duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The collector and treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services.

POWERS AND DUTIES OF OFFICERS.

§ 38. **Duties of treasurer.** The treasurer of every incorporated town shall so keep his accounts as to show where and from what sources all moneys paid him have been derived, and to whom and when such moneys, or any part thereof, have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal. His books, accounts, and vouchers shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same at a regular meeting of such board, on some day between the first and last Mondays of April in each year, and have settlement with the said treasurer.

§ 39. **Board of trustees to publish receipts and expenditures.** It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer of said corporation, to publish in a newspaper, if one be printed therein, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

§ 40. **Duties of clerk.** The clerk of such town shall have the custody of the records, books, and papers of the board of trustees, and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, as required by him by the by-laws.

§ 41. **Powers of marshal.** The marshal of such town shall be a peace officer, and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees, or enforcing the by-laws and ordinances of said town.

§ 42. **Trustees to superintend grading, &c.** The board of trustees shall superintend the grading, paving, and improving of streets, and the building and repairing of sidewalks.

§ 43. **Duties of fire-wardens.** The fire-wardens shall attend all fires, and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be fire-wardens.

§ 44. **Compensation of town officers.** The trustees, clerk, assessor, treasurer, marshal, and justice of the peace, shall respectively receive for their services such compensation as the board of trustees, in their by-laws, may decide; and said board shall cause to be paid other officers of such town for their services a just and reasonable compensation.

OF SIDEWALKS AND STREETS.

§ 45. **Taxes for repairing streets and sidewalks.** Whenever two-thirds of the residents, owners in number or in value, of real estate bounding both sides of any street, not less than one square, shall petition to have such street graded, paved, or otherwise improved, or the sidewalks thereof built or repaired, or when two-thirds of the owners of real estate, in number or in value, on one side of such street, shall desire a sidewalk on that side, it shall be the duty of such board to levy and cause to be collected, by tax, upon the owners of real estate, lot, or lots on such street, or part of street, such a sum of money as is necessary for the improvement of said street or sidewalk, or the building of said sidewalk in front of each of the respective lots, or at the side of any corner lot or lots, or real estate: *provided, however, that no real estate, lot, or lots shall be taxed, as aforesaid, for sidewalks built or improvements done, at a greater distance from the front of said real estate, lot, or lots, than one-half the distance to the opposite side of said street. (As amended, Sess. Laws 1883, c. 107.)*

§ 46. **Nobody exempt from highway tax.** Nothing contained in this act shall exempt the inhabitants of any town from the payment of highway taxes legally assessed, nor from the formation of one or more road districts, irrespective of the corporate limits of such town.

EXTENSION OF CORPORATE LIMITS.

§ 47. **Addition to corporation.** When two-thirds of the owners of a tier of out-lots, adjoining an incorporated town, shall sign a petition, asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded, and make an order that said tier of out-lots shall thereafter be included and constituted a part of said corporation, and the inhabitants residing thereon, and owners thereof, shall be subject to and entitled to all privileges of said corporation.

§ 48. **Annexing of additional lots.** Whenever there shall be lots laid off, and platted, adjoining such town, and a record of the same is made in the register of deed's office of the proper county, the trustees may, by a resolution of their board, extend the boundary of such town so as to include such lots; and the lots thus annexed shall thereafter form a part of such town, and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map of survey, defining the boundaries of such addition, in the office of the register aforesaid.

§ 49. **Proceedings of trustees to annex additions.** When any town shall desire to annex contiguous territory thereto, not platted or laid, or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat, accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days' notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none there, by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory, if known, and are residents of the county.

§ 50. **County board to hear and order annexation.** The board of county commissioners, upon the reception of such petition, shall consider the same, and shall have the testimony offered for or against such annexation, and if, after inspection of the map and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order-book, specifying the territory annexed, with the boundaries thereof, according to the survey, which entry, or an attested copy thereof, shall be conclusive evidence in all courts of such annexation.

DISSOLUTION OF CORPORATION.

§ 51. **Dissolution of corporation.** When an application signed by one-third of the legal voters of any incorporated town shall

be presented to the board of trustees, in writing, asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board, if they deem the reasons good, to call a meeting of the voters of said town by giving ten days' notice thereof, as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting, and a poll shall be opened as at any other corporation election, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote, signed by the president and attested by the clerk, shall be filed in the register of deeds' office of the county, and such town shall, at the expiration of six months from the time of holding such meeting, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town, at any special meeting thereof, may direct.

§ 52. **Dissolution not to affect existing contracts.** No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

§ 53. **Proof of compliance with law by town.** Whenever any suit shall be instituted by an incorporated town, it shall not be required to show its compliance with any of the provisions of this act as to its organization, or publication of by-laws or ordinances, unless the same is controverted by affidavit.

§ 54. **Incorporated towns may adopt this act.** Any town heretofore incorporated by special act, may, by a resolution of the board of trustees or other municipal board thereof, entered upon the record-book of the corporation, become incorporated under this act, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county, and entered by him of record. Trustees and other officers of such incorporated towns, by whatever name designated, performing duties of a like nature to those required of officers created by this act, shall continue to be the officers of such town, by the name as specified in this act, until superseded by the annual election.

§ 55. **When debt not nullified.** No debt or liability due to or from any incorporated town shall be unpaid by reason of such town being brought within the provisions of this act, and becoming incorporated under it.

§ 56. **Proceedings for violation of ordinances.** Any person or persons violating the provisions of any ordinance of a town organized under this act, to which there may be a penalty af-

fixed, shall be presented before the justice of the peace of such town, and that the justice of the peace of such town shall have exclusive jurisdiction, and it shall be his duty to hear and determine all offenses against the ordinances of the town.

MISCELLANEOUS PROVISIONS.

§ 57. **How ordinances may be proven.** All ordinances of the town may be proven by the ordinance book of the town, or the certificate of the clerk of the town, under seal of the town; and when printed in a newspaper, or published in a book or pamphlet form, and purporting to be published or printed by the authority of the town, shall be read and received in all courts and places without further proof.

§ 58. **Taxes assessed to be a lien.** All taxes assessed by the board of trustees of towns incorporated under the provisions of this act, for the grading, paving, or otherwise improving the streets of the town, or for building or repairing sidewalks of the town, shall be a lien on the lots or pieces of ground subject to the same, from the time the amount thereof shall have been ascertained; and in case any error or irregularity should occur in levying or collecting any such tax, proceedings may be taken anew, so as to obviate any such error or irregularity.

§ 59. **Taxes—how collectible, and penalty when delinquent.** Such special tax shall be due and may be collected as the improvements are completed in front of or along or upon any block, lot, or piece of ground, or at the time the improvement is completed, according as shall be provided in the ordinance levying the tax. Such tax, if not paid within thirty days after becoming due, shall have added thereto a penalty of ten per cent., and shall bear interest from the day of sale, at the rate of twenty-five per cent. per annum, to be computed on the tax, penalty, and costs of sale.

§ 60. **What costs may be included in tax.** The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing, and ditching, or otherwise improving, streets, sidewalks, alleys, avenues, or lanes at their intersections may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue, or lane, as may be deemed best by the board of trustees of such town.

§ 61. **Marshal's duty in relation to taxes.** When the special tax is levied, it shall be the duty of the marshal of such town to calculate the amount of tax on any block, lot, or piece of ground, and file a statement thereof with the town clerk, who shall, as soon as the tax is due on any block, lot, or piece of ground, issue a certificate describing it, its number and lot and block, and stating the amount of tax due thereon, and the name of the person entitled to the same, and the purpose for which said tax was levied; and such

certificate so given shall be the tax warrant of the contractor, and shall be by the clerk placed in the hands of the marshal, and he shall keep a record of all such warrants, and enter on the margin of such records all amounts paid, and by whom paid.

§ 62. **Jurisdiction of justices.** Justices of the peace of any town heretofore or hereafter organized under the provisions of said chapter twenty-four shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such town, and concurrent jurisdiction with all other justices in all civil cases, and in all criminal cases, for offenses against the laws of the territory, committed within the county where such town is situated; and whenever complaint shall be made to the justice of the peace of such town, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal of the town, the sheriff, or any constable of the county, or any person specially appointed by the justice for the purpose, and, in all preliminary examinations before such justice, he shall be governed by the Code of Criminal Procedure, and in all trials before such justice for offenses against the territory, he shall be governed by the Justice's Code. (*As amended, Sess. Laws 1881, c. 134.*)

§ 63. **Duty of justice when defendant appears.** When any person shall be brought before such justice of the peace upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

§ 64. **Proceedings where trial is postponed.** Upon good cause shown, such justice of the peace may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into bond, with sufficient security, conditioned that he will appear before such justice of the peace at the time and place appointed, and then and there to answer the complaint alleged against him.

§ 65. **Justice to summon witnesses.** It shall be the duty of such justice of the peace to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment, if necessary, and, when a trial shall be continued by such justice of the peace, he may verbally notify such witnesses as may be present at the continuance to attend before him to testify in the cause set for trial, and such verbal notice shall be as valid as a summons.

§ 66. **Trials—how governed.** All trials before such justice of the peace shall be governed by the criminal procedure applicable to justices' courts.

§ 67. **When defendant found guilty, justice to render judgment.** In all trials for offenses under the ordinances of the town incorporated under and by the provisions of this act, if the defendant is found guilty, such justice of the peace shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant.

§ 68. **Justices peace officers.** Such justice of the peace shall be a conservator of the peace, and his court shall be open every day, except Sunday, to hear and determine any and all cases cognizable before him, and he shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday, except to receive complaints, issue process, and take bail.

§ 69. **Appeals to be allowed, and conditions.** In all cases before such justice of the peace an appeal may be taken by the defendant to the district court of the county in which such town is situated, but no appeal shall be allowed unless such defendant shall, within ten days, enter into recognizance, with sufficient sureties, to be approved by such justice of the peace, conditioned for the payment of the fine and costs, and costs of appeal, and that he will render himself in execution thereof if it should be determined against the appellant.

§ 70. **On conviction—how punished.** Any person convicted before such justice of the peace of an offense under the ordinances of the town, shall be punished by fine as may be regulated by ordinances.

§ 71. **Powers of justice — exceptions — when jury called.** The justice of the peace of the town organized under the provisions of this act, shall have power to enforce obedience to all orders, rules, judgments, and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court, or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of justice of the peace. On the trial of any case in said court, it shall be the duty of such justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial: *provided*, the truth of the matter be fairly stated; and thereupon such exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence, or judgment of said court may be examined by the district court of the county in which such town is situated, on writ of error, which may be allowed by the district court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall, in such proceedings, take judicial notice of all the ordinances of such town. Cases

before such justices of the peace, arising under town ordinances, shall be tried and determined by such justice of the peace without the intervention of a jury, unless the defendant demand a trial by jury; and when a demand shall be so made, the trial shall be by jury of twelve citizens of such town, having the qualifications of jurors, who shall be summoned by the marshals of such town upon a *venire* issued by such justice of the peace. That the *venire* for a jury shall contain eighteen names, three of whom shall be stricken off the list by the defendant, and three by the marshal of such town; the remaining twelve names shall constitute a jury for the trial of a cause. If there is any challenges for cause, such justice of the peace shall try the questions in a summary manner, who may examine the challenged jurors under oath.

§ 72. **Fees of jurors.** Such jurors shall be paid fifty cents for their services as jurors in each case.

§ 73. **Costs taxed to defendant.** In case the defendant is found guilty, the costs of the jury shall be taxed against him as a part of the costs of the case, and the amount thereof shall be a part of the judgment.

§ 74. **Proceedings—how governed.** In all cases not herein specially provided for, the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

CHAPTER XXV.¹

TOWN-SITES.

§ 1. **Corporate authorities determine by ordinance shares of claimants, and make deed.** When any city, town, or village holds the title of any lands in trust, under and by virtue of the acts of congress, approved March 2, 1867, and June 8, 1868, the mayor and common council, the president and trustees, or other general corporate authorities thereof, shall ascertain and by ordinance declare the persons who are severally entitled to each and every block, lot, share, or parcel thereof, according to his, her, or their several and respective rights, claim, or interest in and to the same, as they existed in law or equity at the time of the entry of such lands; and thereupon, and in accordance with such ordinance, the mayor, president, or other chief officer of such city, village, or town, or his successor in office, shall, by a good and sufficient deed of conveyance, grant and convey the title of all such blocks, lots, shares, or parcels

¹Repealed. See Appendix, c. 25, *§ 22.

to the person or persons so declared entitled to the same, or to his, her, or their heirs or assigns.

§ 2. **Mayor and clerk execute deed.** Every such grant or deed of conveyance shall be executed by the mayor, president, or other chief officer of the corporation, signing and acknowledging the same as provided for grants of real property in the Civil Code; and the clerk or secretary of such corporation shall also attest the same by his official signature and the corporate seal.

§ 3. **Deed only prima facie evidence.** When any such block, lot, share, or parcel of such land shall be claimed by two or more persons, the respective right, title, claim, and interest of such persons, in relation to each other, in the same, shall not be determined finally, nor in any way changed, affected, or impaired, by reason of such ordinance and grant, except that such grant shall be *prima facie* evidence only of such title, and shall place the party receiving the same in possession until the title is otherwise determined.

§ 4. **Extent of powers herein granted.** The powers and duties herein granted and defined shall also extend to the execution of conveyances for the purpose of defining and settling boundaries and other questions of title to such blocks, lots, shares, or parcels of the real property included by the site which may be unoccupied, and over which such corporate authorities have control under said acts of congress; and also to the execution of any map or chart of the survey of such city, town, or village, and of grants of any part of such site which has been set apart or dedicated for such purposes to the corporation or county for public use, in any way, and to grant to the public use all streets, avenues, alleys, parks, squares, or other authorized title or easement, for the public use and benefit.

See Appendix, c. 25.

CHAPTER XXVI.

TOWN AND CITY PLATS.

§ 1. **Survey and plat necessary.** When any person wishes to lay out a town in this territory, or an addition or subdivision of out-lots, such person shall cause the same to be surveyed, and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons, or public grounds, and all in and out lots or fractional lots, within or adjoining to said town, giving the names, width, courses, boundaries, and extent of all such streets and alleys.

§ 2. **Lots and squares numbered.** All the in-lots intended for sale shall be numbered in progressive numbers, or by

squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out-lots shall not exceed ten acres in size, and shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which shall divide or border the same.

§ 3. **Base line—how formed.** The proprietor or proprietors of the town, addition, or subdivision of out-lots, by themselves, or agents, shall, at the time of surveying and laying the same, cause to be planted and firmly fixed in the ground, on the line of the main streets of said town, two good and sufficient stones of such size and dimension as the surveyor shall direct. Said stones to be at least two hundred and fifty yards apart, and the lines thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found, shall be distinguished on the plat or map.

§ 4. **Plat or map certified and acknowledged.** The plat or map, after having been completed, shall be certified by the surveyor and the officers; and every persons or persons whose duty it shall be to comply with the foregoing requisitions, shall, at or before the time of offering said plat or map for record, acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment shall, by the officer taking the same, be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded, and form a part of the record.

§ 5. **Of lands donated or granted—of land for streets.** When the plat or map shall have been made out and certified, acknowledged, and recorded, as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plat or map, shall be deemed, in law and equity, a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, and shall be considered, to all intents and purposes, a general warranty against such donor or donors, their heirs or representatives, to said donee or donees, grantee or grantees, for his, her, or their use, for the uses and purposes therein named, expressed, and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons, or other public uses, in any town or city or addition thereto, shall be held in the corporate name thereof, in trust to and for the use and purposes set forth and expressed or intended.

§ 6. **If county not organized, plat recorded. where.** If the county in which said town or addition is situated shall not be organized, then, in that case, the plat or map shall be recorded in

the register's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

§ 7. Towns laid out to comply with this act. When any town, addition, or subdivision has been heretofore laid out and lots sold in this territory, by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty, and it is hereby required, of the county commissioners, or a majority of them, in such county, or proprietor or proprietors, who have laid out the same, or his, her, or their legal representatives, to have the same fairly, fully, and clearly made out, acknowledged, and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes: *provided*, that if the lots shall have been differently numbered and sales made, and they cannot be well changed, they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requisitions of this chapter.

§ 8. Fees of surveyor and register. The surveyor who shall lay out, survey, and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same, shall receive the sum of two cents for each and every lot as aforesaid, the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose.

§ 9. Penalty if sale or lease offered before this act is complied with. If any person or persons shall dispose of, offer for sale, or lease for any time any out or in lots in any town or city, or in any addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased, or offered for sale.

§ 10. Penalty if officer or other person neglect to do duty. If any officer or other person, or persons whose duty it is to comply with any of the requisitions of this chapter, shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten nor more than one hundred dollars, for each and every month he or they shall delay a compliance.

§ 11. Towns heretofore laid out must be recorded within three months. All towns heretofore laid out shall be platted or mapped in accordance within the provisions of this chapter, and the plats or maps of the same shall be recorded within three months from the passage of this chapter, in the office of the register of deeds of the proper county.

§ 12. **Of forfeitures and liabilities.** All forfeitures and liabilities which may be incurred or arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer, and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this chapter, shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt against said treasurer on the books of the county commissioners.

§ 13. **District court may alter or vacate towns.** The district courts are hereby authorized and empowered, on application made by the proprietors of any town within their proper county, to alter or vacate the same or any part thereof.

§ 14. **Notice of application for vacation—how given.** If any proprietor or proprietors of a town shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county, if there be one, at least forty days prior to the sitting of the court to which he or they intend to make such application.

§ 15. **Proceedings before court.** If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section of this chapter has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings thereon to be recorded by the clerk with the records of said court.

CHAPTER XXVII.

ELECTIONS.

§ 1. **This chapter governs all except special elections.** All elections for territorial, district, county, township, precinct, city, and other officers provided by law, shall hereafter be held and conducted in the manner prescribed in this chapter, except as otherwise specially provided for schools in incorporated cities and towns, and for the division of a county into civil townships.

§ 2. **General election annual in November.** The general election shall be held in the several election precincts on the Tuesday next after the first Monday in November in each year, at

which election shall be chosen as many officers as are by law to be elected.

§ 3. Judges of election to be appointed. The several boards of county commissioners shall respectively, at least thirty days prior to the general election in each year, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of election at each precinct for the poll of election therein as provided for in this act; and in case of the failure of the said board from any cause to make such appointment as herein provided, then the county clerk shall make such appointments within five days thereafter; and said board, whenever it is necessary, shall set off and establish election precincts; and the county clerks of the several counties shall make out and deliver to the sheriff, coroner, or other person that may be designated by the board of county commissioners of each county, immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner, or other person appointed, as provided in this section, within ten days after receiving such notice, to serve the same upon each of the said judges of election: *Provided*, that this section shall not apply in counties organized under chapter fifty-nine of the Session Laws of one thousand eight hundred and seventy-nine. (*As amended, Sess. Laws 1881, c. 74, § 1.*)

Provided, that in every organized civil township, the township supervisors thereof shall be the judges of election for all elections, whether general or special, held for any purpose whatsoever in the county; and if there shall be any vacancy in the board of judges, the electors present at the time when such vacancy appears shall choose *viva voce* from the qualified electors of the township so many judges as there shall be vacancies in such board; and the township clerk shall be one of the clerks of election, if present. (*As amended, Sess. Laws 1883, c. 48.*)

Chapter 59 of the Session Laws of 1879, above referred to, has been superseded by chapter 112, Session Laws of 1883, composing chapter 23 of this Code.

§ 4. Judges choose clerks—term of judges and clerks. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time, fill all vacancies which may occur in the office of judges of elections, at any election precinct within their respective counties.

§ 5. **Notice to be posted by county clerk.** The county clerks of the several counties shall, at least thirty days before any general, and at least ten days before any special, election, make out and deliver to the sheriff, coroner, or other person to be designated by them, of their respective counties, three written notices thereof for each election precinct; said notices to be, as nearly as circumstances will admit, as follows, to-wit:

Notice is hereby given, that on the second Tuesday, the _____ day of _____ next, at the house of _____, in the town, district, or precinct of _____, in the county of _____, an election to be held for territorial, township, or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue open until four o'clock in the afternoon of the same day.

Dated this _____ day of _____, A. D. 18—, (as the case may be.)

[Signed]

A—— B——, County Clerk.

§ 6. **Officer to post such notices, when and where.** The sheriff, coroner, or other person to whom such notice shall be delivered as aforesaid, shall put up, in three of the most public places in each township or district, the notice referring to such district, precinct, or town, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election, and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: One at the house where the election is authorized to be held, and two others at two of the most public places in that vicinity or settlement.

§ 7. **Electors to choose judges, if vacancy.** If any person appointed to act as judge of election, as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district, or precinct, as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies, shall be and are hereby vested, for that election, with the same power as if appointed by the board of county commissioners.

§ 8. **Oath of judges and clerks.** Previous to votes being taken, the judges and the clerks of the election shall severally take an oath, in the following form, to-wit:

I, A. B., do solemnly swear (or affirm, as the case may be) that I will perform the duties of judge (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

§ 9. **Who to administer oath.** In case there shall be no judge of a court or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other,

and to the clerks of the election; and the person administering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll-book.

§ 10. **Time of opening, closing and canvass.** At all elections to be held under chapter twenty-seven of the Political Code, the polls shall be opened at the hour of eight o'clock in the forenoon and continue open until five o'clock in the afternoon of the same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls, proclamation shall be made that the polls will be closed in half an hour, and, immediately after the polls have been closed, the judges and clerks of election shall proceed forthwith to count and canvass the votes cast, and they shall complete said canvass and certify thereto before any adjournment shall be had. (*As amended, Sess. Laws 1883, c. 47.*)

§ 11. **Penalty for rejecting legal vote.** Any board of judges who shall willfully and knowingly reject any legal vote shall be subject to a fine of fifty dollars, to be collected before any justice of the peace, for the use of common schools, on the complaint and proof of any person.

§ 12. **White paper must be used for ballots.** Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a white paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the electors intend to vote, and shall designate the office to which each person so named is intended by him to be chosen. But no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill each office. That any judge of election who shall receive, or allow to be deposited in the ballot-box, any ticket, printed or written on any other than white paper, shall forfeit and pay to the county a sum not less than fifty dollars, to be recovered by a civil action in the name of the county commissioners of the county in which such judge of election resides, which money, when collected, shall be for the support of the common schools in said county. (*As amended, Sess. Laws 1881, c. 72.*)

See sections 13, 31, and 33.

§ 13. **All names voted for to be on one ticket.** The names of all persons voted for by any elector at any general election, or special election, shall be on one ballot.

§ 14. **Proceedings in case of challenge, and oath of elector.** If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged the qualifications of an elector; if such

person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall tender the following oath :

You do solemnly swear (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformably to the laws of the United States, and of this territory, on the subject of naturalization, and have taken an oath to support the constitution of the United States;) that you have resided in this territory ninety days, and in this county twenty days, and in this precinct five days, next preceding this election; that you have not voted at this election.

And if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected; and, after taking such oath, if the judges have good reason to believe that the person so offering to vote is not a legal voter, before receiving his vote they shall require him to subscribe the oath, which shall be written out and preserved with the poll-books for future reference.

§ 15. **Penalty for perjury.** If any person so offering such vote shall take such oath, knowing it to be false, he shall be deemed guilty of willful and corrupt perjury, and shall, on conviction, suffer such punishment as now is, or shall hereafter be, prescribed by law for persons guilty of perjury.

§ 16. **Judges to keep ballot-box.** There shall be provided and kept by the judges of each election precinct, at the expense of the county in which such precincts are situated, a suitable ballot-box, with lock and key.

§ 17. **Style of ballot-box and duty of judges.** There shall be an opening through the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

§ 18. **Judges to deposit ballot in box.** When a ballot shall be received, one of the judges, without opening the same or permitting it to be opened or examined, except to ascertain whether it be a single ballot, shall deposit it in the ballot-box.

§ 19. **Clerk to keep poll-list.** Each clerk of election shall keep a poll-list, which shall contain the names of all the persons voting at such election in their numerical order.

§ 20. **Duty of clerks on adjournment for dinner.** At each adjournment of the polls for dinner, the clerks shall, in presence of the judges, compare their respective poll-lists, compute and set down the number of votes, and correct all mistakes that may be dis-

covered, according to the decision of the board, until such poll-lists shall be made, in all respects, to correspond.

§ 21. **Protecting box on adjournment for dinner.** The box shall then be opened and the poll-list placed therein; and said box shall then be locked and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

§ 22. **Disposition of key and box.** The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it without opening it, or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll list taken out, and the box again locked.

§ 23. **Duty of judge to challenge.** It shall be the duty of the judge of election to challenge every person offering to vote whom he shall know or suspect not to be qualified as an elector.

§ 24. **Judges may appoint special constables, commit and fine for disorderly conduct.** For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district, or precinct, and should no constable attend at such elections, the judges of elections are hereby authorized and empowered to appoint one or more special constables, to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars on any person or persons who shall conduct in a disorderly or riotous manner, and shall persist in such conduct after having been warned of the consequences, and on refusing to pay the same, to commit him, or them, to the common jail of the county for any time not exceeding twenty days, or until the same shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed, as though it had been issued by a magistrate in due form of law.

§ 25. **Duty of judges after closing polls.** As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall be continued without adjournment until completed.

§ 26. **Manner of conducting the canvass.** The canvass shall commence by a comparison of the poll-lists from the commencement, and a correction of any mistake that may be found therein,

until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein be taken out and counted by the judges unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot shall be completed; and if, upon a comparison of the count with the poll lists, and the appearance of such ballots, a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

§ 27. **If ballots and poll-lists disagree.** If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom as many ballots, unopened, as shall be equal to such excess.

§ 28. **Duty of clerks in canvassing votes.** The ballot and poll list agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll-books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will admit, in the following form, to-wit:

At an election held at the house of A. B., in the town, district, or precinct, in the county of _____, and territory of Dakota, on the _____ day of _____, the following-named persons received the number of votes annexed to their respective names for the following-described offices, to-wit: A. B. had _____ votes for delegate to congress; C. D. had _____ votes for the legislative council; E. F. had _____ votes for member of the house of representatives; G. H. had _____ votes for coroner; I. J. had _____ votes for sheriff; K. L. had _____ votes for county commissioner, (and in like manner for any other persons voted for.) Certified by us, A. B., C. D., E. F., judges of election. Attest: G. H., I. K., clerks of election.

§ 29. **Judge to forward one poll-book to county clerk.** The judges of election shall then inclose and seal one of the poll-books, and, under cover, direct the same to the county clerk of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said county clerk, at his office, within three days after the closing of the polls, and the other poll-book, together with the ballots and ballot-box, deposited with the chairman of the board of county commissioners, and the said poll-book shall be subject to inspection at any time thereafter; and said poll-books shall be preserved as a public record, and the ballots and ballot-boxes shall be carefully kept until such boxes

are needed at some subsequent special or general election. (*As amended, Sess. Laws 1881, c. 74, § 2.*)

§ 30. **Penalty for neglect to deliver poll-book to county clerk.** If any judge or clerk of election, after being deputed, by the judges of election at which he shall have served as judge or clerk, to carry the poll-books of such election to the county clerk, or any other person deputed for that purpose, shall willfully refuse or neglect to deliver such poll-book to the said county clerk, within the time specified by law, safe with the seals unbroken, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

§ 31. **Canvass by county officers.** On the fifteenth day after the close of any election, or as soon as all the returns are received, the county clerk shall take to his assistance a majority of the county commissioners of the county, county treasurer, or the judge of the probate court, and one county commissioner, and none of the persons so called shall be candidates for office, unless there is not sufficient of said officers who are not such candidates, shall proceed to open said returns and make abstracts of the votes in the following manner: The abstract of the votes for delegates to congress shall be on one sheet; the abstract of votes for district attorney shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for county and precinct officers shall be on one sheet; and it shall be the duty of the said county clerk immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and precinct officers respectively, and to deliver said certificate to the person entitled to it on his making application to the county clerk at his office: *provided*, that when a tie vote shall exist between two or more persons for the council and house of representatives, the county clerk shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice; and it shall be the duty of the county clerk of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of county commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury, and immediately after canvassing the returns and making the abstract of votes, as provided in this section, the county clerk shall make a certified copy of each abstract and forward it to the secretary of the territory: *and provided further*, that if the county clerk is a candidate for office, he shall take no part in the canvass, but shall act as clerk of said board

of canvassers, and the two officers called to the assistance of the county clerk to make such canvass shall call to their assistance one of the officers mentioned in this section, who is not a candidate, and if there is none of said officers remaining who is not a candidate, then they shall call to their assistance a justice of the peace, and it shall thereupon be their duty to at once attend and make such canvass as in said chapter twenty-seven provided. (*As amended, Sess. Laws 1881, c. 71, § 1.*)

§ 32. **Duty of register in case of tie.** If the requisite number of county officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the county clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and equal number of votes to attend at the office of the proper county clerk, at the time to be appointed by the said county clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and the said county clerk shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided.

§ 33. **Canvass by territorial board.** And it shall be the duty of the secretary of the territory, with the chief justice and governor, or a majority of them, to proceed within fifty days after the election, or as soon as all the returns are received, to canvass the votes cast for delegate to congress, for other territorial officers, and for district attorneys; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. A majority of said canvassers shall decide all matters of disagreement, and it is made their duty to disregard all technicalities and misspelling, the use of initial letters, abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes are intended. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall by proclamation order a new election: *Provided*, that if either of the persons mentioned in this section as canvassers be a candidate for delegate to congress, such person shall take no part in the canvass of said votes, and the other two persons shall call to their assistance the United States attorney, auditor, or treasurer of the territory. (*As amended, Sess. Laws 1881, c. 71, § 2.*)

§ 34. **When returns not received—messenger, how paid.** That if the returns of election of any organized county in this territory shall not be received at the office of the secretary of the territory within thirty days after the day of election, the said secretary shall forthwith send a messenger to the county clerk of such county, whose duty it shall be to furnish said messenger with a cer-

tified copy of such returns, and the said messenger shall be paid out of the treasury of the territory the sum of ten cents per mile for each mile he shall necessarily travel in going to and returning from the office of the said county clerk; and the territorial treasurer shall present a bill against the county not sending the election returns within time to the office of the secretary of the territory; and such bill shall be presented to the board of county commissioners of such county for the whole amount paid to such messenger, and the county commissioners, when such bill is presented, shall allow the same in full, and shall issue a warrant for the amount of the bill so presented, and such warrant shall be paid in cash by the county treasurer of such county whenever the same is presented, or as soon thereafter as any money is received in such county treasurer's office.

§ 35. **Resignations and vacancies.** Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, sheriff, probate judge, register of deeds, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of the member of the council or house of representatives of the legislative assembly, by death, resignation, or otherwise, it shall be the duty of the county clerk of the county in which the vacancy has occurred, to officially notify the governor thereof; whereupon the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges of election in his county or district to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *provided*, that if there be no session of the legislative assembly between the happening of such vacancy or vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

§ 36. When two or more counties are united one council or representative district, it shall be the duty of clerks of the respective counties to attend at the office of the county clerk of the senior county of such district, within twenty days after the day of election, and, in conjunction with the clerk of the senior county, shall compare the votes given in the several counties comprising such council or representative district; and said clerks shall immediately make out a certificate of election for the person or persons having the highest number of votes in such district, for member or members of the council or house of representatives of the legislative assembly, which certificate shall be delivered to the person entitled thereto, on his applica-

tion to the county clerk of the senior county of such district, at his office; and any breach of the provisions of this section shall be deemed a misdemeanor, and punishable accordingly. (*As amended, Sess. Laws 1881, c. 74, § 3.*)

See sec. 42.

§ 37. **Duty of governor.** Should any vacancy happen in the office of members of the council or house of representatives of the legislative assembly while in session, by death, resignation, removal, or otherwise, it shall be the duty of the governor, immediately upon receiving official notification of the same, to proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

§ 38. **Compensation of judges, etc.** There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, two dollars per day, and the person carrying the poll-books from the place of election to the county clerk's office, the sum of five cents per mile for going and returning.

§ 39. **Divided subsequent to election.** If a vacancy shall occur in the council or house of representatives in this territory, from any cause, and if the county or counties comprising the district in which such vacancy has happened shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at such election who does not at the time reside within the limits of the original county or district in which such vacancy occurred: *provided*, that nothing herein contained shall be so construed as to permit any person to vote so residing within the limits, who has not the other qualifications of an elector.

§ 40. **Duty of county clerks.** In cases of elections to fill vacancies, as provided for in this act, immediately after receiving the election returns from the several precincts, the county clerk shall, as provided in this act, proceed to canvass the votes returned, and without delay forward to the secretary of the territory the copies of the abstracts of the same.

§ 41. **County clerk shall canvass returns.** No election returns shall be refused by any county clerk for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election, or making returns thereof; but all returns shall be received and the votes canvassed by such county clerk, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

§ 42. **Penalty for violation.** If any judge or clerk of election, or county clerk, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county, which money, when collected, shall be for the support of the common schools in said county.

§ 43. **Person elected.** In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to that office.

§ 44. **No civil process served.** During the day on which any general, special, town, precinct, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

§ 45. **Canvassers—how to proceed—penalty.** The county clerk shall not construe the statutes concerning the canvassing of the election returns so as to decide all matters of law and fact himself, but the county clerk aforesaid, and the persons called to his assistance, shall constitute a board, a majority of whom shall decide all matters of disagreement, and the said board shall disregard technicalities and misspelling, the use of initial letters, or abbreviations of the name of candidates for office, if it can be ascertained from such votes for whom they are intended; but they shall not count votes polled in any place but at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

§ 46. **Poll-books—how delivered.** It shall be the duty of the county clerk to provide uniform poll-books for the use of his county, each poll-book containing a copy of the law prescribing the qualifications of electors, and so much of this act as relates to the duties of judges and clerks of election, and the penalties imposed for offenses; also containing blanks for all entries required to be made in the said poll-books, at the time the said clerk delivered notice for an election to the sheriff of his county, as provided for in this act. He shall also deliver to the sheriff two copies of said poll-books for an election precinct, and the sheriff shall deliver the same into the hands of one of the judges of election, and the judges of election receiving the said poll-books shall deliver, or cause the same to be delivered, to the clerks on the day of election.

§ 47. **Who entitled to vote.** Every male person above the age of twenty-one years, who shall have been a resident of the territory ninety days, twenty days in the county, and five days in the precinct, next preceding the election, who is a citizen of the United

States, or who has declared upon his oath his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citizens of the territory, and shall have complied with the provisions of any law which is now or may in future be in force relating to the registration of voters, shall be entitled to vote, and all persons possessing the qualifications mentioned in this section, and who have resided in this territory nine months, shall be eligible to any office in the said territory: *provided, however*, that persons shall vote in the precincts where they reside and not elsewhere.

"An act for the registry of electors, and to prevent fraudulent voting." See Appendix, *c.* 52.

§ 48. **Secretary transmits blanks.** The secretary of the territory shall, at least thirty days before every general election, transmit to the county clerks of the several counties blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law, and the expense of printing such blanks and envelopes shall be paid by the territory.

§ 49. **Secretary to indorse.** A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at said office on the envelope containing them.

CHAPTER XXVIII.

REVENUE.

§ 1. **General classes of taxable property.** All property, whether real or personal, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing in this territory, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, and of all bankers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose, in the manner prescribed by this chapter.

EXEMPTIONS.

§ 2. **Property exempt from taxation.** The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given:

1. The property of the United States and of this territory, including school lands.

2. The property of a county, incorporated city or village, or school-district, when devoted to public use and not held nor used for pecuniary profit.

3. Public grounds, by whomsoever devoted to the public use, and including all places set apart for the burial of the dead.

4. The engine and implements used for the extinguishing of fires, with the grounds used exclusively for their buildings and for the meetings of fire companies.

5. The grounds and buildings of library, scientific, educational, benevolent, and religious institutions, colleges, or societies devoted solely to the appropriate object of those institutions, not exceeding ten acres in extent, and not leased or otherwise used with a view to pecuniary profit. (*As amended, Sess. Laws 1879, c. 48.*)

6. The books, papers, furniture, scientific, or other apparatus pertaining to the above institutions and used solely for the purpose above contemplated, and the like property of students in any such institutions used for the purpose of their education.

7. Moneys and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not to exceed in amount of total valuation, aside from the property of students, as above mentioned, the sum prescribed in their charter or act of incorporation.

8. All animals not specified in the next section of this chapter.

9. Private libraries not exceeding one hundred dollars in value.

10. Family pictures.

11. The household furniture of each family, together with the beds and bedding thereof, and all wearing apparel of every person and family actually used for wearing, not to exceed in valuation two hundred dollars.

12. All food and fuel, provided in kind, not to exceed provision for one year's time: *provided*, that no person from whom a compensation for board or lodging is received or expected, shall be considered a member of a family within the intent and meaning of this chapter.

13. The polls or estates, or both, of persons who, by reason of age or infirmity, may, in the judgment of the assessor, be unable to contribute to the public charge, such opinion being subject to revision by the county board of equalization.

14. Any one-fourth part of any quarter section of prairie land, the same being a legal subdivision, on which five acres of timber shall be planted, either by sowing seed or by setting trees or cuttings, and the same to be kept in growing order by cultivation, and not to be more than twelve feet apart each way, together with all improvements thereon, not to exceed in value one thousand dollars, and for a period of ten years from and after the planting of said timber; and

any change of owners'hip of such land shall in no way affect the exemption from taxation as herein provided: *provided, however*, that no person shall derive any of the benefits as set forth in subdivision fourteen, section two, of chapter twenty-eight of the Political Code, until such person shall file an affidavit with the assessor that he has in every way complied with the requirements of the law made and provided in such cases, whereupon the assessor shall make a note of the facts in his list, and shall therein state in effect the following words, to-wit, "exempt from taxation by virtue of tree culture," and shall describe the particular tract or tracts of land so exempt. (*As amended, Sess. Laws 1881, c. 113.*)

15. All improvements made on real property by setting out either forest or fruit trees, shrubbery, or vineyards, which shall not be considered as increasing the value of the land for purposes of taxation.

16. All pensions from the United States or from any of the states of the Union.

17. The polls of all active members in good standing of any regularly organized fire company, not exceeding thirty in number, in cities or towns of more than five hundred inhabitants, and not exceeding fifteen in number in towns or cities of less than five hundred inhabitants: *provided*, that such fire company, actually and in good faith, possess apparatus for the extinguishment of fires exceeding two hundred and fifty dollars in value, to be determined by the assessor of the proper county. (*As amended, Sess. Laws 1881, c. 114.*)

TAXABLE PROPERTY.

§ 3. **Classes of property subject to taxation.** All other property, real and personal, shall be subjected to taxation in the manner provided in this chapter.

1. Lands and lots in towns and villages and cities, including lands bought from or donated by the United States, and from the territory, and whether bought on credit or otherwise.

2. Ferry franchises and toll bridges, which for the purposes of this act are to be considered as real property.

3. Lands which are pledged as security for debt by mortgage or otherwise at their actual cash value, without any regard whatever to the amount of any such mortgage or incumbrance.

4. Horses and neat cattle, mules and asses, sheep and swine.

5. Money, whether in possession or on deposit, and including bank bills.

6. All credits, whether money, property, or labor due from solvent debtors on contract or in judgment, and whether within this territory or not. In making the amount of credits which any person is required to list for himself, or for any other person, company, or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing by such person, company, or corporation, to any other person, company, or corporation:

Provided, that nothing in this section shall be so construed as to apply to any bank, company, or corporation exercising banking powers or privileges, or to authorize any deduction allowed by this section from the value of any other item of taxation than credits.

7. Mortgages and all other securities, promissory notes and accounts, whether bearing interest or not.

8. Stocks or shares in any bank or company incorporated by this territory, or any other state or territory, and situated in, or transacting business in, this territory.

9. All public stock and loans.

10. All household furniture not exempted by the preceding section, and including gold and silver plate, musical instruments, watches, and jewelry.

11. All private libraries, for their value over one hundred dollars.

12. All pleasure carriages, stage hacks, omnibuses, and other vehicles for transporting passengers.

13. All wagons, carts, drays, sleighs, and every other description of vehicles, or carriages, and all plows, harrows, reaping and mowing machines, harvesters, steam-engines, horse-powers, grain threshers and separators, and all other implements and machinery appurtenant to agricultural labor.

14. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this territory solely or not, if owned wholly or in part by persons who are inhabitants of this territory, for the whole or part so owned by the inhabitants of this territory.

15. Annuities, but not including pensions from the United States or any other state of the Union.

16. All money or capital invested or employed in manufactories, including buildings, machinery, and materials.

17. All money or capital employed in merchandising.

18. All property, real and personal, within this territory, in possession of, or under the control of, or held for sale by, any warehouseman, agent, factor, or representative in any capacity of any manufacturer, dealer, or other agent of any such manufacturer or dealer in agricultural implements or machinery, or other goods, wares, or merchandise.

19. Personal property of every description belonging to persons or companies doing freighting or transportation business, and belonging wholly or in part to persons within this territory, for such part as is so owned by said persons.

20. All other property real and personal, of any kind, including all improvements upon government lands, except the breaking or plowing upon said land, not specially exempted by the provisions of section two of this chapter. (*As amended, Sess. Laws 1881, c. 116.*)

Taxation of telegraph companies. See Appendix, c. 28, § 3, *21, 22.

MANNER OF LISTING PROPERTY.

§ 4. **Board to provide notices and forms.** On or before the twentieth day of January of each year, the board of county commissioners of each county shall provide for the use of the assessor suitable notices and blank forms for the listing and assessment of all property, and such instructions as shall be needful to secure full and uniform assessment and returns; and a list of all the entered lands in his county or district subject to taxation.

§ 5. **Classes and kinds of property each person to list.** The list of taxable property assessed to each person shall contain:

1. His lands by township, range, and section, and any division or part of a section, or numbered fractional lot of any section, lying in the country in which the list is required. And when such parcel of land is not a congressional division or subdivision, it shall be listed and described in some other mode sufficient to identify it.

2. His town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town.

3. His right and title in any ferry franchise, toll bridge, or part thereof, by the total and actual cash value of the same.

4. Amount of capital employed in merchandising or manufacturing, including all buildings, machinery, and appurtenances thereto.

5. Number of horses.

6. Number of mules and asses.

7. Number of neat cattle, over one year of age.

8. Number of sheep over three months old.

9. Number of swine over three months old.

10. Number of carriages and vehicles of every description.

11. Amount of money and credits, including actual and total cash value of all such credits, notes, and accounts due.

12. Amount of taxable household furniture.

13. Amount of stock or shares in any incorporated company, or company not incorporated.

14. Amount of all property, machinery, or merchandise held and controlled as agent of any manufacturing company or agent thereof.

15. All real property sold by any party or corporation under any form of grant or conveyance, or contract therefor, of which the vendor had or has an inchoate contingent or equitable title, right, or claim, and which is in the name, possession, or use of any vendee who has voluntarily taken such grant or contracts for such title, right, or claim: *provided*, that nothing herein shall be construed so as to affect or impair any right of a person holding or claiming lands from the United States under the homestead or pre-emption laws.

16. All other property not specially enumerated in this section, by its actual cash value, except such as is specially exempted by section two of this chapter.

§ 6. **Board may extend list.** The above list of items may be extended at the discretion of the board of county commissioners, so as to obtain such facts as they may deem desirable.

§ 7. The assessor shall in no case commence assessing before the first Monday in May of each year. (*As amended, Sess. Laws 1879, c. 49, § 1; and Sess. Laws 1881, c. 118, § 15.*)

§ 8. **What property to be listed.** All taxable property, real and personal, shall be listed and assessed each year in the name of the owner thereof, as soon as practicable, on and after the first Monday in May, including all property owned on the first day of April of that year; and, in order to make the assessment, such assessor shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association, or company within his county, a statement, under oath or affirmation, of all the real estate within the county, and personal property, owned by, claimed, or in the use, possession, or control of such person, firm, corporation, association, or company. If any person, firm, officer, or agent shall neglect or refuse, on demand of the assessor, to give, under oath or affirmation, the statement required by this section, the assessor shall ascertain and estimate, from the best information he can obtain, the number, amount, and cash value of all the several species of property required, and shall list the same accordingly, and the value so fixed by the assessor shall not be reduced by the county board of equalization. (*As amended, Sess. Laws 1879, c. 49, § 2, and Sess. Laws 1881, c. 118, § 16.*)

§ 9. **Unknown owners—oath to list.** If the owner of any property not listed by another person shall be absent or unknown, the assessor shall ascertain and estimate the value thereof, and if the name of such owner be known to the assessor, the property shall be assessed in his, her, or their name; if unknown to the assessor, the property shall be assessed to "unknown owners." The list shall be signed and sworn to by the person making it, and the oath thereto may be administered by the assessor, or his deputy, or by any other officer authorized to administer oaths, and shall be certified by him, and the oath may be printed upon the blank form, and shall be in substance as follows:

I, A. B., do solemnly swear (or affirm) that I have listed above and within all the lands, town and city lots, personal property, money, and credits subject by law to taxation, and owned, used, possessed, or controlled by me, or by law required to be listed by me for any other person or persons, as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, factor, bailee, or agent, according to the best of my knowledge.

§ 10. **Assessor may require oath of owner or other person—penalty.** In case any person, required to render the list under oath, fails or refuses to do so, the assessor, in order to perform his duty, as required in section eight of this chapter, may examine on oath any person whom he supposes to have knowledge in relation to the property required to be listed; and if any such person refuse to testify, when so required, he shall forfeit the sum of five dollars, to be recovered in a civil action in the name and to the use of the proper county, and the assessor shall make a minute of the names of persons refusing to swear to such list, or to testify in relation to property, and shall note the same on the list, and return the same to the board of county commissioners, and the county board of equalization shall add fifty per cent. thereof to the amount in value of property returned by the assessor as the list of the person so refusing to swear or affirm.

§ 11. **List of refusals to swear.** The said statements of persons refusing to swear shall be indorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order, and return them to the office of the county clerk by the first Monday of July next ensuing, at which time, or before, he shall also prepare and deliver his assessment roll. All property is to be valued by the assessor, except such as is herein required to be valued by the owner, agent, or other person having control of the same. (*As amended, Sess. Laws 1881, c. 118, § 18.*)

§ 12. **Assessor's oath to roll.** The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

I, A. B., county or township assessor in and for the —— county, Dakota territory, do solemnly swear that the value of all property, moneys, and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount of value of the property of any person or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value therefor is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any valuation or evasion of any of the requirements of the law in relation to the assessments of property for taxation.

§ 13. **Sworn false list—perjury.** If any person shall willfully make or give, under oath or affirmation, a false list of his, her, or their taxable property, or a false list of the taxable property in the use or possession, or under the control, of him, her, or them, and required by law to be listed by him, her, or them, such person shall be deemed guilty of perjury; and, upon conviction thereof, shall be punished therefor as is by law provided for the punishment of perjury.

§ 14. **Credits defined.** The term "credits," as used in this act, includes every claim and demand for money, labor, or other valuable thing; and every annuity or sum of money receivable at stated periods, and all moneys in property of any kind, and secured by deed, mortgage, or otherwise; but pensions from the United States, or any state, are not included in the above terms.

BY WHOM AND WHERE LISTED.

§ 15. **Every inhabitant, unless excepted, to list.** Every inhabitant of this territory, of full age and sound mind, unless excepted by the provisions of this act, shall list all property, subject to taxation in this territory, of which he is the owner, or has the control or management in the manner herein directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by his mother, if living; if not, then by the person having the property in charge; of a married woman, by her husband, but if he be unable, or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedent, by the executor, administrator, or heirs; of a body corporate, company, society, or partnership, by the principal accounting officer, agent, or partner; property under mortgage or lease, to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

§ 16. **Commission merchants, etc.** Commission merchants, and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this territory, are, for the purpose of taxation, required to list all the property in their possession.

§ 17. **Property listed, assessed, and taxed — when — where.** All personal property is to be listed, assessed, and taxed in the county where the owner resides, on the first of May of the then current year, or where the property is kept. But if the owner resides out of the territory, it is to be listed and taxed where it may be at the time of listing. And if the agent or person having charge of such property neglects to list it, he will be subject to the penalty hereinafter provided. (*As amended, Sess. Laws 1879, c. 49, § 3, and Sess. Laws 1881, c. 118, § 17.*)

§ 18. **List in behalf of another.** A person required to list property in behalf of another, shall list in the same county or township in which he would be required to list if it were his own, except as herein otherwise directed. But he must list it separate from his own, naming the person to whom it belongs. But the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs without enumerating them.

§ 19. **How companies to list property and money — duty of auditor and commissioner.** The president, secre-

tary, superintendent, or other principal accounting officer within the territory at the time of the assessment of every railroad company, turnpike company, plank-road company, bridge or ferry company, insurance company, telegraph company, or any other joint-stock company, except banking or other corporations whose taxation is specifically provided for in this chapter, for whatever purpose they may have been created, whether incorporated by any law of this territory or not, where any portion of said property, at the time of the assessment, is situated in more than one county, shall list for taxation, verified by the oath or affirmation by the person so listing, all the personal property, which shall be held to include road-bed, depots, wood and water stations, poles and wire, bridge and boats, books, papers, office furniture and fixtures, and such other realty as is necessary for the daily business operations of said road, bridge, insurance, or other incorporation. Moneys and credits of such company or corporations within the territory, at the actual value in money, in manner following, to-wit: In all cases, except as hereinafter provided, a full return of all property shall be made to the auditor of the territory on or before the first Monday of February, annually, together with a statement of the amount of such property which is situated in each organized county, precinct, or township, incorporated village, or city therein. The value of all movable property shall be added to the stationary and fixed property: *provided*, that whenever the whole of the property of any company aforesaid shall be in one county only, the return shall be made to the assessor or assessors in the same manner as returns of other property are made. If the return aforesaid shall not be received by said auditor within ten days after the first Monday in February, aforesaid, it shall be the duty of the auditor to procure the information aforesaid in any manner that may appear to be most likely to secure the same correctly, and for that purpose shall address a written request to the officer who has omitted or neglected to make the return aforesaid; and it shall be the duty of the auditor, on or before the first Monday of April, or so soon thereafter as he shall have procured the necessary information, to certify to the county clerks of the several counties in which said property, or any part thereof, shall be situated, the amounts thereof, specifying the several amounts included in each organized county or township, incorporated city or village in said county, which amounts, when so received by the several county clerks, shall be placed on the list of taxable property returned to them by the several assessors for such county or townships, incorporated cities or villages. The auditor shall certify whether the return was made by the proper officer, or whether the valuation was procured by himself; and it shall be the duty of the county commissioners to equalize the valuation of such property in the same manner as of other property, and if the return has not been made by the proper officer at the proper time, as required by this act, it shall be the duty of said county commissioners to add

not exceeding fifty per cent. to the valuation thus before them: *provided*, that shares of stock in all national banks, held by any person or persons in the territory, shall be assessed at their par value, and the owner or owners thereof shall be required to pay tax thereon the same as though they were shares in banks chartered and incorporated by the laws of the territory, or by the laws of any other state or territory of the United states: *and provided further*, that for the purpose of taxation no discrimination shall be made between any national bank and any other bank doing business in this territory under the laws thereof.

Taxation of railroad companies. See Appendix, c. 28, *§§ 19a-19f.

§ 20. **Persons doing business in more than one county.** When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county; and credits not existing in, nor pertaining especially to, the business in any one county, are to be listed and taxed in that county where his principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

§ 21. **Insurance companies.** Insurance companies of every description, transacting business in this territory, shall be taxed in the same amount and at the same rate that all other property is taxed, upon the amount premiums taken by them during the year previous to the listing in the county where the agent conducts the business. And the agent shall render the list and shall be personally liable for the tax, and if he refuses to render the list, or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may, at their discretion, add fifty per cent. to the amount returned by the assessor.

§ 22. **Depreciated bank-notes.** Depreciated bank-notes and depreciated stocks, or shares in corporations or companies, may be listed at their current value and rate. Credits shall be listed at such sums as the person listing them believes will be received or can be collected, and annuities at the value which the person listing believes them to be worth in money.

§ 23. **Entitled to deduct bona fide debts only.** In making up the amounts of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of *bona fide* debts owing by him, but no acknowledgment, made for the purpose of being so deducted, shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much

only as he believes he will be compelled to pay on account of the inability of the principal debtor. And if there are other sureties able to contribute, then so much only shall be deducted as he, in whose behalf the list is made, will be bound to pay or contribute; but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance; nor on account of an unpaid subscription to any society, nor on account of a subscription to or installments payable on the capital stock of any company or corporation, nor upon any account whatever, unless such deduction be made from the amount of moneys or credits, or both, by such person listed.

§ 24. **Definition of merchant.** Any person owning or having in his possession or control in this territory, with authority to sell the same, any personal property, purchased either within or out of the territory, with a view of selling the same at an advance price or profit, or which has been consigned to him for the purpose of being sold within the territory, shall be held to be a merchant for the purposes of this act. Such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the value of such property in his possession or control on the first day of May. (*As amended, Sess. Laws 1881, c. 118, § 1.*)

§ 25. **Held as manufacturer, when.** Any person who purchases, receives, or holds personal property of any description for the purpose of adding value thereto by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this act, and he shall list for taxation the value of such property in his hands, estimated as directed in the previous section in case of merchants, but the value shall be estimated upon the materials only entering into the combination or manufacture.

OF ASSESSMENT ROLL.

§ 26. **Making and delivery of roll—contents—form.** On or before the first Monday of July, annually, the several county and township assessors shall make out and deliver to the county clerk an assessment roll, consisting of the following items, to-wit:

1. A list of all the taxable lands in such county in numerical order, beginning with the lowest numbered section, in the lowest numbered township, in the lowest numbered range in the county, and ending in the highest numbered section, township, and range, with the number of acres in each tract set opposite the same, in a column provided for that purpose, and the assessed value thereof in another column, and the name of the owner, or person listing the same, in another column, with the columns of acres and values footed up. Also stating the number of the school and road district in which such property and the

owner thereof is situated. Such list shall be as nearly as practicable in the following form :

RETURN OF TAXABLE LANDS IN _____ COUNTY, DAKOTA, AS ASSESSED FOR THE YEAR 18--.

Part of Section.	Section.	Township.	Range.	Acres.	Value.	Owner's Name.

2. A list of all the town lots in each town or city in each county, in like numerical order, with the valuation of each lot or part of lot, and the name of the person listing the same opposite, with the column of values footed up, substantially in the following form :

RETURN OF LOTS IN THE CITY (OR TOWN) OF _____, IN _____ COUNTY, DAKOTA, ASSESSED FOR THE YEAR 18--.

Block.	Lot.	Value.	Owner.

3. A list in alphabetical order of all the persons and bodies corporate in whose names any property, or anything taxable other than the real estate, has been listed, with a sufficient number of columns opposite each name in which to enter the numbers or values, or both, of the several species of property or other interests required by law to be listed, with the columns of numbers and values footed up. Such list shall be as nearly as practicable in the following form, to-wit :

RETURN OF PERSONAL PROPERTY IN _____ COUNTY, DAKOTA, ASSESSED FOR THE YEAR 18--.

NAMES.	Merchandise.	Manufactures.	Horses.	Value.	Mules and Asses.	Value.	Cattle.	Value.	Sheep.	Value.	Swine.	Value.	Carrriages.	Value.	Money and Credits.	Household Furniture.	Stock or Shares.	Other Personality.	Total.	Poll Tax.	REMARKS.

As amended, Sess. Laws 1881, c. 118, § 2, and Sess. Laws 1883, c. 98.

REFUSAL TO LIST.

§ 27. **Return of refusals to swear.** In every case where a person is required to list property for himself, or in behalf of another, if he shall neglect or refuse to list the same, the assessor shall proceed as directed in section ten of this chapter, and in the return of personal property, opposite the name of such person, he shall write the words "by the assessor," when the list was made by himself or his deputy, together with the words "absent" or "sick" or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it; and a neglect to make it shall be taken as a refusal to do so.

COUNTY BOARD OF EQUALIZATION.

§ 28. **Commissioners constitute board—powers—limitation.** The board of county commissioners of each county shall constitute a board of equalization for the county, and said board, or a majority of the members thereof, shall hold a session of not less than two days at the county seat, commencing on the first Monday of July in each year, for the purpose of equalizing and correcting the assessment roll in their county; and in order to equalize and correct such assessment roll, they may change the valuation and assessment of any property, real or personal, upon the roll, by increasing or diminishing the assessed valuation thereof as shall be reasonable and just, to render taxation uniform: *provided*, that the aggregate assessment shall not be materially changed thereby. (*As amended, Sess. Laws 1881, c. 118, § 3.*)

§ 29. **Further powers equalizing board.** The said board of equalization must also place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner, or by the assessor, and enter for the same a reasonable, just, and uniform taxation. During the session of said board, any person, or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as shall be just; and if any person returned as refusing to render a list, or to be sworn thereto, or to the list of the property of another returnable by him, can show good cause for such failure or refusal, the penalty herein provided may be remitted: *provided*, that in equalizing the assessment of all property, personal and real, said board must be governed by the value of such property on the first day of May preceding, or, if that cannot be reasonably and justly ascertained, by its average value during the year preceding. (*As amended, Sess. Laws 1881, c. 118, § 4.*)

§ 30. **Clerk of board.** The county clerk of the county shall be the clerk of said board of equalization for the county.

ABSTRACT OF ASSESSMENT ROLL.

§ 31. **Clerk makes and forwards abstract to auditor.** As soon as practicable after the assessment rolls are equalized and corrected, as provided in the two preceding sections, and before the third Monday of July next ensuing, the county clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the county, and the total value thereof.

The total valuation of town lots.

The amount of property invested in merchandise.

The amount of property invested in manufactures.

The number of horses, and their total value.

The number of mules and asses, and their total value.

The number of cattle, and their total value.

The number of sheep, and their total value.

The number of swine, and their total value.

The number of carriages and vehicles of every kind, and their total value.

The total value of money and credits.

The total value of household furniture.

The total value of stock or shares.

The total value of all other personalty not enumerated under the foregoing heads, and the number of polls.

Which abstract the clerk is directed to transmit, without delay, to the auditor of the territory, and the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable; and it shall be the duty of the auditor of the territory to furnish such forms for the use of the county commissioners, assessors, clerks, and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the territory. (*As amended, Sess. Laws 1881, c. 118, § 5.*)

TERRITORIAL BOARD OF EQUALIZATION.

§ 32. **Who constitute—meeting—duties.** The governor, territorial auditor, and treasurer (or the majority of them) shall constitute the territorial "board of equalization," and said board of equalization shall hold a session at the capital of the territory, commencing on the second Monday of August of each year, and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the territorial tax to be levied for the current year, together with any other general or special territorial taxes required by law to be levied, and to equalize the levy of such

taxes throughout the territory; but such equalization shall be made by varying the rates of taxation on the different counties, in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors. (*As amended, Sess. Laws 1881, c. 118, § 6.*)

"Joint resolution providing for the appointment of a tax commission." See Appendix, c. 28, *§ 32a.

RATE OF TAXATION AND LEVY OF SAME.

§ 33. **Territorial county and special taxes limited.** The rate of the general territorial tax shall not be less than one-half mill nor more than five mills on the dollar valuation; for ordinary county revenue, including the support of the poor, not more than four mills on the dollar; for roads and bridges, a poll tax of one dollar and a half, or one day's work, on every male person between the ages of twenty-one and fifty years; a bridge tax not to exceed two mills on the dollar; and a road tax not exceeding two mills on the dollar valuation, to be paid in money, or in labor at the rate of one dollar and fifty cents per day, at the option of the person so taxed, and the certificate that the person named therein has actually performed eight hours' labor for each day's work so certified, shall be received by the county treasurer in discharge of said tax to the amount so certified. For county sinking fund, such rate as, in the estimation of the board of county commissioners, will pay one year's interest on all the outstanding debt on the county, with fifteen per cent. on the principal.

§ 34. **Auditor transmits rate of territorial tax.** On or before the third Monday in August in each year, the territorial auditor is required to transmit to the county clerk of each county a statement of the rate of taxation required in said county for the general territorial tax, as directed to be levied and collected by the territorial board of equalization. Should the territorial board of equalization fail to fix the rate of taxation in any or all of the counties, then the auditor is required to notify the county clerk of the rate to be levied and collected in such county or counties, which must not exceed two mills on the dollar of valuation, and must be in even mills, or in mills and tenths of mills, and uniform for all the counties. (*As amended, Sess. Laws 1881, c. 118, § 7.*)

§ 35. **County tax, when levied.** On the first Monday in September of each year, the board of county commissioners must meet at the county seat to levy the necessary taxes for the current fiscal year, and they may levy the taxes at any time after the said first Monday of September, if the statement from the territorial board of equalization has not then been received; but such levy must not be

postponed for more than ten days, and they shall levy the taxes as herein directed. (*As amended, Sess. Laws 1881, c. 118, § 8.*)

§ 36. **Territorial tax three mills, when.** The rate of the general territorial tax shall be as directed by the territorial board of equalization or by the territorial auditor, but in case the statement of the levy of such taxes, as hereinbefore directed, has not been received by the county clerk within ten days after the said first Monday in September, then the said board of county commissioners shall levy the general territorial tax at the rate of three mills on the dollar of valuation. (*As amended, Sess. Laws 1881, c. 118, § 8.*)

§ 37. **Clerk makes list—contents—order.** As soon as practicable after the taxes are levied, the county clerk shall make out a tax list containing—

1. A list in alphabetical order of all the persons and bodies corporate in whose name any property other than real estate has been listed, with the amount or valuation thereof in a separate column opposite the name, and total amount of all the taxes carried out in another column.

2. A list of all the taxable lands in the county (not including town lots) in numerical order, commencing with the lowest numbered section, in the lowest numbered township, in the lowest numbered range in the county, and ending with the highest numbered section, township, and range, with the names of the persons or parties in whose name each subdivision was listed opposite each subdivision on the margin, or in a column provided for that purpose, with valuation of each tract, and several species of taxes and the total of all the taxes carried out in separate columns opposite each tract, in the same manner as provided in the alphabetical list of names.

3. A list of the city or town lots in each city or town in the county, commencing with the lowest number and ending with the highest number in each city or town, with the name of the person or party listing each lot, or part of lot, opposite the same, and the valuation and several species of taxes and total taxes carried out in separate columns, in the same manner as hereinbefore provided in respect to personal property and lands.

§ 38. **Duplicate list for treasurer.** The tax list, when completed, shall be kept by the county clerk as the property of the county. The clerk shall also prepare a duplicate of the tax list of his county, and deliver the same to the county treasurer on or before the first day of November following the date of the levy for the current year. (*As amended, Sess. Laws 1881, c. 118, § 9.*)

§ 39. **Form of list and duplicate.** The tax list and duplicate shall be as nearly as practicable in the following form, to-wit:

TAX-LIST FOR 18—, — COUNTY, DAKOTA.

NAMES.	Part of Section.	Section.	Township.	Range.	Acres.	Value.	Name of Town.	Lot.	Block.	Value.	Personalty.	Territorial Tax.	County Tax.	County Sinking-Fund Tax.	Land Road Tax.	Poll Tax.	District School Tax.	Total.	REMARKS.

§ 40. **Entry required on list and duplicate.** An entry is required to be made upon the tax-list and its duplicate, showing what it is, and for what county and year it is, and the county commissioners shall attach to the lists their warrants, under their hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied according to law; and no informality in the foregoing requirements shall render any proceedings for the collection of taxes illegal. The county clerk shall take the receipt of the county treasurer, on delivering to him the duplicate tax-list, with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

COUNTY TREASURER, AND HIS DUTIES.

§ 41. **County treasurer collector of taxes.** The county treasurer of each county shall attend at the county seat at all times, to receive the taxes not yet paid, and he is also authorized and required to collect, so far as practicable, the taxes remaining unpaid on the list of the former year or years. In all cases where taxes are paid, he shall give a receipt to the person paying the same.

§ 42. **Warrants receivable to fund drawn on.** Territorial warrants are receivable for the amount payable into the territorial treasury on account of the general territorial tax, and county warrants are receivable at the treasury of the proper county for the amount of county tax payable into the county treasury, except when otherwise provided by law; and city warrants shall be received for city taxes, and school warrants shall be received for school taxes, in the districts where such warrants are issued; but United States

treasury notes, or their equivalent, only, are receivable for such taxes as are or may be required by law to be paid in cash; and road and poll taxes may be discharged as provided in section thirty-three.

§ 43. **Treasurer's receipts duplicates.** Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date, amount, and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall, within one month, be filed by the treasurer with the county clerk, and such duplicate receipts shall specify the land or other property on which such tax was assessed according to its description on the tax duplicate, or in some sufficient manner, and shall also specify the amount of each separate and distinct fund, in separate or distinct lines or columns, and whether the said separate or distinct funds were paid in cash or in territorial warrants, county, or road order, or supervisors' receipts, as the case may be.

§ 44. **Form of receipt.** The tax receipt and duplicate shall be substantially in the following form, to-wit:

No. ———. § ———
 TREASURER'S OFFICE. ——— COUNTY, DAKOTA, }
 ———, 18—, §
 Received of ———/——— dollars, in full of the following taxes for the year 18— on annexed prop-
 erty or real estate:

Part of Section or Name of Town.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	KIND OF TAX.	AMOUNT OF TAXES.			Total.
						Paid in Cash.	Paid in Warrants.	Interest.	
					Territorial.				
					County.				
					Road.				
					Poll.				
					School.				
					Advertising.				

§ 45. **Clerk audits duplicate.** It shall be the duty of the county clerk, on receiving any duplicate tax receipt from the treasurer, forthwith to examine the same and compare it with the tax-list in his possession, and see if the total amount of taxes and the several amounts of the different funds are correctly entered and set forth in such receipt; and in case it shall appear that the treasurer has not collected the full amount of taxes and interest which, according to the tax-list and the terms of the receipt, he should have collected, then the county clerk shall forthwith charge the treasurer with the

amount such receipt falls short of the true amount, and the treasurer shall be liable on his official bond to account for and pay over the same.

§ 46. **Receipts numbered consecutively.** All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this territory.

§ 47. **What treasurer shall write on duplicate.** Whenever any taxes are paid the treasurer shall write on the tax duplicate, opposite the description of the real estate or property whereon the same were levied, the word "paid," together with the date of such payment and the name of the person paying the same; and the county clerk, on receiving the duplicate receipt, shall forthwith make the same entries on the tax-list in his possession.

§ 48. **Treasurer to keep a cash-book.** The county treasurer is required to keep a cash-book, in which he shall enter an account of all money by him received, specifying in proper columns, provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid,—whether territorial, county, school, road, sinking fund, or otherwise,—and the amount paid in warrants, orders, or receipts, each in a separate column, and the total amount for which the receipt was given in another column; and the treasurer shall keep his account of money received for and on account of taxes, separate and distinct from moneys received on any other account, and shall also keep his account of money received for and on account of taxes levied and assessed for any one year, separate and distinct from those levied and assessed for any other year, and all entries in said cash-book of money received for taxes shall be in the numerical order of the receipt issued therefor.

§ 49. **Miscellaneous duplicate receipts.** Whenever the treasurer receives any money, warrants, or orders on account of licenses, fines, or any other account, except taxes charged on the tax duplicate, he shall make out and deliver to the person paying the same duplicate receipts, one of which receipts said person shall forthwith deposit with the county clerk, in order that the treasurer may be charged with the amount thereof. The treasurer shall then enter the same in his cash-book, as in case of money received for taxes, but in a separate place, and with a separate and distinct series of numbers of receipts issued therefor; and no person shall receive such license, or be discharged from obligation by reason of such fine or account,

until he shall have so delivered such duplicate receipt to the county clerk. (*As amended, Sess. Laws 1881, c. 117. See, also, Appendix, c. 21, § 29, *9.*)

§ 50. **Form of cash-book.** The cash-book above provided for shall be as nearly as practicable in the following form, to-wit:

TREASURER'S CASH-BOOK, — COUNTY, DAKOTA.

Date.	Number of receipt, by whom paid.	Territorial F'nd		County F'nd		Co. Sinking Fund.		Land Road Fund.			Poll Fund.			District School Fund.	Advertising Fees.	Total.	Remarks.
		Paid in cash.	Paid in war-rants.	Paid in cash.	Paid in war-rants.	Paid in cash.	Paid in war-rants.	Paid in cash.	Paid in war-rants.	Paid in receipts.	Paid in cash.	Paid in war-rants.	Paid in receipts.				

§ 51. **Clerk's duplicate of treasurer's cash-book.** The county clerk is required to keep a duplicate of the treasurer's cash-book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same.

§ 52. **Errors and omissions.** If, on the assessment roll or tax-list there be any error in the name of the person assessed or taxed, the name may be changed, and the tax collected from the person intended, if he be taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax-list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who, upon being satisfied thereof, shall enter the same upon his assessment roll and assess the value, and the treasurer shall enter it upon the tax-list and collect the tax as in other cases.

§ 53. **Demand for taxes not necessary.** No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law, to attend at the treasurer's office, at the county seat, and pay his taxes; and if any person neglect so to attend and pay his taxes until after the first day of January next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale: *provided*, that in case any person having only personal property assessed, and upon which the taxes are unpaid, shall, in the opinion of the treasurer, be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands: *provided, however*, that in case any person owing taxes removes from any county in this territory, the county treasurer shall

forward such tax claim to the treasurer of the county to which such person has removed, and such taxes shall be collected by the county treasurer of the latter place as other taxes, and returned to the proper county, less legal charges. (*As amended, Sess. Laws 1881, c. 118, § 10, and Sess. Laws 1881, c. 112.*)

DELINQUENCY, PENALTY, AND LIEN OF TAXES.

§ 54. **Taxes delinquent, when.** On the first Monday of February of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent, and shall draw interest at the rate of ten per cent. per annum from the date of such delinquency. (*As amended, Sess. Laws 1879, c. 49, § 4.*)

§ 55. **Penalty.** To all taxes which remained unpaid at the time the same became delinquent, there shall be added as a penalty five per cent. on the amount so remaining unpaid, and one per cent. per month thereafter until paid, to be added on the first day of each month. (*As amended, Sess. Laws 1879, c. 49, § 5.*)

§ 56. **Lien of taxes defined.** Taxes upon real property are hereby made a perpetual lien thereupon against all persons and bodies corporate, except the United States and the territory, and taxes due from any person upon personal property shall be a lien upon any real property owned by such person, or to which he may acquire a title. All taxes shall, as between vendor and purchaser, become a lien upon real estate on and after the first day of November in each year. (*As amended, Sess. Laws 1881, c. 118, § 11.*)

COLLECTION BY DISTRESS.

§ 57. **Distraigned goods at expense of the owner.** When the treasurer distrains personal property, he may keep it at the expense of the owner, and he shall give notice of the time of the sale within five days after the day of the taking, in the manner that constables are required to give notice of the time of the sale of personal property on execution; and the time of the sale shall not be more than ten days from the day of the taking, but he may adjourn the sale from time to time, for a period not to exceed three days, and shall adjourn once at least; when there are no bidders, and in case of an adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, fees for sale, fees for levying on the property, and mileage, to be the same as allowed by law to sheriffs for levying and execution on personal property, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

Collection of delinquent personal taxes. See Appendix, c. 28, *§§ 57a-57c.
 Compensation for publishing tax sale. See Appendix, c. 28, *§ 57d.

§ 58. **In case treasurer be resisted in execution of duty.** If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

§ 59. **Taxes receivable till otherwise collected.** The treasurer shall continue to receive payment of all taxes after the first day of January, upon the above terms, until collected by distress and sale. (*As amended, Sess. Laws 1881, c. 118, § 12.*)

TAX SALE.

§ 60. **Treasurer adds local taxes.** Whenever, in the collection of any district, town, city, or local tax, which may have been levied according to law, the collector is not able to make the tax by distress and sale of personal property, and real estate is to be sold for the same, it shall be the duty of the collector of the tax to send such delinquent list to the county treasurer on or before the fifteenth day of July of each year, and the county treasurer shall receive the delinquent list, and advertise the same at the same time he advertises the sale of real estate for delinquent taxes, as hereinafter provided, by adding the amount of such delinquent district, town, city, or local tax to the amount of delinquent territorial, county, and other taxes, and shall sell such lands for the purpose of paying all such delinquent taxes as hereinafter directed, and shall credit the proper district, town, city, or locality for the amount of taxes so collected, which shall be subject to the order of the proper collecting officer.

§ 61. **Treasurer's notice of sale.** The treasurer shall give notice of the sale of real property, by publication thereof once a week for three consecutive weeks, commencing the first week in September, preceding the sale, in a newspaper in his county, if there be one, and if there be no paper published in his county, shall give notice by a written or printed notice posted on the door of the court house, or building in which courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale. Such notice shall contain a notification that all lands, on which the taxes of the preceding year (naming it) remain unpaid, will be sold, and the time and place of the sale, and said notice must contain a list of the lands to be sold, and the amount of taxes due. The treasurer shall add to each description of land so advertised, the sum of ten cents for each description other than town lot, and for each town lot the sum of five cents, to defray the expenses of advertising, which amount shall be paid by the county treasurer at the expiration of the

sale, upon the affidavit of the publisher. (*As amended, 1879, c. 49, § 6.*)

Compensation for publishing tax sale. See Appendix, c. 28, *§ 57*d*.

§ 62. **Shall offer lands for sale.** That on the first Monday of October in each year, between the hours of nine o'clock A. M. and four o'clock P. M., the treasurer is directed to offer at public sale, at the court-house, or place of holding courts in his county, or at the treasurer's office, where, by law, the taxes are made payable, all lands, town lots, or other real property which shall be liable for taxes of any description for the preceding year or years, and which shall remain due and unpaid; and he may adjourn the sale from day to day, until all the lands, lots, or other real property have been offered, and no taxable property shall be exempt from levy and sale for taxes. (*As amended, Sess. Laws 1879, c. 49, § 7.*)

See Appendix, c. 28, *§ 57*d*.

§ 63. **Method of sale—parcels—homestead reserved.** The person who offers to pay the amount due on any parcel of land for the smallest portion of the same is to be considered the highest bidder, and when such a portion constitutes a half or more of the parcel it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided, in such case, lengthwise, by a parallel with the proper lines of the lots. If the portion taken be less than one-half of the parcel, it is to be taken from the south-east corner, in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead shall not be sold for any taxes due from the owner thereof, until all other land, town lots, or other real property shall have been first sold, and to that end the quantity of land offered for sale may be obtained by drawing the division line in any direction so as to avoid the homestead; and when the homestead constitutes a part of the tract or parcel sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause proceedings to be had similar to that required in relation to mechanic's liens, for the ascertainment of the homestead. And, in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set apart from the homestead.

§ 64. **Persons bidding failing to pay.** Should any person so bidding fail to pay the amount due, the treasurer may again offer land for sale, if the sale has not closed; and if it has closed, he may again advertise it specially and by description, by one written or printed notice posted for two weeks on the door of the court-house, or place where courts are usually held, after which it may be sold at public sale; or the treasurer may recover the amount by

civil action, brought in the name of the county in which the sale was held.

§ 65. **Filing returns of sale.** On or before the first Monday of November following the sale of real property, the treasurer is required to file in the office of the county clerk of his county, a return of his sale of land (retaining a copy in his office) showing the lands sold, the names of the purchasers, and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings. (*As amended, Sess. Laws 1879, c. 49, § 8.*)

Wambole v. Foote, 2 Dak. 1; 2 N. W. REP. 239.

§ 66. **Descriptions entered numerically.** The description of real estate in such return shall be entered in the same numerical order as required in the tax-list, and such return shall be as nearly as may be in the following form, to-wit:

TREASURER'S SALE BOOK. DELINQUENT TAXES OF 18—, — COUNTY, DAKOTA.

Date of Sale.	Part of Section or Name of Town.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	Names of Purchaser.	Amount Sold for.	Subsequent Taxes Paid	Total.	By whom Redeemed.	Amount Paid for Redemption.	Ademption Money.	Remarks.

County commissioners to examine "tax sale book" and "stub receipts" annually. See Appendix, c. 21, § 29, *9.

§ 67. **Purchaser entitled to certificate.** The purchaser of any tract of land sold by the county treasurer for taxes will be entitled to a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds. Such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pay any taxes levied on the same,

whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "Sold for tax at public sale." Such certificate shall be substantially in the following form :

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

THE TERRITORY OF DAKOTA, }
 County, } ss.

I, _____, treasurer of the county of _____, in the territory of Dakota, do hereby certify that the following described real estate in said county and territory, to-wit: (describing the same,) was, on the _____ day of _____, 18—, duly sold by me, in the manner provided by law, for the delinquent taxes of the year 18— thereon, amounting to _____ dollars, including interest and penalty thereon, and the costs allowed by law, to _____, for the sum of _____ dollars, he being the highest and best bidder for the same.

And I further certify that unless redemption is made of real estate, in the manner provided by law, the said _____, or assigns, will be entitled to a deed therefor, on and after the _____ day of _____, A. D. 18—, on surrender of this certificate.

In witness whereof, I have hereunto set my hand this _____ day of _____, A. D. 18—. _____, Treasurer.

§ 68. **Fee for deed.** The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale, and the fee of the notary public or other officer acknowledging the deed; but any number of parcels of land, bought by any one person, may be included in one deed or certificate, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale-book opposite the description of the land conveyed.

PRIVATE SALE.

§ 69. **Private sale provided.** After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk, as provided in sections sixty-five and sixty-six of this chapter, if any real estate remain unsold for want of bidders thereof, the county treasurer is authorized and required to sell the same at private sale, at his office, to any person who will pay the amount of the taxes, penalty, and costs thereon for the same; and to deliver to said purchasers a certificate, as provided in section sixty-seven of this chapter; and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser and the other to the county clerk, as hereinbefore provided, with the additional statement inserted in the certificate that such lands have been offered at public sale for taxes, but not sold for want of bidders, on which he is required to write, "Sold for taxes at private sale;" and the treasurer is further authorized and required to sell, as aforesaid, all real estate

in his county on which taxes remain unpaid and delinquent for any previous year or years.

REDEMPTION.

§ 70. **May redeem—how—provided.** The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the day of such sale, or at any time before the execution of a deed of conveyance therefor by the county treasurer, by paying the county treasurer for the use of the purchaser, his heirs or assigns, the sum mentioned in this certificate, and interest thereon at the rate of thirty (30) per cent. per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the redemption in the list of sales, and give a receipt therefor to the person redeeming the same, and file a duplicate of the same with the county clerk, as in other cases, and hold the money paid to the order of the purchaser, his agent or attorney: *provided*, that infants, idiots, and insane persons may redeem any lands belonging to them, sold for taxes, within one year after the expiration of such disability.

Wambole v. Foote, 2 Dak. 1; 2 N. W. REP. 239.

§ 71. **Undivided land sold.** Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal, and subsequent taxes as he shall claim of the land sold.

§ 72. **Partial redemption.** In every case of partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

EXECUTION OF DEED AND EFFECT THEREOF.

§ 73. **Tax deed after two years—effect thereof.** If no person shall redeem such lands within two years, at any time after the expiration thereof, and on production of the certificate of purchase, the treasurer of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the territory, a deed of the land remaining unredeemed, which shall vest in the grantee an absolute estate in fee-simple in such land, subject, however, to all the claims which the territory may have thereon for taxes or other liens, or incumbrances.

§ 74. **Execution and form of deed.** Such deed shall be executed by the county treasurer under his hand, and the execution thereof shall be attested by the county clerk with the county seal, and such deed shall be conclusive evidence of the truth of all the facts

therein recited, and *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form, to-wit:

Whereas, A. B. did, on the _____ day of _____, A. D. 18—, produce to the undersigned, C. D., treasurer of the county of _____, in the territory of Dakota, a certificate of purchase, in writing, bearing date the _____ day of _____, 18—, signed by E. F., who, at the last-mentioned date, was treasurer of said county, from which it appears that _____ did, on the _____ day of _____, 18—, purchase at public auction, at the door of the court-house in said county, the tract, parcel, or lot of land lastly in this indenture described, and which lot was sold to _____ for the sum of _____, being the amount due on the following tract or lot of land returned delinquent for the non-payment of taxes, costs, and charges for the year 18—, to-wit: [here insert the land offered for sale.] And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs, and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax-book or duplicate for the year 18—, and that said lands had been legally advertised for sale for taxes, and were sold on the _____ day of _____, 18—:

Now, therefore, this indenture, made this _____ day of _____, 18—, between the territory of Dakota, by C. D., the treasurer of said county, of the first part, and the said A. B., of the second part, witnesseth, that the said party of the first part, for and in consideration of the premises, and the sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part, _____ heirs and assigns, forever, the tract or parcel of land mentioned in said certificate and described as follows, to-wit: [describe the land;] to have and to hold said mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, _____ heirs and assigns, forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., treasurer of said county of _____, has hereunto set his hand and seal on the day and year aforesaid.

Attest:

_____ [SEAL.]

—which deed shall be acknowledged by said treasurer before some one authorized by law to take acknowledgments of deeds.

Wambole v. Foote, 2 Dak. 1.

§ 75. **Limitation of action to recover land.** No action shall be commenced by the former owner or owners of lands, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such deed, unless such action shall be commenced within three years after the recording of such deed; and not until all taxes, interest, and penalties, costs and expenses, shall be paid or tendered by the parties commencing such action.

§ 76. **Tax sale not voidable.** The sale of lands, town or city lots, or any other real property, for taxes, shall not be invalid on account of such real property having been listed, or charged on the duplicate, in any other name than that of the rightful owner; nor shall any such sale be invalid, nor the conveyance for the real property so sold be voidable, by reason of the neglect or failure of the treasurer, or any other officer, to collect the tax for which it was sold by distraint and sale of personal property.

§ 77. **Certificate delivered for deed.** When deeds are delivered for real property sold for taxes, the certificate therefor must be canceled and filed away by the county clerk; and in case of the loss of any certificate, on being satisfied thereof by due proof, and bond being given to the territory of Dakota in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk.

SALES WRONGFULLY MADE.

§ 78. **Erroneous sales corrected.** When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to save the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties shall be liable for the amount to the county on his bond, or the purchaser may recover the same directly from the treasurer.

§ 79. **Judgment required for taxes due.** Whenever any action or proceeding shall be commenced and maintained before any court or judge to prevent or restrain the collection of any tax, or part thereof, or any particular act of an officer in the collection thereof, or to recover any such tax before paid, or to recover the possession or title of any property, real or personal, sold for taxes, or to invalidate or cancel any deed or grant thereof for taxes, or to restrain, prevent recover, or delay any payment of taxes, the true and just amount of taxes due upon such property, or by such person, must be ascertained, and judgment must be rendered and given therefor against the tax-payer, and if the tax be delinquent, execution must issue forthwith for the same.

TAX FOR TERRITORIAL PURPOSES.

§ 80. **Tax for territorial purposes.** A tax of thirty dollars for territorial purposes shall be levied upon each peddler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise not manufactured within the limits of this territory, for a license to peddle throughout the territory for one year.

§ 81. **Licenses—how obtained.** Such license may be obtained from the county clerk of any county, upon paying the proper tax to a treasurer thereof, and taking his receipt therefor.

§ 82. **Peddling without license.** Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable, whether he be the owner or not, and, upon conviction thereof, shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had, to be recovered by civil action, in the name of the county prosecuting for the same. All fines and penalties recovered under this section shall be applied to the common school fund of the county prosecuting for the same; and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produce a license upon trial, such peddler shall pay all costs of prosecution.

PAYMENT OF TERRITORIAL FUNDS BY COUNTY TREASURER.

§ 83. **Territorial funds—when and how delivered.** The treasurers of the several counties shall pay into the territorial treasury all funds in their hands belonging thereto on or before the first Monday of March and on the first Monday in September, in each year, and at such other times as the territorial treasurer shall require, and the funds so paid in shall be the identical territorial warrants, if any, received by the treasurer for the payment of the taxes, or in coin, or in treasury notes of the United States, and the said county treasurer shall send said money to the territorial treasurer by draft, post-office order, or by express, for which he shall be allowed the actual expenses of procuring the same, and no more. (*As amended, Sess. Laws 1881, c. 118, § 13, and 1879, c. 20, § 2.*)

§ 84. **Penalty for failure.** If the county treasurer shall willfully and negligently fail to settle with the territorial treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the territory the sum of five hundred dollars, which sum may be recovered of him, or his sureties, on suit brought by the territorial treasurer in any court in this territory having jurisdiction; or, in case of failure of the territorial treasurer to bring such suit, then any citizen of the territory may bring the same.

§ 85. **When auditor to forward list of new taxable lands.** A list of lands becoming taxable for the first time in each county of the territory shall be procured by the territorial auditor from the proper land-officers, at the best prices for the territory, and a list of the lands becoming so taxable in each of the several counties shall be forwarded by the auditor to the county clerk of each county on or before the thirtieth day of May of each year. (*As amended, Sess. Laws 1879, c. 49, § 9; Sess. Laws 1881, c. 118, § 19; and Sess. Laws 1881, c. 119.*)

WARRANT-BOOK.

§ 86. **Warrant-books for county—form.** Each county treasurer is required to keep a book called the "warrant-book," in which he shall enter every territorial, county, road, or other warrant or order by him paid, or received in payment of taxes, specifying the date at which the same was received and canceled, from whom received, the payee, or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed, and total amount for which it was received; and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash, and in another and separate place he shall enter an account of all indorsements made on warrants or orders in part payment thereof. Such warrant-book shall be in the following form, to-wit:

TREASURER'S WARRANT-BOOK, — COUNTY, DAKOTA.

Date.	From what Received.	Payee of Warrant.	Number of Warrant.	Date of Warrant	Amount.	Indorsements.	Prin- cipal.	Inter- est.	Total.

MISCELLANEOUS PROVISIONS.

§ 87. **Penalty for substituting warrants.** If any county treasurer or his deputy, or any other person, shall knowingly or willfully, make, issue, and deliver any tax receipt, or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in warrants or orders, when the same was or were paid in cash, such treasurer or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and, on conviction thereof before any court of competent jurisdiction in this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one nor more than five years, in the discretion of the court.

§ 88. **Fraudulent receipts—penalty.** If any county treasurer in this territory, or his deputy, or any person, shall, knowingly or willfully, make, issue, and deliver any tax receipt, or duplicate tax receipt, required by section forty-three of this act to be issued, by fraudulently making the tax receipt, and its duplicate, or the paper purporting to be its duplicate, different from each other, with intent to defraud the territory of Dakota, or any county in said territory, or any person or persons whomsoever, such treasurer or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and, on conviction thereof before any court of competent jurisdiction of

this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year, nor more than five years, in the discretion of the court.

§ 89. **Dereliction of officer.** In the case of dereliction of duty on the part of any officer or person required by law to perform any duty under the provisions of this act, in any county in this territory, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in any such county, on receiving satisfactory evidence of such dereliction or failure to perform, as required by law, any duty enjoined by this act, shall refuse to pay such person or persons any sum whatever for such services.

§ 90. **Miscellaneous receipts.** When any money shall be paid to the county treasurer, he shall make the proper duplicate receipts for the same, as in the case of the payment of taxes, and shall give one of said receipts to the person paying said money, and the other to the county clerk, within one month thereafter.

§ 91. **Interest on warrants received.** When the county treasurer shall receive any county or territorial warrants or orders on which any interest is due, he shall note on such warrants or orders the amount of interest by him paid thereon, and shall enter in his account the amount of such interest, distinct from the principal.

See Appendix, c. 28, *§§ 91a-91e.

§ 92. **Redeemed warrants.** When the county treasurer of any county shall pay any county order drawn on him by the county commissioners, or when he shall take or receive any such order in payment for any tax, he shall write on the face of such order "Redeemed," and the date of redemption, and shall sign his name thereto.

§ 93. **When warrant exceeds tax.** When any person desiring to pay any taxes due and unpaid, shall present a county order to the treasurer of any county in payment for such tax, which shall exceed the amount that such treasurer is authorized to receive in county orders in payment for such tax, he shall indorse on the back of such order, in part payment, the amount he is authorized by law to receive, and date the same. Said treasurer shall take two receipts from the holder of such order, for the amount so indorsed and paid, showing the date of the indorsement, a full description of such county order, including the date of, to whom given, the amount for which it was given, and all the indorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher.

§ 94. **Part payments applied.** When any person shall desire to pay only a portion of the tax charged on any real estate, such person shall pay a like proportion of the several taxes charged thereon, and no person shall be permitted to pay one of said taxes without paying the others, except the tax for the erection, completion, or re-

pair of school-houses, the collection of which shall have been enjoined by law.

§ 95. **Delinquent treasurer.** If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county clerk, on receiving instructions for that purpose from the territorial auditor, or from the county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties, or any of them, in the district court of his county.

See chapter 7, § 15.

§ 96. **Board may remove.** Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the board of county commissioners of such county may, at their discretion, remove such treasurer from office, and appoint some suitable person to fill the vacancy thereby created, as hereinbefore provided.

§ 97. **Additional surety.** The county commissioners of any one of the counties of this territory may require the county treasurer to give additional freehold sureties, whenever, in the opinion of a majority of said commissioners, the existing security shall have become insufficient; and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them may direct, whenever, in their opinion, more money shall have passed, or is about to pass, into the hands of said treasurer than is or would be recovered by the penalty in the previous bond.

§ 98. **If treasurer fail.** If any county treasurer shall fail or refuse to give such additional security or bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed agreeably to the provisions of law.

§ 99. **Treasurer not to discount warrants.** No county treasurer shall, either directly or indirectly, contract for or purchase any order or orders, issued by the county of which he is the treasurer, at any discount whatever upon the sum due on such order or orders; and if any county treasurer shall so contract for, or purchase, any such order or orders, he shall not be allowed, in settlement, the amount of said order or orders, or any part thereof, and shall also forfeit the whole amount due on such order or orders, to be recovered by civil action, at the suit of the Territory of Dakota, for the use of the county.

§ 100. **Certain credits forbidden.** The county treasurer, on his settlement with the county commissioners, shall not be cred-

ited with any sum for interest paid on any order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon.

§ 101. **Shall not loan or use funds.** If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own individual purpose, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars, nor less than one hundred dollars, to be recovered in action at law at the suit of the territory of Dakota, for the use of the county.

§ 102. **Payments after settlement.** Each county treasurer shall, immediately after the annual settlement with the county commissioners of his county, on demand and presentation of the order of the clerk, issued by direction of the county commissioners therefor, pay over to the district or precinct treasurer, city treasurer, or other proper officer, all moneys in the county treasury belonging to any district, precinct, city, town, or school-district: *provided*, that the moneys mentioned in this section may, by the direction of the proper local officers, remain in the county treasury, on the order of the county clerk, as aforesaid.

§ 103. **Detailed exhibit—what to contain.** The county clerk and county treasurer, conjointly, shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, and also the assets and liabilities at the time of making out the same. Said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account, and also the liabilities of the county, stated in detail, and the assets of every kind, as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in, and the kind of funds; said exhibit shall be made out annually, and posted up in the office of the treasurer, on the first Monday in November. (*As amended, Sess. Laws 1881, c. 118, § 14.*)

§ 104. **Loan and embezzlement punished.** If any county treasurer, other officer or person, charged with the collection, receipt, safe-keeping, transfer, or disbursements of the public money, or any part thereof, belonging to the territory, or any county, precinct, district, city, town, or school-district in this territory, shall convert to his own use, or to the use of any other person or persons, body corporate, association, or party whatever, in any way whatever; or shall use, by way of investment in any kind of security, stocks, loan, property, land, or merchandise, or in any other manner or form whatever; or shall loan, with or without interest, to any company or corporation, association, or individual; or if any person shall advise, aid, or in any manner knowingly participate in such act,—every such

act shall be deemed and held in law to be an embezzlement of so much of said money or other property, as aforesaid, as shall be thus converted, used, invested, loaned, or paid out, as aforesaid, which is hereby declared to be a high crime or misdemeanor, and, upon presentation, trial by indictment, and conviction thereof, before any court of competent jurisdiction in this territory, such county treasurer, or other officer or person, shall be sentenced to imprisonment in the penitentiary, and kept at hard labor, for a term of not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled, as aforesaid, which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money or other funds, property, bonds or securities, assets or effects, of any kind, as aforesaid, have been so embezzled; and, in all cases, such fine so operating as a judgment shall only be released or entered as satisfied by the party or parties in interest, as aforesaid.

§ 105. **Extraordinary expenditure requires vote.** If the county commissioners deem any expenditure necessary, greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case, four weeks' notice of said election shall be given in each newspaper published in the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax, the county commissioners shall cause the same to be levied and collected in the same manner as the annual tax, and, if possible, at the same time: *provided, however,* that no new assessment shall be made for any special tax.

CHAPTER XXIX.

HIGHWAYS, BRIDGES, FERRIES, AND ROAD SUPERVISORS.

TERRITORIAL ROADS.

§ 1. **Section lines, highways.** All section lines shall be and are hereby declared public highways, as far as practicable: *provided,* that nothing in this act shall be so construed as to interfere with existing highways in the settled portions of the territory.

§ 2. **Vacation and change.** The board of county commissioners of each county shall have power to vacate or change the high-

ways within their respective counties, located by the legislative assembly, as hereinafter provided.

§ 3. **Sixty-six feet wide.** The public highways along section lines, as declared by the first section of this chapter, shall be sixty-six feet wide, and shall be taken equally from each side of said lines, unless changed as provided in the preceding section.

LOCATION, VACATION, AND CHANGE OF HIGHWAYS RUNNING THROUGH MORE THAN ONE COUNTY.

§ 4. **Petition and proceedings.** When fifteen freeholders of any county shall petition the board of commissioners of such county for the location, change, or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course, and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the county clerk of such county shall notify the county clerk of each of the counties in which such highway is to be run, located, vacated, or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such county clerks laid before the several boards of county commissioners at their next session thereafter, when such board shall appoint commissioners, according to the regulations hereinafter provided.

Establishment of public highways by consent. See Appendix, c. 29, *§§ 4a, 4b.

See Civil Township. Political Code, c. 21, pt. 2.

§ 5. **Notice and examination.** Upon the board of commissioners of the county in which such petition is first filed being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard by publication in a newspaper of each county in which such highway is to be run, vacated, or changed, for three weeks successively, or by written or printed notices posted up in three of the most public places in the neighborhood of such highway, in each of such counties, such board shall appoint a commissioner to examine such highway.

§ 6. **Clerk to notify examiners.** Immediately upon the appointment of such commissioner, the county clerk of such county must notify the county clerk of each of the counties interested, specifying, in such notice, the time and place when such commissioners shall meet to commence the examination of such highway, when such last-mentioned county clerk, and the county clerk of the county where such petition is first filed, shall issue precepts to the sheriffs

of their respective counties, directing them to notify such commissioners of such appointments, and the time and place of their meeting.

§ 7. **Number and disagreement.** Each board shall appoint one commissioner, and in case the number is equal and cannot agree, the commissioner thus appointed shall appoint another, who shall perform the same duties and receive the same fees as those first appointed.

§ 8. **Oath and duty of examiners.** At the time and place designated in the notice given by the county clerk of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath, to be administered by some authorized officer, to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated, or changed, and in such examination may employ a surveyor and a necessary number of chain-carriers and markers.

§ 9. **Report of same.** After such commissioners shall have completed their examination they shall draw up a report of their proceedings, setting forth the highway proposed to be located, vacated, or changed by course and distance, and recommending therein, according to the opinion of the majority of such commissioners, either that the prayer of such petition shall be granted or rejected; a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter.

§ 10. **Decision upon petition.** Upon the return of such report, the board of commissioners shall proceed to determine the prayer of such petition, and if there shall be no remonstrance against the same, and it is recommended in such report, such board may, if they deem it expedient, declare it granted, and, if so declared, shall direct the county clerk to notify the county clerks of each of the other counties interested thereof. Then, if there be no remonstrance pending in either county interested, the county clerk of each of such counties shall notify the supervisors of the road districts in his county through which such highway passes, or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts, and such road supervisors must in like manner be notified of the vacation of any highway, or of any part thereof.

§ 11. **Dismissal of petition.** If such commissioners do not recommend the prayer of such petition to be granted, the boards of commissioners of the counties interested shall order it to be dismissed, but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject-matter.

§ 12. **Remonstrance heard.** If at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway is presented, any person shall remonstrate

against granting the prayer of the petition, setting forth, in writing, that he is damaged in a sum mentioned, by the location, vacation, or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons, residents of such county, to review that part of such highway whereof such complaint is made, and shall direct the county clerk of such county to notify the county clerk of each of the other counties interested in such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such board.

§ 13. **Viewers assess damages.** Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath, before some officer authorized to administer oaths, to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway, or the change thereof complained of, and, having done so, shall, at the next term of such board, report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed highway or change, and if they shall be of opinion that the prayer of the petition should not be granted, they shall direct the county clerk of such county to notify the county clerk of each of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter; but if they shall be of the opinion that the damages should be paid and the prayer of the petition be granted, they shall direct such county clerk to notify the county clerk of each of the other counties interested of the amount of such damages, and shall continue further proceedings to the next term thereafter.

§ 14. **Petition, when rejected.** If more freeholders residing along the highway proposed to be located, vacated, or changed, remonstrate against granting the prayer of such petition than those of the same county petition therefor, the board of commissioners of such county shall decide against such petition, and shall direct the county clerk of such county to notify the county clerk of each of the other counties interested therein of such fact and decision, and continue further proceedings in the premises until the ensuing term.

§ 15. **Final determination.** At the next term after the reception of notice of any remonstrance, and the proceedings thereon, the county clerks of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought be granted, and shall cause the county clerk of each county interested therein to be notified; and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained, such highway shall be declared located, vacated, or changed,

and such supervisors notified thereof as hereinbefore provided; but if a majority of such boards decide against such petition, it shall be declared dismissed whenever it is ascertained, and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages, the person asking the same shall pay the costs of such review.

§ 16. **Fees for services.** Such commissioners appointed to examine such highway, and such reviewers, shall receive each two dollars for every day they may be necessarily employed, and such surveyor, chain-carriers, and markers shall receive such compensation as the board of county commissioners, where such petition is first filed, shall deem reasonable, to be paid equally by each county interested.

§ 17. **Road recorded in each county.** Whenever a highway is located, vacated, or changed, the order therefor shall be entered of record in the order-book of the board of commissioners of each county interested, in which county such highway, or change thereof, shall be particularly described by course and distance.

OF THE LOCATION, VACATION, AND CHANGE OF HIGHWAYS NOT ON SECTION OR QUARTER-SECTION LINES.

§ 18. **Petition and notice.** Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood, shall petition the board of county commissioners for the location, vacation, or change of any public highway, other than on section or quarter-section lines, such board, if they shall be satisfied that notice of such application has been given by publication, three weeks successively, in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such highway, or change, at least twenty days before the meeting of the board at which such petition is to be presented, shall appoint three persons to view such highway.

§ 19. **Sheriff notifies viewers.** The county clerk of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place, and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths, to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground not running through any person's inclosure or other improvement of one year's standing, without the owner's consent, unless upon examination a good way cannot otherwise be had.

§ 20. **Report and record.** Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such loca-

tion, change, or vacation may be made, giving a full description of such location, change, or vacation, by metes and bounds, and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly shall be required; and, in such case, copy of the order vacating such highway shall be recorded by the proper county clerk of the county, and shall cause the supervisors of the road district to be notified accordingly.

§ 21. **Opening of road.** If no objections be made to such proposed highway, vacation, or change, such board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of any of the townships in which such location or change is made, and shall cause notice thereof to be given to the proper supervisor, to work such location or change.

§ 22. **Appointment of reviewers.** If any person, through whose land such highway or change may pass, shall feel aggrieved thereby, such person may, at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders as reviewers, and assign a day and place for them to meet.

§ 23. **Reviewers take oath—reports.** Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then, or on any other day to which a majority may adjourn, prior to the next session of said board, proceed to review the proposed highway and assess the damages, if any, which such objector may sustain from such highway or change being opened, vacated, or continued through his lands, and shall report the same to the ensuing session of such board.

§ 24. **Action on report of majority.** If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation, or change to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claim for damages, the objector shall pay the costs, and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, as hereinbefore provided.

§ 25. **Setting aside assessment.** If it shall be made to appear to the board that the damages assessed are unreasonable, they may set aside such assessment and order another review, under the same regulations as provided in case of the first review.

§ 26. **Reviewers appointed.** If any one or more freeholders residing in such county, along such proposed highway, vacation,

or change, shall object to the same at any time before final action thereon, as not being of public utility, others viewers may be appointed, who shall proceed, on a day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board, at their next session, whether or not, in their opinion, the said highway, vacation, or change will be of public utility.

§ 27. **Report of reviewers.** If a majority of the viewers last named report against the public utility of such highway, the same shall not be established, unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto the objector shall pay the costs of the review, and the highway shall be recorded and ordered to be opened and kept in repair; but in no case shall a highway be opened, vacated, or a change be made, if a majority of the freeholders residing along such proposed highway, or along such change, or along the highway proposed to be vacated, shall remonstrate against the same.

§ 28. **Payment of damages.** No such highway shall be opened, worked, or used until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing, filed with the county clerk of such county.

§ 29. **Appeal to district court.** Any person aggrieved by any decision of any board of commissioners may appeal therefrom to the district court of such county, upon his filing a bond, with a surety and penalty, to be approved by the register of deeds of such county, conditioned for the due prosecution of such appeal, and the payment of costs, if costs be adjudged against him; and in case proceedings shall be had in more than one county, the county clerk of each county, on being notified of such appeal by the county clerk of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such county, and upon the determination of such appeal such clerk shall notify the county clerk of each of the counties interested thereof.

OF THE SAME UPON SECTION AND QUARTER-SECTION LINES.

§ 30. **Action without survey or view.** The board of county commissioners has power to establish, change, and vacate highways upon section and quarter-section lines, when the initial and terminal points and the course of the highway can be clearly described without the appointment of viewers, or the services of a surveyor; but in all other respects the proceedings therein shall be governed by the provisions of the preceding subdivision of this chapter, relating to the establishment, vacation, and change of highways not on such lines.

MISCELLANEOUS PROVISIONS.

§ 31. **Roads sixty-six feet wide.** No road shall be less than sixty-six feet wide; and the order for laying any highway must specify the width thereof.

§ 32. **On county or town lines.** Public highways established on the county or township line, shall be opened and repaired by the supervisor of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township.

§ 33. **Highway running through inclosure.** Whenever any public highway shall have been laid out through any inclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing, to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done.

§ 34. **Credit when no damages.** If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just, subject to the approval of the county commissioners

§ 35. **Six years' non-use vacates.** Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town: *provided, however,* that the board of county commissioners shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk of the court, whereupon said vacated highway shall vest in the rightful owner, who may have the title thereof, according to law, of the property on each side of said highway.

§ 36. **Settlers freeholders.** In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this territory shall have and possess all rights in this act granted to freeholders.

§ 37. **Twenty years' use.** All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.

§ 38. **Viewers disinterested.** No person owning lands, or who is related by consanguinity to any person owning lands, along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

§ 39. **Pay of viewers.** Viewers and reviewers appointed under this act shall receive two dollars for every day they shall be necessarily employed as such.

§ 40. **Benefits considered.** The benefits to accrue to any owner, occupant, or claimant of lands by reason of opening any highway, are to be considered by the commissioners, or the viewers, in the determination and award of damages for the same.

§ 41. **Private roads.** Any person may have a private road laid out, changed, or vacated, upon presenting a petition to the board of commissioners of the county in which such petitioner resides, under regulations hereinbefore provided, for roads running through one county only: *provided*, that such board may order such private road to be laid out, changed, or vacated, without any view, if there be no remonstrance against such petition; and the petitioner shall open and keep in repair such road at his own expense.

§ 42. **Public lands—damages.** When any person shall acquire the title to government lands over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title shall, within three months after receipt of his patent therefor, assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such road shall remain and be a public highway, but his damages, if any, shall be paid; and in case of a failure for that length of time to assert his claim for damages, as aforesaid, he shall thereafter be debarred from asserting such claim.

§ 43. **Occupying claimants.** All public land in this territory, settled upon and occupied by settlers thereon, shall be subject to all the provisions of this act so far as the rights and liberties of such settlers are concerned.

§ 44. **Line roads—one-half of each.** When a public highway is laid out and located upon the line dividing the land of two individuals, one-half of the same must be taken, if practicable, from the land of each.

§ 45. **Bond for costs.** In all cases the person or persons remonstrating against the establishment, change, or vacation of a public highway, or who may petition for damages occasioned thereby, must give to the board of county commissioners a bond, with approved security, for the payment of all costs occasioned by such remonstrance or petition for damages in case the highway be established, or no damages be allowed.

§ 46. **Timber along highway.** On all public highways of not less than sixty-six feet in width, the owners, occupants, or claimants of adjoining lands may use and occupy one rod in width of such highway adjoining such lands, for the purpose of cultivating the growth of timber and trees thereon: *provided*, that the same be kept continuously in good order, and under full timber and tree cultivation.

Time and manner of making fire guards. See Appendix, c. 29, *§ 47a.

§ 47. **Hedge protection.** Any person cultivating a hedge upon his land, adjoining a public highway, and desiring to fence the same, may place such fence seven feet over and upon such highway: *provided*, that it do not obstruct the public travel.

Time and manner of making fire guards. See Appendix, c. 29, *§§ 47a-47d.

Right of way to telegraph and telephone companies. See Political Code, c. 23, pt. 2, *§ 101.

OF BRIDGES.

§ 48. **Bridges part of highway.** Bridges erected or maintained by the public, constitute a part of the public highway.

DUTIES OF PERSONS USING PUBLIC HIGHWAY.

§ 49. **Vehicles turn to right.** Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, sleds, sleighs, or other vehicles, each shall pass to the right of the middle of the traveled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference.

§ 50. **Penalty—damages.** Every person offending against the provisions of the preceding section shall, for each offense, forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offense.

§ 51. **Drunken drivers.** No person owning or having the direction or control of any coach or other vehicle, running or traveling upon any road in this territory, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such coach or other vehicle who is addicted to drunkenness, or to the excessive use of intoxicating liquors; and if any such person shall violate the provisions of this section he shall forfeit a sum not less than ten and not exceeding fifty dollars, and shall be liable for all damages sustained.

§ 52. **Hitching passenger teams.** It shall not be lawful for the driver of any carriage or other vehicle used for the conveyance of passengers to leave the horses attached thereto, while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope, or chain, or without some suitable person to take the charge or guidance of them, so as to prevent their

running; and if any such driver shall violate the provisions of this section, he, and his employer or employers, jointly and severally, shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense.

§ 53. **Passenger conveyance liable.** The owners of every carriage, or other vehicle, running or traveling upon any road or public highway, for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured, in all cases, for all damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be willful, negligent, or otherwise, in the same manner as such driver would be liable.

OF FERRIES.

§ 54. **Unlawful without lease, or in two miles of other.** It shall be unlawful for any person to establish, maintain, or run, upon any waters within this territory, any ferry upon which to convey, carry, or transport any persons or property, for hire or reward, without first having obtained a license therefor, as hereinafter provided; and where but one bank or shore is in this territory, the board of commissioners for the proper county have the same authority, and this law applies with like effect, as if the entire stream were within this territory, so far as the banks and waters actually within it are concerned. And when any ferry lease has been granted, no other lease shall be granted within a distance of two miles thereof, across the same stream. Any person violating any of the provisions of this section, shall, for each offense, forfeit and pay to the proper county not less than five dollars, nor more than one hundred dollars, with costs, to be recovered in an action in the name of the territory.

§ 55. **County board leases—terms.** The board of county commissioners of the county to whom application shall be made for a ferry, in the manner hereinafter provided, are hereby authorized, and it shall be their duty, to grant a lease of such ferry, for a term not exceeding fifteen years, to such person or persons who shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the said board of county commissioners as lessors, and such highest bidder or bidders as lessees; and the county commissioners of any county in this territory that have leased to any person or persons the ferry across any stream or streams in this territory, shall be empowered to extend to such person or persons the lease so granted to any person or persons putting in a steam ferry, at the same rate as previously paid: *provided*, that such extended time shall not exceed fifteen years from the time of the granting of the first lease, and that when, in the opinion of the county commissioners of the county wherein such lease is granted, the rates

fixed by law for crossing such ferry be too high, they shall have the right to fix the rates as in their judgment may seem just.

§ 56. **Rates on Missouri, Sioux, Dakota, and Vermillion.** The rates for crossing the Missouri river on ferries shall not exceed the following, to-wit:

For two horses, mules, or oxen, and wagon, with or without load, one dollar.

For each additional pair of horses, mules, or oxen, thirty cents.

For each two horses or mules, and buggy, seventy-five cents.

For each one horse or mule, with buggy and driver, fifty cents.

For each lead horse or mule, twenty-five cents.

For loose cattle, per head, fifteen cents.

For sheep and swine, per head, ten cents.

For each one hundred pounds of freight or merchandise, unloaded, ten cents.

For each thousand feet of lumber, unloaded, one dollar.

The rates for ferriage across the Big Sioux river, the Vermillion river, and the Dakota river, shall not exceed the following, to-wit:

For foot passengers, each, ten cents.

For each horse or mule, with or without a rider, ten cents.

For each head of loose cattle, five cents.

For two horses or mules, or cattle team, loaded or with load, with driver, twenty-five cents.

For each horse or mule, or ox, over two, attached to a team, five cents.

For a single horse or mule to a buggy, fifteen cents.

For each head of sheep or swine, five cents.

All freight not attached to teams, five cents per one hundred pounds.

All lumber in pile, fifty cents per thousand feet.

Said ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near said ferry, in easy view of the passing public.

§ 57. **Ferries in unorganized counties.** The secretary of the territory is hereby authorized, when application is made to him, to grant a lease of any ferry in any unorganized county or counties, or in any other unorganized county, within and under the jurisdiction of the territory, for the like period, and under the provisions of this chapter in every respect which are applicable thereto. The money received therefor shall be by him paid into the territorial treasury: *provided*, that all licenses granted by the secretary under this section shall terminate upon the organization of the county in which the same or any part thereof lies, and it shall thereafter be subject to the general law, as herein provided.

§ 58. **Safety of ferries.** Every person obtaining a lease to keep a ferry as aforesaid, shall provide and keep in good repair a

good and sufficient boat for the safe conveyance of persons or property, and when the river or creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, from sunrise to sunset, and with reasonable care and promptness, convey across said ferry all persons and property presented for transportation across the same. And if any lessee, as aforesaid, shall fail or neglect to perform all or any of the duties enjoined upon him by this act, or shall demand or receive a higher rate of ferrriage than shall be allowed by the preceding section of this act, the lessee so offending shall for each offense forfeit and pay the sum of ten dollars, to be recovered in the name of the territory of Dakota, before any justice of the peace of the proper county.

§ 59. **Penalty for unlawful ferry.** If any person shall keep a ferry in any of the organized counties of this territory, without a lease first obtained from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty dollars, and not exceeding five hundred dollars, for each year or fractional part of a year such person shall keep such ferry, to be recovered in a civil action in the name of the territory of Dakota.

§ 60. **Money to school fund.** All moneys which may be received by the board of county commissioners, upon leases granted for ferries as aforesaid, and all forfeitures collected for violations of the provisions of this chapter, shall, within thirty days after the receipt thereof, be paid to the county treasurer, for the use of the public schools of the county, and the same shall be apportioned among the several districts of the county in like manner as other school funds are now by law apportioned.

§ 61. **Temporary ferries.** Nothing in this chapter shall prevent any person from ferrying persons and property across any small stream in time of high water, when, in the opinion of the board, such stream is too small to justify a regular ferry.

§ 62. **Forfeiture for not maintaining.** Any and all persons who have heretofore received either permit, lease, grant, or charter in any form, either from the legislative assembly, or any tribunal or board, for the keeping of a ferry or ferries of any kind, who shall neglect or fail, during the period of one month, at any one time after the passage of this or any prior act, to keep his or their respective ferry or ferries in operation, for the safe transportation of persons and property over the same according to law, shall forfeit all the ferry rights, franchises, and privileges, and all right, title, or claim to the same, granted by or under this law, or any former act, as aforesaid; and upon due proof, made before the board of county commissioners of the proper county, of such failure or neglect, as aforesaid, the said board are empowered and authorized to declare

such forfeiture absolute, and thereupon and thereafter all the rights, franchises, and privileges granted by or under this law, as aforesaid, shall cease and be of no force or effect in law or equity.

OF ROAD SUPERVISORS.

§ 63. **Road districts—supervisors.** At the annual meeting of the county commissioners, in January of each year, or as soon thereafter as practicable, it shall be the duty of the board of county commissioners of each of the organized counties of this territory to apportion their respective counties into one or more road-districts, where such county is not at present formed into townships, and shall appoint for each district a road supervisor, who shall hold his office until the first of January succeeding his appointment, and shall take an oath to faithfully discharge his duties as such road supervisor.

§ 64. **Vacancies.** The board of county commissioners of each county shall have power to fill all vacancies, and shall fill all vacancies that may occur for any reason in the office of road supervisor.

§ 65. **Supervisor's duties.** The road supervisor of each road district, or township, shall obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years, residing within each road district, which list shall be completed on or before the first day of March in each year, and in case any person, as aforesaid, shall locate in any road district after the first day of March, the supervisor shall enroll his name, and he shall be liable to labor on the road at the same time and in the manner that those originally enrolled are liable to labor; but any person who has labored that year in any road district, and has a certificate thereof, shall be credited with the labor as performed, in the same manner as though the labor had been performed in the district in which he resides.

§ 66. **Road poll-tax.** Every male person between the ages of twenty-one and fifty years shall be subject to a poll-tax of one dollar and fifty cents, which must be paid in money, or by one day's labor, in each year, on the public highway within his road district, at the time and place directed by the road supervisor.

§ 67. **Supervisors to give notice.** The road supervisors must, between the first days of April and December of each year, give at least twenty-four hours' notice to all persons subject to road labor, as aforesaid, to perform the work necessary on the public highways within their respective districts, and such notice shall specify the time when and place where they are to appear for that purpose.

1. **Penalty for neglect to pay tax.** Every person subject to labor on the public highways, who has been duly notified to work thereon as hereinbefore provided, who shall not commute or pay the sum of one dollar and fifty cents, as provided by section sixty-six of chapter twenty-nine of the Political Code, and who shall refuse or neglect, without good cause, to appear as above provided, shall for every day's refusal pay the sum of one dollar.

2. **Supervisor to make complaint.** Every supervisor of highways may, within six days after any person shall become liable for the payment of any sum of money under the provisions of this act, unless a satisfactory excuse be rendered to him by the person so liable, make a complaint in writing and on oath to some justice of the peace of the county, stating the default, neglect, refusal, or other cause by reason of which such person became so liable, which complaint shall be in the name of the territory of Dakota as plaintiff, and the party liable for such tax as defendant, and no fees of officers, costs, or expenses in court in enforcing the provisions of this chapter shall be paid by or be a charge upon the territory or county, but shall be collected from the defendant.

3. **Duty of justice.** The justice of the peace to whom such complaint shall be made shall forthwith issue a summons directed to the defendant in the form provided in the Justice's Code, in a summons for relief, returnable in not less than two nor more than six days; and it shall be the duty of any sheriff or constable to whom it is delivered to forthwith serve the same.

4. **Proceedings to collect tax.** On the return-day of such summons, or within such reasonable time thereafter as the justice shall allow, if no sufficient cause be shown to the contrary, the justice shall render a judgment in favor of the territory of Dakota against such person for the sum for which such person shall have become liable to pay on account of the default, neglect, or other delinquency mentioned in the complaint, and for the delinquent tax, with the cost of the prosecution, and shall forthwith issue an execution under his hand, directed to the sheriff or any constable of the county, as provided in the Justice's Code, and returnable at the time prescribed therein, commanding him to levy the amount of such judgment, including the costs of the proceedings, of the goods and chattels of such defendant, and nothing shall be exempt from such execution except the absolute exemptions.

5. **Same.** The sheriff or constable to whom such execution shall be delivered shall forthwith proceed to execute the same, and he shall pay the moneys collected thereon to the justice of the peace who issued the execution, who shall pay the same to the supervisor who entered the complaint, to be by him expended in improving the roads and bridges in his district.

6. **Supervisor shall not excuse payment.** The acceptance by a supervisor of an excuse for a refusal or neglect shall not in any case exempt the person excused from paying for or working the tax for which he shall have become liable during the year.

(*As amended, Sess. Laws 1881, c. 124.*)

§ 68. **Road tax worked—where.** Any road tax levied by the board of county commissioners, in addition to the poll tax, may be worked out in the road district in which such person resides, when it is a personal tax, or a tax on personal property; or in the road district where the real property is situate on which the tax is levied, at the rate, in all cases, of one dollar and fifty cents per day.

§ 69. **Work certified for tax.** The road supervisors must obtain a list of all the road tax assessed on each individual, and a certificate by the supervisor for the amount worked out must be taken by the treasurer or collector of the county in payment to that amount of said tax.

§ 70. **Board, how to expend tax.** The board of county commissioners must order the expenditure of all road tax paid into the county treasury in the improvement of the highways, paying the road

supervisors, purchasing implements, and repairing bridges in each road district, under such regulations as they may deem most expedient for the public interest, and for this purpose shall order the payment of such sum by the treasurer to the parties performing such labor upon the certificate of the road supervisor: *provided*, that such funds shall be expended in the road district in which the person resides, when it is a personal tax, or a tax on personal property, and where the real estate is situate, where it is a tax on real estate.

§ 71. **Obstructions in highway.** It shall be the duty of any road supervisor having personal knowledge of, or in being notified in writing of, any obstruction in the highway or public street in his district, to immediately remove, or caused to be removed, any such obstruction.

§ 72. **Penalty for obstructing.** If any person or persons shall willfully, carelessly, or negligently obstruct or injure any public highway, public street, or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed, or injury done, to enter complaint in behalf of the people against the person or persons so offending before a justice of the peace of the county; and, on conviction thereof, the fine so collected shall be immediately paid over to the treasurer of the county for the benefit of the common schools.

§ 73. **Supervisor's report.** On or before the first Monday of January of each year, the several road supervisors shall each make a report to the board of county commissioners of his doings as such during the preceding year, the amount of labor performed, the number of days' labor necessarily performed by himself in the discharge of his duties; and the county commissioners shall thereupon cause a warrant on the county treasury to be drawn in favor of such supervisor for such services, at one dollar and a half per day, payable from the common road fund belonging to said district in the county treasury.

§ 74. **Refusal to serve—penalty.** Every person who shall be elected or appointed a road supervisor, according to the provisions of this chapter, and shall fail, refuse, or neglect to qualify as such road supervisor for thirty days, after having been duly notified of his election or appointment, by the county clerk, shall forfeit the sum of ten dollars, to be collected upon a complaint made by any citizen before a justice of the peace of the county, together with all the costs of the prosecution, which forfeitures shall go into the common road fund of the district in which he resides.

CHAPTER XXX.

THE MILITIA.

§ 1. **Who compose the militia.** All able-bodied male citizens, residents of this territory, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia, and perform military duty in such manner, not incompatible with the constitution and laws of the United States, as hereinafter prescribed.

§ 2. **Territory—one division—command.** The territory shall constitute but one division, and shall be under the command of one brigadier general and colonels, as the commander in chief may see proper, according to the census returns taken from time to time under the authority of law.

§ 3. **Governor, commander in chief — officers appointed.** The governor of the territory shall be commander in chief, and shall have power to appoint the brigadier general, colonels, majors, and all the commissioned officers necessary for the several regiments and companies, and the captains of the several companies shall have power to appoint all non-commissioned officers of their respective companies.

§ 4. **Sheriff make list of persons.** It shall be the duty of the sheriff of each of the counties of this territory, when taking the census of their respective counties, to make out a list containing the names of all the persons in their respective counties liable to perform military duty, and file a copy of such list with the register of deeds of the county, to be by him kept as matter of reference, and also to transmit to the secretary of the territory a copy, to be by him kept as a matter of reference in his office, which copies shall be filed in the offices of the persons aforementioned on or before the first day of January in each year.

§ 5. **List—when taken.** The sheriff shall take a list of the persons liable to perform military duty at the time of making the assessment.

§ 6. **When and how militia liable to duty—rules.** The militia thus enrolled shall be subject to perform no active military duty, save and except in case of war, invasion, or to prevent invasion, riot, or insurrection. In such case, the commander in chief is hereby authorized to order out, from time to time, for actual service, as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia: *provided*, that in all such cases the enrolled volunteer militia shall first be ordered into

service. The militia, while in active service, shall be governed by the military law of the territory, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid in this section, the senior ranking officer of the troops present shall take command: *provided*, that no person shall be eligible to a command in the militia of this territory, except citizens of the United States, or persons having declared their intention to become such.

§ 7. **Volunteer militia.** The active militia of this territory shall be composed of volunteer companies, raised by order of the commander in chief within the limits of this territory. The volunteer militia shall, in all cases of war, invasion, riot, or insurrection, be the first military force ordered into the field.

§ 8. **How composed.** Volunteer companies shall consist of men between the ages of eighteen and forty-five: *provided*, no minor shall be enrolled as a member of such volunteer company without the consent of his parent or guardian.

§ 9. **Companies, battalions, and regiments formed—drill.** Whenever, according to the provisions of this act, forty men shall be enrolled as members of a volunteer company of artillery, infantry, light infantry, or rifle, or whenever thirty men shall be enrolled as members of a volunteer company of cavalry, such companies shall be officered by the commander in chief, as provided for in the third section of this chapter. No company shall be increased to more than one hundred members; and whenever a company becomes reduced to less than twenty members, it may be attached to another company, or disbanded, by order of the commander in chief: *provided*, that whenever twenty men shall be enrolled as members of a light artillery company, they may proceed as provided in section three. When two such light artillery companies are organized in any brigade, they may be formed into a battalion, under the command of a major, and such subordinate officers as the commander in chief shall direct; and whenever three such companies of light artillery are organized in any brigade, they may be formed into a battalion, under the command of a lieutenant colonel and major, with such subordinate officers as the commander in chief may direct; and whenever five such light artillery companies exist in any one brigade, they may, by order of the commander in chief, be formed and organized into a regiment, with a full complement of regimental officers. All such companies, battalions, and regiments of light artillery, when organized, shall be armed and drilled, as near as practicable, in accordance with the system of the United States army for like organization.

§ 10. **Companies numbered—rank.** The several volunteer companies of cavalry, artillery, infantry, light infantry, and rifle-

men in this territory shall be numbered by the proper commandant of the brigade, and a record made of such number in his office, and in the adjutant general's office, and, when they exist in sufficient numbers, and are conveniently located for the purpose, shall be organized into battallions and regiments, and officered as provided in section three of this act. And in all cases of the same description of arms, and the oldest organized uniform company, those first commissioned shall be first and senior in rank, the next uniform company commissioned, second in rank, and so on to the junior organized and commissioned company, dating from the first commissions issued to the officers of the company.

§ 11. **Return by commandants—contents.** Every commandant of any volunteer independent company shall make a return of all non-commissioned officers, musicians, and privates under his command, belonging to his company, and all the arms and accouterments belonging thereto, to the commandant of his regiment, squadron, or battalion; but if his company does not form a part of any regiment, squadron, or battalion, then he shall make return to the commandant of his brigade; but in either case shall make his return on or before the first day of October in each year; and the commandants of each and every regiment, squadron, or battalion shall make return to the commandant of brigade on or before the first day of November annually; and the commandant of brigade shall return to the commander in chief, on or before the first day of December in each year. All commandants named in this act shall make return of all commissioned and staff officers, non-commissioned staff officers, all members of volunteer or independent companies, all arms and accouterments belonging to or in possession of their commandants, and all such returns shall be preserved by the adjutant general, in a book of records in his office; and an abstract thereof, showing the number of uniform volunteer militia, or active military of the territory, shall be by him forwarded to the war department at Washington City.

§ 12. **Term of service.** Every non-commissioned officer and soldier of any volunteer company shall be held to duty therein for two years, unless some absolute disability shall occur after forming such company, or shall be discharged by the proper officer; and every such person, after the expiration of said term, and every commissioned officer, after serving a similar term, in conformity with the provisions of this act, shall be entitled to a certificate of such service; and such certificate shall be given to all such persons under the rank of brigadier general, by general of brigade, and if there be no brigadier, by officers of any brigade in command; and the holders of such certificates shall be exempt from military duty in time of peace: *provided*, that if any officer or person shall knowingly grant, issue, or use any illegal certificate under the provisions of this act, such officer

or person shall be deemed guilty of misdemeanor, and subject to pay a penalty in amount not less than five nor more than fifty dollars for each offense, to be collected before any court having competent jurisdiction, and when collected, to be paid into the military fund in the county where the offense was committed.

§ 13. **Companies, constitution, and by-laws.** Each volunteer company, organized under the provisions of this act, may adopt such constitution and by-laws as a majority of such company may approve, which shall be binding on all who sign the same; and when any fines are assessed, by reason of any infraction of such constitution and by-laws, such company may have process before any competent court of jurisdiction, in the name of the United States, for the use of such company, and prosecute to final judgment and execution all such fines and penalties provided for by such constitution or by-laws: *provided*, that said constitution and by-laws are not inconsistent with the provisions of this chapter, or the constitution of the United States, or the act organizing the territory of Dakota: *provided, also*, that in no case will the territory pay any costs of such prosecution.

§ 14. **Military commissions.** All the military commissions issued, except the quartermaster general, adjutant general, paymaster general, and aid-de-camp to the commander in chief, shall expire in two years from the date thereof: *provided*, that any officer holding a commission under the provisions of this chapter, who may be reappointed to the same office, shall retain the same rank as he was entitled to under his former commission: *provided, also*, that nothing in this chapter shall be so construed as to disqualify any staff officer or any officer of the line from holding a commission after he may have arrived at the age of forty-five years: *and further provided*, that every officer who shall remove out of the bounds of his command, or who shall be absent from his command without leave of the commanding officer of his brigade, shall be considered as having vacated his office, and a new appointment shall be made without delay to fill the vacancy so created: *provided*, that nothing in this act shall be so construed or understood as to prevent any appointed officer from being removed from his office whenever, in the opinion of the officer appointing him, he shall deem it advisable to remove him.

§ 15. **Annual muster.** There shall be held, once in each year, a brigade muster and encampment of all the volunteer militia in the territory, commencing at ten o'clock A. M., and continuing not more than four nor less than two days. Said muster and encampment shall be held at the most suitable place to be selected by the commandant of brigade, and the officers and soldiers forming such encampment shall be drilled in accordance with the requirements of the rules and usages of the United States army; and the commandant of the brigade shall give thirty days' public notice of the time and

place of such muster, which shall be held in the month of July, August, or September.

§ 16. **What entitles officer to command.** All officers appointed according to the provisions of this chapter shall be entitled to a certificate from the officer making such appointment, which certificate, and taking the necessary oath, shall entitle such officer to command, and to perform such other duties as may pertain to the office to which he is appointed, until the commission can be procured; and in all cases, the officers giving such certificate shall administer to such officer the necessary oath of office, and indorse the same upon the back of his certificate, with the day and date on which such oath was administered: *provided, also*, that every staff officer who may be appointed shall also be entitled to a certificate in like manner

§ 17. **Resignations.** For good cause shown, the commander in chief may accept the resignation of brigadier generals, and the brigadier general may accept the resignation of colonels, or the commandants of regiments, lieutenant colonels, majors, captains, and lieutenants; and for good cause shown, the commandant of any regiment, squadron, or battalion shall accept the resignation of any regimental, squadron, or battalion staff officer: *provided, also*, that the brigadier general may accept the resignation of his staff officers; and in all cases when a resignation is accepted, the cause of such resignation shall be indorsed by the officer accepting the same on the back of the commission so resigned; but the command of such officer shall not cease until the officer accepting such resignation shall have indorsed his acceptance.

§ 18. **Staff officers appointed.** To each brigade there shall be one brigade major,—to serve as brigade inspector,—two aids-de-camp, one brigade quartermaster, one brigade engineer, one brigade judge advocate, one brigade surgeon, and one brigade chaplain, which brigade staff shall be appointed by the commander in chief. To each regiment or battalion of artillery, rifle, light infantry, or infantry, there may be one chaplain, one adjutant, one quartermaster, one surgeon, one surgeon's mate, one sergeant major, one quartermaster sergeant, one drum major, and one fife major, to be appointed by the commandant of such regiment or battalion. To each regiment or battalion of cavalry there shall be one adjutant, one quartermaster, one paymaster, one surgeon, one surgeon's mate, one quartermaster sergeant, one sergeant major, and two regimental or squadron buglers, which shall be appointed by the commandant of such regiment or squadron.

§ 19. **Staff officer's rank.** The staff officers herein enumerated shall rank as follows, namely: The quartermaster general and adjutant general as brigadier generals; the paymaster general, engineer in chief, judge advocate general, and aids-de-camp to the com-

mander in chief, as colonels; the aids-de-camp to brigadier generals, chaplains, and surgeons, as captains; company ensign, adjutants, quartermasters, paymasters, surgeon's mates of regiments, battalions, and squadrons, as lieutenants; and all the other regimental or squadron staff, as non-commissioned officers.

§ 20. **Officer's uniform.** The uniform of the respective officers herein mentioned shall be the same as the uniform of the officers in the United States army.

§ 21. **Of company musters.** Each company shall muster as often as twice in each year, independent of the general muster.

§ 22. **Officer to take oath.** Each officer, before he enters upon the discharge of his duty, shall take and subscribe an oath to support the constitution of the United States, the provisions of this chapter, and the act organizing the territory of Dakota, and to faithfully and impartially discharge his duty to the best of his ability.

§ 23. **Officers and privates tried—how.** Officers and privates shall be tried for misdemeanors and offenses in the same manner as provided in the army regulations of the United States.

CHAPTER XXXI.

MINES AND MINING.

LOCATION AND SIZE OF LODS AND MINING CLAIMS.

§ 1. **Length of lode.** The length of any lode-claim hereafter located within this territory may equal, but shall not exceed, fifteen hundred feet along the vein or lode.

§ 2. **Width of lode.** The width of lode-claims shall be one hundred and fifty feet on each side of the center of the vein or crevice: *provided*, that any county may, at any general election, determine upon a greater width, not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election, and any county, by such vote at such election, may determine upon a less width than above specified: *provided*, that not less than twenty-five feet on each side of the vein or lode shall be prohibited.

§ 3. **Discoverer to record his claim.** That the discoverer of a lode shall, within sixty days from the date of discovery, record his claim in the office of the register of deeds of the county in which such lode is situated, by a location of certificate, which shall contain:

1. The name of the lode.
2. The name of the locator or locators.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery shaft.
5. The number of feet in width claimed on each side of the vein or lode.
6. The general course of the lode, as near as may be.
(*As amended, Sess. Laws 1881, c. 96, §§ 1 and 2.*)

§ 4. **When certificate void.** Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.

§ 5. **Manner of locating claim.** Before filing such location certificate the discoverer shall locate his claim by first sinking a discovery shaft thereon sufficient to show a well-defined mineral vein or lode; second, by posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator or locators, and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; third, by marking the surface boundaries of the claim. (*As amended, Sess. Laws 1881, c. 96, § 3.*)

§ 6. **Marking boundaries.** Such surface boundaries shall be marked by eight (8) substantial posts, hewed or blazed on the side or sides facing the claim, and plainly marked with the name of the lode, and the corner, end, or side of the claim that they respectively represent, and sunk in the ground, to-wit, one at each corner, and one at the center of each side line, and one at each end of the lode. When it is impracticable, on account of rock or precipitous ground, to sink such posts, they may be placed in a monument of stone. (*As amended, Sess. Laws 1881, c. 96, § 4.*)

§ 7. **Requisite of location.** Any open cut, cross cut, or tunnel, at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten (10) feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

§ 8. **Time discoverer has to perform labor.** The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon. (*As amended, Sess. Laws 1881, c. 96, § 5.*)

§ 9. **Certificate construed to contain.** The location or location certificate of any lode claim shall be construed to include all

surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically, with such parts of all lodes or ledges as continue, by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

§ 10. **Claim not beyond exterior lines.** If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

§ 11. **Claims subject to right of way.** All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-tail which is now in use, or which may be hereafter laid out across any such location: *provided, always*, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway, or pack-tail, without consent of the owners, except by condemnation, as in case of land taken for public highways; parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writing: *and provided further*, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

§ 12. **Owner may demand security from miner.** When the right to mine is, in any case, separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

§ 13. **Filing an amended certificate.** If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this act: *provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof

shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations.

§ 14. **Work performed annually.** The amount of work to be done or improvements made during each year, to hold possession of a mining claim, shall be that prescribed by the laws of the United States, to-wit: one hundred dollars annually: *provided*, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of location of such claim. (*As amended, Sess. Laws 1881, c. 96, § 6.*)

§ 15. **Repealed.** (*Sess. Laws 1881, c. 96, § 7.*)

§ 16. **Relocating abandoned claims.** The relocation of abandoned lode claims shall be by sinking a new discovery shaft, and fixing new boundaries, in the same manner as if it were the location of a new claim; or the relocater may sink the original shaft, cut, or adit to a sufficient depth to comply with sections five and seven of this chapter, and erect new or adopt the old boundaries, renewing the posts, if removed or destroyed. In either case, a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

§ 17. **One certificate, one location.** No location certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location, it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.

§ 18. **Fee for recording.** The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate, when demanded, for which he shall be entitled to receive fifty cents.

DISPUTED MINING PROPERTY.

§ 19. **Judge may order survey of mine—limitations.** In all actions in any district court of this territory, wherein the title or right of possession to any mining claim shall be in dispute, the said court, or the judge thereof, may, upon application of any of the parties to such suit, enter an order for the under-ground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor, not related to any of

the parties to such suit, or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey, and observe the method of making the same; said second survey to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same. Such court, or the judge thereof, may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property, when such removal is shown to be necessary to a just determination of the question involved: *Provided, however*, that no such order shall be made for survey and inspection, except in open court or in chambers, upon notice of application of such order of at least six days, and not then except by agreement of parties, or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

§ 20. **Judge to issue writs of injunction.** The district courts, or any judge thereof, sitting in chancery, shall have, in addition to the power already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property from which he or they may have been ousted by force and violence, or by fraud, or from which they are kept out of possession by threats, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued.

Right of way, easements, and other necessary means for the development of mines. See Appendix, c. 31, *§§ 21-33.

CHAPTER XXXII.

LOGS AND LUMBER.

§ 1. **Lawful to boom logs in navigable rivers.** It shall be lawful for any person having logs or lumber in any stream navigable for water crafts, in this territory, to boom such logs or lumber along the shore, and to secure the boom by means of piles driven in the stream, or by chains, ropes, timber or traverse poles made fast at points along the shore: *provided*, that there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such streams.

CHAPTER XXXIII.

POLICE OF THE TERRITORY.

OF THE SETTLEMENT AND SUPPORT OF THE POOR.

§ 1. **County commissioners overseers.** The county commissioners of the several counties of this territory shall be the overseers of the poor within their several counties, and shall perform all the duties with reference to the poor within their respective counties that may be prescribed by law. (*See Appendix, c. 21, § 29, *8.*)

§ 2. **How designated.** That every board of county commissioners shall, in discharging the duties imposed by this act, be designated as overseers of the poor.

§ 3. **Suits against.** In all suits or proceedings in favor of or against any such overseers of the poor, pertaining to or connected with the poor of their respective counties, the same shall be conducted in favor of or against such county in its corporate name.

§ 4. **Every county shall relieve its poor.** Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the nineteenth section of this act is provided.

§ 5. **Legal settlements acquired — married women and children.** Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows:

1. A married woman shall always follow and have the settlement of her husband, if he have any within the territory, otherwise her own at the time of her marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

2. Legitimate children shall follow and have the settlement of their father, if he have any within the territory, until they shall gain a settlement of their own; but if the father have no settlement, they shall in like manner follow and have the settlement of their mother, if she have any.

3. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within this territory; but neither legitimate or illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

4. Every male person and every unmarried female over the age of twenty-one years, who shall have resided in any county in this territory ninety days, shall thereby gain a settlement in such county.

5. Every minor whose parents, and every married woman whose husband, has no settlement in this territory, who shall have resided ninety days in any county in this territory, shall thereby gain a settlement in such county.

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

7. Every settlement, when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this territory, or by willful absence from the county in which such legal settlement had been obtained for ninety days or more, and upon acquiring a new settlement, or upon the happening of such willful absence, all former settlements shall be defeated and lost; and the provisions of this section shall apply to cases of settlements begun, to be acquired, or lost or defeated, as well heretofore as after.

§ 6. **Overseers have care of poor.** The overseers of the poor in each county shall have the oversight and care of all poor persons in their county, so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner provided by law.

§ 7. **Duty of overseers.** It shall be the duty of the overseers of the poor, in counties wherein no common poor-house is established, two weeks next preceding the first Monday of April in each year, to give public notice by having published in the newspaper or newspapers in their respective counties, or, in case no such

newspaper is published in the county, by posting upon three public places in the county, an advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenance during the coming year, which sealed proposals shall be opened and acted on by said overseers of the poor, at their regular meeting beginning on the said first Monday in April; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions at any time for the keeping of such poor persons as may in the *interim* become a county charge, or of rejecting the propositions of such persons as they know to be unable to fulfill their obligations to the said poor.

§ 8. **Commissioners may allow and pay in their discretion.** The board of county commissioners may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who, from their general character, will probably be benefited thereby, and also the parents of idiots, and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode; the said board taking the usual amount of charges in like cases as the rule for making such allowance.

§ 9. **Duty of, on complaint.** It shall be the duty of said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if, in their judgment, the said poor have not been sufficiently provided with the common necessaries of life, or have in any respect been ill-treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such person or persons keeping them, as such overseers may deem reasonable and proper, and remove said poor, and place them in the care of some other person.

§ 10. **Poor-book.** The overseers of the poor shall enter in the poor-book of their respective counties all poor persons in their counties who are unable to care for themselves, and who shall, in their judgment, be entitled to the benefit of the provisions of this act, together with the date of such entry.

§ 11. **Appeal to district judge.** If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the county in which he or she resides shall refuse to give such person the benefit thereof, upon application of such person, the judge of the district court of the county or judicial subdivision may, if he shall think proper, direct the said overseers of the poor to receive him or her on the poor list, on his or her application therefor.

§ 12. **When settlement uncertain.** If any one within the description of poor persons specified in this act shall be found in any county, and the overseers of the poor of such county shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed, in their discretion, to provide for such poor person in the same manner as other persons are hereby directed to be provided for.

§ 13. **Temporary relief to certain poor.** Whenever any person entitled to temporary relief as a pauper shall be in any county in which he or she has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief, by placing him or her temporarily in the poor-house of such county, if there be one, but if there be no poor-house, then they shall provide the same relief as is customary in cases where a legal settlement has been obtained.

§ 14. **Justice of peace may issue warrant.** Upon complaint of any overseer of the poor, any justice of the peace may issue his warrant, directed to and to be executed by any constable, or by any other person therein designated, to cause any poor person found in the county of such overseer, likely to become a public charge, and having no legal settlement therein, to be sent, and charged at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be removed, such person shall be relieved by said overseers whenever such relief is needed.

§ 15. **When poor person feels aggrieved—proceedings.** If the overseers of the poor of any county in this territory, to which any pauper shall have been removed, as above provided, shall feel themselves aggrieved by such order of removal, they may, at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal to the district court of the county or judicial subdivision from whence the removal was ordered to be made; such appeal to be taken, tried, and determined, and costs adjudged, as in other cases of appeal from a judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and right of the case.

§ 16. **Appeal—how heard.** Such appeal shall be heard at the term of the court next after the same is filed therein, if, in the opinion of the court, reasonable notice of the appeal has been given to the opposite party; but, if not thus given, the cause shall stand continued until the next term of the court, and notice of the appeal be then given, if not before done.

§ 17. **When order is defective.** If the order of removal is defective, the court shall permit the same to be amended without

costs, and after such amendment is made, the appeal shall be heard and determined as if such order had not been defective.

§ 18. **When removed.** If any person be removed, by virtue of the provisions of this chapter, from any county to any other place within this territory, by warrant or order under the hand of any justice of the peace, as hereinbefore provided, the overseers of the poor of the county to which such person shall be removed, are required to receive such person if he have a legal settlement in their county.

§ 19. **Overseers shall make a return to clerk.** The overseers of the poor shall make a return to the clerk of the board of county commissioners of the sums of money required for the poor of their respective counties, within fifteen days after every such contract hereinbefore provided for shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board of county commissioners, in the same manner as other claims of the county are paid.

§ 20. **Pay of overseers.** The overseers of the poor in each county shall be entitled to receive each two dollars per day for each and every day during which they shall be necessarily employed in the discharge of their several duties as such, to be allowed by the board of county commissioners.

§ 21. **Shall submit accounts, when.** The overseers of the poor of the several counties shall annually, at the first session of the board of county commissioners in the year, submit their accounts and make report of their proceedings for the past year, which report shall be presented to the clerk of the board of county commissioners at least one day prior to the meeting of said board, and said board may then credit and allow said accounts so presented, and may draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

§ 22. **When non-resident is sick or dies.** It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their county is lying sick therein, or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any county who shall not have money or means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such county to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of such overseers.

§ 23. **Special election to purchase asylum.** It shall be lawful for the board of county commissioners in the several counties of this territory, after having submitted the question to the legal voters of their counties, by calling a special election for the purpose, whenever the said commissioners may deem it advisable, and if at said election a majority of the legal voters shall vote in favor of the proposition to purchase a tract of land in the name of their respective counties, and thereon to build, establish, and organize an asylum for the poor, and to employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same upon such terms and under such restrictions as the board shall consider most advantageous for the interests of the county, who shall be called "superintendent of the county asylum," and when two or more counties shall have jointly purchased any tract of land and erected an asylum for the poor of their respective counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized by a majority of the legal voters of their respective counties, in the manner prescribed in this section, to jointly purchase lands and erect asylums, and to do other things necessary and proper for the relief of the poor within the counties forming such joint ownership as is by this act provided for their respective counties.

§ 24. **Duty of superintendent.** It shall be the duty of such superintendent or superintendents to receive into his or their care and custody all persons who may become a county charge, as paupers, and to take such measures for the employment and support of such paupers, and to perform such other duties, as the board of county commissioners shall, from time to time, order, establish, and direct, consistent with the laws of this territory.

§ 25. **Shall appoint physician—compensation.** It shall be the duty of the county commissioners to appoint, annually, a well-qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.

§ 26. **To bind out poor children.** It shall be the duty of the overseers of the poor of the different counties, and also of the superintendents of the county asylums, to bind out such poor children as fall under their care and charge, from time to time; and it shall also be the duty of said overseers to see that children so bound be properly treated by the persons to whom they are bound, and to take legal means of redress in case of maltreatment.

§ 27. **Board assess tax to purchase poor-farm.** To raise the sum necessary for the purchase of land, and the erection and furnishing of buildings for such asylums, the board of county commissioners in the several counties shall have power to assess a

tax on property liable to taxation for raising a county revenue, not exceeding five hundred dollars, unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section twenty-three of this act, and a majority of all the votes cast at said poll be in favor of such assessment.

§ 28. **All poor go to asylum.** So soon as the necessary provisions may be made by the erection of suitable buildings, the said board shall direct and order that all persons who have become permanent charges as paupers in the county be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable, and thereafter the overseers of the poor shall, from time to time, as persons may become permanent charges as paupers to their respective counties, have such persons removed to the said asylum.

§ 29. **Superintendents give bond.** Such superintendent or superintendents shall give bond, with freehold security, to said board, in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty, and he or they shall make to such board, at the first and third sessions of each year, a detailed report in writing of the time and manner of the admission of each pauper, their health and fitness to labor, the results of their industry, and the expenses incurred; and it shall be the duty of the members of such board, in person, to annually inspect said asylum with regard to its fitness in all respects for the objects of its establishment.

§ 30. **Children to be educated.** Whenever it shall be necessary and practicable, poor children of the asylums, who cannot be bound out, or whom it may not be expedient to bind out, as apprentices, shall be educated thereat.

§ 31. **Superintendence thereof.** It shall be the duty of the superintendent or superintendents of any asylum, erected or established by law, to superintend and direct the education of such poor children, according to the preceding provisions of this act, and for the purpose of carrying the same into effect, with the least possible expense, it shall be the duty of the said superintendent to send them to any common school within the county in which the asylum is situated, during the continuance of its session.

§ 32. **Discontinuance of asylum.** Any asylum or farm, provided by the board of county commissioners for the purpose, may be discontinued by said board, and the property, real and personal, relating thereto, which belongs to the county, may be sold, leased, or otherwise disposed of, or applied in such manner as may be best for the interests of the county.

§ 33. **Board may levy poor-tax.** The board of county commissioners may, in the several counties, if they deem it expedient, annually, at their session at which the county tax is ordered to be

levied and assessed, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed to be raised. The tax hereby authorized to be raised shall be collected by the same officers whose duty it may be to collect the territorial and county revenue, who shall pay the same into the county treasury.

§ 34. **Appeals from justice of peace.** All decisions of any justice of the peace, in any matter, proceeding, or suit authorized by this law, may be appealed from in like manner, and under like regulations and restrictions of law, as in other cases.

§ 35. **Board appoints visitors.** The board of county commissioners may, in their discretion, appoint a board of visitors annually, to consist of three persons, residents of the county, to visit at least once in each year the asylum of such county, and to report to the commissioners its condition, and the treatment, management, and condition of the inmates thereof.

§ 36. **Compensation.** Such visitors shall receive such compensation as the said board shall adjudge reasonable.

§ 37. **Sending pauper out of county unlawful.** It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending, or causing to be sent, out of the county where such person properly belongs, any pauper, or person who is, or is likely to become, an object of public charity, into any other county of this territory, except in the manner provided for in this chapter.

§ 38. **Penalty.** Any person who shall violate the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

BRINGING PAUPERS INTO A COUNTY.

§ 39. **Penalty for bringing in paupers.** Every person who shall bring into and leave any pauper in any county wherein such pauper is not lawfully settled, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, by an action in the name of the county; and no property shall be exempt from seizure and sale in such cases, and it shall be the duty of the board of county commissioners of the several counties to institute suits for all violations of this section; and any such sum, when collected, shall be paid into the county treasury for the use of the county.

OF THE CARE OF THE INSANE.

§ 40. **Governor contracts for care.** The governor of this territory is authorized, and it is hereby made his duty, from time to time, to enter into contract with the states of Minnesota, Iowa, or Nebraska, or either of them, as in his judgment will be most economical and advisable, for the keeping, maintaining, treating, and the custody and care, in an asylum in one of said states, of persons declared lunatics, from this territory. (*See Appendix, c. 51.*)

§ 41. **Territorial asylum.** After such contract is made with the proper authorities of such state, the asylum of such state with which such contract is made shall be the insane asylum for this territory, and any person who, under the provisions of any law now in force, or that may be hereafter enacted, shall be declared or adjudged a lunatic, or insane, and a proper subject for confinement in a lunatic asylum, may be, by the proper officer or person, by direction of the lawful authority, taken to and confined in such asylum, the same as though such asylum were located within this territory.

§ 42. **All past and future accounts territorial charge.** It shall be the duty of the auditor of this territory to audit all accounts having accrued under the provisions of law for the keeping and care of lunatics, or that shall accrue for taking to confinement in, and caring for lunatics in, the insane asylum for the territory.

§ 43. **Verification of accounts.** Such accounts shall be verified by the owner thereof, and approved by the probate court by whose order the person was confined, for whose keeping the charge is made: *provided*, that persons who are so confined, that have estates, such estates shall be liable for their keeping.

§ 44. **Probate judge decides sanity.** Upon the filing of a verified petition in the office of the judge of probate, setting forth that any citizen of that county is insane, it shall be his duty to investigate the matter at once, as directed by law, and, if adjudged insane, the court may order that such person be confined in the insane asylum. (*See Appendix, c. 51.*)

CHAPTER XXXIV.

DOMESTIC ANIMALS.

See "An act exempting the counties of Lawrence, Pennington, Custer, Forsyth, and Mandan from the provisions of certain sections of chapter 34 of the Political Code of Dakota Territory," and "An act exempting the counties of Lawrence, Pennington, Custer, Mandan, and Forsyth from the provisions of chapter 38 of the Code of Civil Procedure." See Appendix, c. 34, *§§ 22, 23. Also, "An act regulating the herding and driving of stock." See Appendix, c. 34, *§§ 24, 31.

MARKS AND BRANDS.

See "An act relating to the use of marks and brands in live-stock." See Appendix, c. 34, *§§ 32-43. And "An act for the protection of stock in the territory of Dakota, and to punish certain offenses concerning the same." See Appendix, c. 34, *§§ 44-52.

§ 1. **Record of marks and brands.** It shall be the duty of the register of deeds of each county, upon application of any person residing in such county, to record a description of the marks or brands with which such person may be desirous of marking his horses, cattle, sheep, or hogs; but the same mark or brand shall not be recorded for more than one resident of the same county.

§ 2. **Using recorded mark—penalty.** If any person shall willfully mark any of his horses, cattle, sheep, or hogs with the same mark or brand previously recorded by any resident of the same county, and while the same mark shall be used by such resident, the person so offending shall forfeit for every such offense the sum of five dollars, to be recovered before any justice of the peace of such county. If any person shall willfully mark or brand the cattle, horses, sheep, or hogs of any other person with his own mark or brand, the person so offending shall forfeit for every such offense not less than ten nor more than fifty dollars; and if any person shall willfully destroy or alter any mark or brand upon any horse, cattle, sheep, or hog belonging to another, the person so offending shall, upon conviction thereof, forfeit and pay, for every such offense, a sum not less than ten nor more than fifty dollars, and shall, in addition, pay to the party injured double damages, and the costs.

OF ESTRAYS.

§ 3. **Estrays taken by resident only.** No person shall take up an estray animal except in the county wherein he or she resides and is a householder, or holds a claim under the pre-emption of homestead laws, nor unless the same be found in the vicinity of his or her claim or place of residence: *provided*, that this shall not be so construed as to prevent taking up of any estray found in the un-

inhabited parts of this territory, and at a distance of ten miles from any habitation.

§ 4. **Limitation in time.** No person shall take up any estray animal mentioned in the next section, between the first day of October and thirty-first day of March inclusive, unless the same be found trespassing upon the premises or within the inclosure of the person taking up the same.

§ 5. **Publishing estray notice.** Every person who shall take up any estray horse, mare, colt, mule, ass, or any head of neat cattle, sheep, hog, or goat, shall, within fifteen days thereafter, give notice of the finding and taking up of such animal, by posting a written advertisement thereof, with a description of such estray, and the marks and brands thereon, in three public places in the county wherein he resides, or by publishing such advertisement three times in a weekly newspaper, if there is a newspaper published in the county in which the estray is taken up, and if the same be not called for or claimed by any person within twenty-two days after the posting of such notice, or within three weeks after the first insertion of such notice in a newspaper, the person taking up such estray animal shall go before some justice of the peace of the county wherein he resides, and make oath that such animal was found estray by him, and the place where the same was found, that the marks and brands thereon have not been effaced or altered by him since the taking up, and that he hath duly advertised the same as required by law; every such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the advertisement of such estray as herein required.

§ 6. **Justice's appraisement jury.** Such justice of the peace shall thereupon issue his warrant to three disinterested householders of the county, unless their attendance may be otherwise had, commanding them to attend at such place as may be therein mentioned, to appraise such estray; the appraisers so appointed, or any two of them, shall thereupon proceed to appraise such estray, and, upon the completion of such appraisement, shall attend before the justice and report their appraisement in writing, to be subscribed and sworn to by them, setting forth a description of the estray appraised, the marks and brands thereon, the name and place of residence of the person taking the same up, and that the appraised value of such estray is a fair and true valuation thereof, and the justice shall thereupon enter such certificate in his docket.

§ 7. **Justice publishes description.** Upon the completion of such appraisement as aforesaid, the justice of the peace before whom the appraisement is had, shall forthwith post in three of the most public places in his county, or publish three times in a newspaper, if there is a newspaper published in the county, a notice of

the taking up of such estray, with a description thereof, and of the marks and brands thereon, and the name and place of residence of the person taking up the same.

§ 8. **Report to register.** Such justice shall also transmit a copy of such affidavit or certificate of the appraisers, certified by him to be a true copy from his docket, to the register of deeds of his county, within ten days after the completion of such appraisement.

§ 9. **Record of appraisement.** Every register of deeds, upon receiving any such certified copy of such appraisement, shall forthwith cause the same to be recorded in a book to be kept in his office, to be entitled the "Estray Register."

§ 10. **Two or more animals.** If two or more animals are taken up at the same time by the same person, both and all thereof shall be numbered in the same advertisement and appraisement, and the same fees are allowed as for the advertisement or appraisement of one estray.

§ 11. **Claimant must pay charges.** Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray shall go before the justice of the peace before whom such appraisement was had, or some other justice of the peace of the county, and such claimant shall make affidavit in writing, subscribed by him, setting forth his name and place of residence, and that he is the owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant, upon payment of all fees advanced by him, and his reasonable charges for keeping and caring for such estray. If the parties cannot agree as to the amount of such charges, the same shall be assessed by such justice of the peace, and such assessment shall be final. Every affidavit required by this section shall be made and recorded upon and within the docket of such justice of the peace.

§ 12. **Disposition of estray.** If any such estray be not claimed and taken away within one year after the appraisement thereof, as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised, as herein provided, and shall not in other respects have violated the provisions of this subdivision of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the person taking the same up.

§ 13. **If worth over fifty dollars.** If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisement thereof, the person taking up such estray shall notify some justice of the peace of the county, and such justice shall appoint a day and place for the sale thereof, and cause notices of such sale to be posted in three public places in the

county, at least twenty-two days before such day so appointed, or shall cause such notice of such sale to be published three times in a weekly newspaper, if there is one published in the county, and on the appointed day the person taking up such estray shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray, and caring for and keeping the same, to be fixed by such justice, and the fees advanced for the appraisement and advertisement of such estray, as herein provided, and after deducting the fees allowed such justice for such sale, and the advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer, who shall receipt to the justice therefor.

§ 14. **Treasurer disposes of money.** All moneys so deposited with the county treasurer shall by him be retained in the treasury for six months thereafter, separate and apart from all other moneys; and if the owner of any such estray so sold as aforesaid shall, within such period, appear before the board of county commissioners and establish his title to such estray, such board of commissioners shall order the amount so paid into the treasury to be refunded to such owner; if no such owner appear within six months after the deposit of any such sum of money as herein provided, the same shall be passed to the school fund of the county, and shall be accounted for and expended as other school moneys are.

§ 15. **Description filed.** Whenever any sum of money is paid into the county treasury by virtue of the thirteenth section, the justice paying the same shall deliver to the treasurer a certificate setting forth a description of the estray, from the sale of which the same was obtained, and the marks and brands on such estray, and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall, by the treasurer, be filed and preserved in his office, to the end that the right of the owner of such estray to receive such sum of money may be readily established.

§ 16. **Fees a first lien.** The fees of justices of the peace, advertising, and appraisers shall be paid by the person taking up the estray, but the same shall constitute a first lien upon the estray, and shall be paid by the owner before he shall be entitled to take away such estray.

§ 17. **Unlawful taking—penalty.** If any person not authorized so to do shall take up any estray or lost goods, or if any person taking up any such estray or any lost goods shall willfully neglect to cause the same to be advertised and appraised, as herein provided, or shall work or use any such estray beast, except in a prudent manner, and so as not to injure the same, or shall,

when working such beast, fail to sufficiently feed and properly care for the same, every such person so offending shall forfeit twenty-five dollars to the owner of such estray, to be recovered by action of debt before any justice of the peace: *provided, however*, that such action shall not be a bar to an action commenced by the owner of such estray against the person taking up the same, if such animal should receive a permanent injury or be rendered useless because of ill-treatment inflicted or neglect received from the person taking up such estray.

§ 18. **Work of estray.** Any person taking up any estray may work and use the same in a prudent manner, and so as not to injure the same, but during the time of working and using such estray shall not be allowed to charge or receive any compensation for the keeping thereof.

§ 19. **Loss of estray.** If any estray, after being duly advertised and appraised, as herein provided, shall, without the fault of the person taking up the same, die, or be stolen, or escape and wander away, the person taking the same up shall not be responsible therefor.

§ 20. **Sale at county seat.** The place of sale of estrays, under this chapter, shall be at the county seat of the county in which the estray is appraised.

Fees in matters of estrays. See Political Code, c. 39, § 28.

OF LOST GOODS.

§ 21. **Proceedings same as estrays.** The manner of taking up, appraising, advertising, and disposing of any lost goods or personal property which may be found upon the highway, or in any other place, shall be the same as herein provided for estrays.

CHAPTER XXXV.

SALE OF INTOXICATING LIQUORS.

An Act to Regulate the Sale of Intoxicating Liquors.

§ 1. **Selling liquor without license unlawful.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* It shall be unlawful for any person, by himself, by agent, or otherwise, to sell in any quantities intoxicating liquors to be drunk in, upon, or about the premises where sold, or to sell such intoxicating liquors to be drunk in any adjoining room, building, or premises, or other place of popular resort connected with said premises where sold, or to sell such intoxicating liquors for any purpose in any quantities less than

five gallons, without first having obtained a license and given a bond as hereinafter provided. (*Sess. Laws 1879, c. 26, § 1.*)

§ 2. **License, how granted and for what time.** All applications for a license to sell intoxicating liquors shall be made to the board of county commissioners, and shall be granted by said board if they deem it expedient, and the applicant a proper person to engage in the same; and no license shall run for a longer period than one year without renewal, and not for a longer period than the first Monday of the January next ensuing the date of its issue. (*Id.* § 2.)

§ 3. **License fee—amount of—bond and sureties—conditions.** Before any license is issued the applicant shall produce the receipt of the county treasurer showing that he has paid into the county treasury the amount fixed by the board for such license, to be at the rate of not less than two hundred dollars nor more than five hundred dollars per year, and execute and deliver to said board his bond to the territory of Dakota, which bond shall be in the penal sum of five hundred dollars, with at least two good and sufficient sureties, who shall on oath justify in double the penal sum of the bond, to be approved by the board of county commissioners, which said sureties shall be residents of the county, conditioned that the person applying for the license shall keep a quiet and orderly house; that he will not permit any gambling in, upon, or about the premises where the intoxicating liquors are sold, or in any adjoining room, building, or premises, or other place of popular resort connected with said premises where sold, and shall well and faithfully keep and observe the laws of the territory and the provisions of any ordinances or regulations of the municipality where such business shall be conducted relating to the keeping of saloons, taverns, and the sale of intoxicating liquors, and shall close his place or house of business at the hour of eleven o'clock P. M. every night. All the conditions required to be included in the bond mentioned in this section shall form and constitute a part of every such bond without being expressed therein, or if only partially set forth or referred to therein, and no such bond shall be void upon the first recovery, but it may be sued and recovered upon from time to time as herein authorized, until the whole penalty is exhausted. (*Id.* § 3.)

§ 4. **Selling to habitual drunkard—how prevented—penalty for.** Any wife, mother, father, son, daughter, sister, or other relative of a person who is in the habit of getting intoxicated, or the county commissioners, or the mayor of any city, or other territorial, county, or municipal officer, may make complaint to any justice of the peace of the county where such person resides or may be staying, alleging the name or names of the person or persons from whom said person having such habit obtains his liquor, as such relative or such officer believes, and thereupon said justice of the peace shall, without charge

therefor, issue a notice in writing to such person or persons so named, notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them, or at his or their place of business, to such person having such habit, and which notice must at once be served upon such person or persons as summons are served from justice courts, and after the service of such notice if any person or persons so notified shall sell, give away, or permit any person at his place of business to sell or give away, any intoxicating liquors to such person about whom he or they have received notice as aforesaid, his license to sell liquor shall from that time be deemed and held to be canceled and annulled; and said person so selling or giving away shall be fined in any sum not less than one hundred dollars and not more than five hundred dollars, and be liable in a civil action at the suit of such relative to pay him, her, or them the sum of five hundred dollars damages for each offense; and no property of any kind shall be exempt from payment of such fine or damages, except property absolutely exempted. (*Sess. Laws 1879, c. 26, § 4.*)

§ 5. License, when revoked. When any person so licensed shall be convicted of a violation of any of the provisions of this chapter, or of any of the penal statutes of this territory relating to the sale of intoxicating liquors, or shall violate any of the conditions of said bond, the board of county commissioners may, and it is hereby made their duty to, revoke such license; but such revocation shall not be construed to discharge such licensee or his sureties from liability on said bond for any damage sustained by, or right accrued to, any person prior to such revocation. (*Id.* § 5.)

§ 6. City and town authorities may grant license to certain parties. It shall be competent and lawful for any incorporated village, town, or city within the county where such bond is filed and license granted, to prohibit the party so licensed, as well as all others, from engaging in the business of selling intoxicating liquors to be drunk in, upon, or about the premises where sold, within the corporate limits, until he shall obtain from the village, town, or city authorities a license, and pay into the village, town, or city treasury such sum as may be fixed by ordinance, to be not less than fifty dollars nor more than five hundred dollars: *provided*, that no additional bond shall be required, nor shall any license be granted, by the authorities of any such village, town, or city to any one who has not filed the required bond with the board of county commissioners, and obtained from such board a license: *and provided further*, that no license granted by any such incorporated village, town, or city shall run for a longer period than the license granted by such board; and the revocation of the county license by the board of county commissioners shall work a revocation of any license granted under the provisions of this section. (*Id.* § 6.)

§ 7. Powers given to both county and town authorities to grant license. It shall be competent and lawful for both

the county commissioners of any county, and also the mayor and city council, or other authorities, of any incorporated village, town, or city situated therein, to require the payment of the license herein provided, and the granting of the power to license or tax in any city, town, or village charter shall not be held as conflicting in any way with the provisions of this act; the intention being to allow both the county and any incorporated village, town, or city authorities to levy and collect a license for the sale of intoxicating liquors as herein provided, or as provided by the charter and the ordinances of such village, town, or city. (*Sess. Laws 1879, c. 26, § 7.*)

See Appendix, c. 35, *§§ 7a, 7b.

§ 8. Liability of dealer for intoxication—liability of intoxicated person. Every person who shall, by the sale or giving away of intoxicating liquors, with or without a license, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person during the time that care or provisions are rendered necessary by reason of such intoxication, which sum may be recovered in a civil action before the proper court; and any person getting intoxicated as herein mentioned shall be liable to a fine not less than five nor more than twenty-five dollars. (*Id.* § 8.)

§ 9. Liability of commissioner for approving insufficient bond. Any county commissioner who shall knowingly approve any insufficient bond required by the provisions of this act shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars. (*Id.* § 9.)

§ 10. Giving away liquor, etc., is selling, within meaning of law. The giving away of intoxicating liquor, or any other shift or device to evade the provisions of this chapter, shall be deemed and held to be an unlawful selling, within the provisions of the same. (*Id.* § 10.)

§ 11. Penalty for violating this law. Every person selling intoxicating liquors in violation of the provisions of this act, or without first having complied with the requirements of the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars for each and every offense, or be imprisoned not exceeding sixty days in the county jail, or by both, in the discretion of the court. (*Id.* § 11.)

§ 12. Fines, to whom paid—what exempt. For the payment of all fines, costs, compensation, and damages assessed against any person or persons in consequence of the sale of intoxicating liquors, and all fines collected under the provisions of this section shall be paid over to the county treasurer to the credit of the school fund, as provided in this act, the real and personal property of such person or persons of every kind, except property absolutely

exempt from execution, where the party is the head of a family, shall be liable, and such fines, costs, and damages shall be a lien upon such real property until paid; and all the furniture kept in the saloon or place of business, together with all liquors, glasses, bottles, kegs, and barrels in the custody of any person selling intoxicating liquors, shall be liable to seizure and sale to pay any fine or judgment against such person so selling intoxicating liquors. (*Id.* § 12.)

§ 13. **Druggist may sell without license, when.** It shall be lawful for regular druggists to sell without license spirituous and vinous liquors for medicinal purposes, upon the written prescription of a physician having been in the continuous practice of medicine for the space of five years next preceding the time of giving such written prescription, or holding a diploma from some regular medical college, who certifies in the said prescription that, in his opinion as a physician, the health of the party to whom the liquor is to be sold requires or would be promoted by the use of the particular kind of liquor prescribed. It shall also be lawful for such druggist to sell wines for sacramental purposes. It shall also be lawful for druggists to sell alcohol for medicinal purposes. (*Id.* § 13.)

§ 14. **Same—may not permit drinking on premises.** It shall be unlawful for druggists to sell spirituous, vinous, or malt liquors to be drank, or to permit the same to be drank, in, upon, or about the premises where sold, or in any room or building connected therewith. (*Id.* § 14.)

§ 15. **Same—penalty.** Any druggist violating the provisions of this act shall be guilty of a misdemeanor. (*Id.* § 15.)

§ 16. **Physician — penalty for giving false prescription.** Any physician who shall give a person or persons a prescription to obtain liquor from a druggist to enable such person or persons to evade the provisions of this act, shall be guilty of a misdemeanor. (*Id.* § 16.)

§ 17. **Minor, unlawful to sell to.** It shall be unlawful for any person or persons, by agent or otherwise, to sell or give away any spirituous, vinous, or malt liquors to a minor, or to a person who is intoxicated, or who is in the habit of becoming intoxicated. (*Id.* § 17.)

§ 18. **Complaints — duty of officers to make.** It is hereby made the duty of the district attorney, sheriff, and all constables and all peace officers of the county or municipality, knowing of any violations of this act, to make complaint thereof to the grand jury of the next term of the district court of the county or judicial subdivision in which the offense may have been committed, or to make complaint to a justice of the peace, who shall have power to bind over the offender to appear and answer at the next term of the district court. (*Id.* § 18.)

§ 19. **County clerk to deliver list of licensed persons to grand jury.** Every county clerk shall, on the first day of the

term of each district court, deliver through the court to the grand jury an accurate list of all persons holding license under the provisions of this act within the county, which list shall show the date and expiration of each license. Any violation of this provision of this section shall be punished by a fine of not less than five dollars nor more than fifty dollars for each and every offense. (*Sess. Laws 1879, c. 26, § 19.*)

§ 20. **Duty of grand jury.** It shall be the duty of the grand jury, at each and every term of the district court in every county or judicial subdivision, to make a strict inquiry and return bills of indictment against every person violating any of the provisions of this chapter. (*Id. § 20.*)

§ 21. **Intoxicating liquors defined.** The words "intoxicating liquors," as used in this act, shall be deemed and construed to include spirituous, vinous, and malt liquors, and all mixtures or preparations thereof, including bitters that may be used as a beverage and produce intoxication. (*Id. § 21.*)

County commissioners to grant licenses to persons living in counties or territory unorganized, to which said territory may be attached for judicial purposes, to sell intoxicating liquors. See Appendix, c.35, *§§ 7a, 7b.

CHAPTER XXXVI.

PEDDLERS' AND AUCTIONEERS' LICENSE.

§ 1. **License required.** No auctioneer, peddler, or other person or persons, company or corporation, shall be permitted to sell, vend, or retail, either at private sale or public auction, any goods, wares, or merchandise, without having first obtained a license for that purpose, as hereinafter provided.

§ 2. **County board grants license.** The board of county commissioners of the respective counties shall have power to grant such license on the payment into the county treasury, by the applicant for such license, of a sum to be assessed and fixed by said board, not less than ten dollars nor more than one hundred dollars.

§ 3. **Authority under license.** Such license shall authorize the person receiving it to vend, sell, and retail goods, wares, and merchandise, within said county, for the period of one year from the time of granting the same.

§ 4. **County clerk's powers.** If the board of county commissioners be not in session when the application is made, the county clerk may grant a written permission to the applicant to vend, sell, and retail goods, wares, and merchandise until the end of the next session of the board of county commissioners; or, if said board take

no action upon the case, for the term provided in the third section of this chapter; and, at the time of granting such license, the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

§ 5. **Clerk's permits revocable by board.** When permission shall be granted in vacation, as aforesaid, it shall be the duty of the board, at their next regular meeting thereafter, to examine such permit, and, if approved, to proceed forthwith to assess and fix the amount to be paid for such a license thereafter, which amount shall be paid as in the case of original applications; but if the board of county commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than that fixed by the county clerk.

§ 6. **Penalty for violation.** If any person or persons, company or corporation, shall, directly or indirectly, keep an auction store, or sell, vend, or retail any goods, wares, or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not less than ten dollars nor exceeding two hundred dollars.

§ 7. **Merchants taxed not included.** Nothing in this act shall be so construed as to extend to the sale of goods, wares, and merchandise by merchants who pay an annual tax upon the same, assessed according to the revenue laws of this territory, nor to persons who sell commodities manufactured or raised by themselves in this territory, or in any adjoining state or territory. (*As amended, Sess. Laws 1881, c. 92.*)

CHAPTER XXXVII.

WEIGHTS.

§ 1. **Bushels of articles fixed by weight.** A bushel of each of the articles enumerated in this section shall consist of the number of pounds avoirdupois, respectively, affixed to each, viz.:

- Barley, forty-eight pounds.
- Beans, sixty pounds.
- Bran, twenty pounds.
- Buckwheat, forty-two pounds.
- Beets, sixty pounds.
- Broom-corn seed, thirty pounds.
- Corn, shelled, fifty-six pounds.
- Corn, in the ear, seventy pounds.

Clover seed, sixty pounds.
 Coal stone, eighty pounds.
 Flaxseed, fifty-six pounds.
 Lime, eighty pounds.
 Oats, thirty-two pounds.
 Onions, fifty-two pounds.
 Potatoes, Irish, sixty pounds.
 Potatoes, sweet, forty-six pounds.
 Peas, sixty pounds.
 Rye, fifty-six pounds.
 Salt, eighty pounds.
 Turnips, sixty pounds.
 Timothy seed, forty-two pounds.
 Wheat, sixty pounds.

§ 2. **Ton of hay, cubic measure.** A ton of hay shall consist of two thousand pounds; or, by measurement, three hundred and forty-three cubic feet, after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties.

§ 3. **Cubic feet in perch.** A perch of mason work or stone is hereby declared to consist of twenty-five feet cubic measure.

Grading and weighing wheat. See Appendix, c. 37, *§§ 4-13.

CHAPTER XXXVIII.

HOMESTEAD AND THE CONVEYANCE THEREOF.

§ 1. **Exempt from judicial sale or judgment.** The homestead of every family resident in this territory, as hereinafter defined, whether such homestead be owned by the husband or wife, so long as it continues to possess the character of a homestead, shall be exempt from judicial sale, from judgment lien, and from all mesne or final process issued from any court.

§ 2. **Family defined.** A widow or widower, though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

§ 3. **Conveyance of, limited.** A conveyance or incumbrance by the owner of such homestead shall be of no validity unless the husband and wife, if the owner is married, and both husband and wife are residents of the territory, concur in and sign the same joint instrument.

§ 4. **Liable for its taxes only.** The homestead shall be liable for taxes accruing thereon, and if certified and recorded as hereinafter directed, shall be liable only for such taxes, and shall be

subject to mechanic's lien for work, labor, or material, done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

§ 5. **Liable for purchase money.** The homestead may be sold for any debt created for the purchase thereof.

§ 6. **Must embrace residence.** The homestead must embrace the house used as a home by the owner thereof, and if he or she has two or more houses thus used at different times and places, such owner may select which he or she will retain as a homestead.

§ 7. **Embrace only contiguous tracts.** It may contain one or more lots or tracts of land, with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots and tracts, unless they are contiguous, or unless they are habitually and in good faith used as part of the same homestead.

§ 8. **Area embraced.** If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than one hundred and sixty acres.

§ 9. **Buildings embraced—defined.** It must not embrace more than one dwelling-house or any other buildings, except such as are properly appurtenant to the homestead as such, but a shop, store, or other building situated thereon, and really used or occupied by the owner in the prosecution of his own ordinary business, may be deemed appurtenant to such homestead.

§ 10. **Selection and marking.** The owner, or the husband or wife, may select the homestead, and cause it to be marked out and platted and recorded as provided in the next section. A failure in this respect shall not leave the homestead liable, but the officer having the execution against the property of such a defendant may cause the homestead to be marked off, platted, and recorded, and may add the expense thence arising to the amount embraced in his execution.

§ 11. **How marked and described.** The homestead shall be marked off by fixed and visible monuments, unless the same shall embrace the whole of a subdivision or lot, and in giving the description thereof, when marked off as aforesaid, the direction and distance of the starting point from some corner of the dwelling-house shall be stated. The description of the homestead, certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county in a book to be called the "Homestead Book," which shall be provided with a proper index.

§ 12. **Change of homestead—limitations.** The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the description,

or may change it entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto; and no such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her rights, or those of the children.

§ 13. **New homestead exempt.** The new homestead shall in all cases be exempt to the same extent and in the same manner as the old or former homestead was exempt.

§ 14. **Disputed homestead.** When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, it shall be competent for the district court, in any proper case, to determine such question, and all questions relating thereto.

§ 15. **Order of succession to.** Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead, until it is otherwise disposed of according to law; and, upon the death of both husband and wife, the children may continue to possess and occupy the whole homestead until the youngest child becomes of age.

§ 16. **Descends free of debt.** Such homestead shall descend according to the law of succession as provided by the Civil Code, unless otherwise directed or disposed of by will, and shall be held exempt from any antecedent debt of the parent; and, if it descend to the issue of either husband or wife, it shall be held by such issue exempt from debts of such husband or wife, except as in the following section provided.

§ 17. **If no survivor, liable for debt.** And if there be no husband or wife surviving, and no issue, the homestead shall be liable to be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

§ 18. **Limitation of devise.** Subject to the rights of the surviving husband or wife, as declared by law, the homestead may be devised like other real property of the testator.

§ 19. **Family further defined.** Every family, whether consisting of one or more persons, in actual occupancy of a homestead, as defined in this chapter, shall be deemed and held to be a family, within the meaning of this chapter.

CHAPTER XXXIX.

COMPENSATION OF PUBLIC OFFICERS.

§ 1. The salaries and fees of the several officers hereinafter named shall be as follows, to-wit:

TERRITORIAL AUDITOR.

§ 2. The salary of the territorial auditor shall be three hundred dollars per annum, which shall be payable quarterly; and he shall receive twenty-five dollars annually for office rent, fuel, and stationery. (*See Appendix, c. 39, *§ 2a.*)

TERRITORIAL TREASURER.

§ 3. The salary of the territorial treasurer shall be two thousand dollars per annum, payable quarterly; that he give a bond of one one hundred thousand dollars, with good and sufficient sureties, to be approved by the governor. (*As amended, Sess. Laws 1883, c. 103.*)

CLERKS OF THE DISTRICT COURTS.

§ 4. The clerks of the district courts shall be entitled to charge and receive for their fees and services the emoluments prescribed by section 828 of the Revised Statutes of the United States, so far as the same is applicable to the business in the district courts of counties and subdivisions, and for any item not embraced within said section of the United States law, such compensation as may be allowed by the rules of the court.

CLERKS' FEES.

[The following is section 828 of the Revised Statutes of the United States, and the law referred to in the above section, as governing the fees of clerks of the district courts:]

For issuing and entering every process, commission, summons, *capias*, execution, warrant, attachment, or other writ, except a writ of *venire*, or a summons or subpœna for a witness, one dollar.

For issuing a writ of summons or subpœna, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgement, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, de-

cree, or recognizance, or drawing any bond, or making any record, certificate, return, or report for each folio, fifteen cents.

For a copy of an entry or record, or of any paper on file, for each folio, ten cents.

For making docketts and indexes, issuing *venire*, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making docketts and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

For making docketts and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making docketts and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment, or other lien, fifteen cents.

THE DISTRICT ATTORNEY.

§ 5. The district attorneys shall severally receive such salary for their services as the board of county commissioners of the proper county shall allow, not less than four hundred dollars a year; but the salaries of such district attorneys shall not be increased or diminished during the term for which he shall be elected or appointed. All fees and costs recovered in civil actions, in which the county is the successful party, shall be paid into the county treasury, for the use and benefit of the county; and it shall not be competent or lawful for the board of county commissioners to give and pay said fees and costs, or either, or any part thereof, to said district attorney, as a part of his salary, or in addition to his salary, and every order made by said board for the purpose shall be void. (*See Appendix, c. 39, §§ 5, 6.*)

§ 6. **Certain fees prohibited.** Said district attorneys shall not receive any fees or reward from, or on behalf of, any prosecutor or other individual, for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party, other than for the territory or county, in any civil action depending on some state of facts upon which any criminal prosecution commenced, but undetermined, shall depend; nor shall any district attorney, while in office, be eligible to or hold any judicial office whatever; but if the district attorney of one county shall be requested to go to another county, or from one part to another part of his county, to transact any business as district attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business, in addition to the salary fixed

by the county board. (*Sess. Laws 1883, c. 43, §§ 5, 6. See Appendix, c. 39, §§ 5, 6.*)

When §§ 5 and 6 go into effect. See Appendix, c. 14, *§§ 3, 4.

REGISTER OF DEEDS.

§ 7. The register of deeds is entitled to charge and receive the following fees:

For recording deed, mortgage, or other instrument, and indexing, for the first four hundred words, seventy-five cents.

For each additional folio, ten cents.

Copy of record, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Making certified abstract of title, for the first deed or transfer, one dollar.

And whenever any person presents an abstract to the register of deeds who made the same, for continuation of such abstract, it shall be his duty to continue the same, and he shall be entitled to receive ten cents for each new transfer, and twenty-five cents for his certificate thereto, and no more.

And for each additional deed or transfer, ten cents.

Entering satisfaction of mortgage or lien, twenty-five cents.

For recording each certificate of marriage, twenty-five cents.

For recording marks and brands, each, twenty-five cents.

For filing and indexing chattel mortgage, twenty-five cents.

For recording a final receipt from the receiver of any United States land-office, fifty cents. (*As amended, Sess. Laws 1881, cc. 1, 76.*)

Fees for recording trade-mark. See Appendix, c. 21, *§ 57c.

COUNTY CLERK.

§ 8. For performing the duties of clerk of the county commissioners, and attending to the business of the county, the county clerk shall receive such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of six hundred dollars.

For each certificate and seal in other cases, twenty-five cents.

Fees for recording brand. See Appendix, c. 34, *§ 33.

Fees for taking affidavits under the act offering bounty for wolf scalps. See Appendix, c. 34, *§ 50.

SHERIFF.

§ 9. The sheriff shall be entitled to charge and receive the following fees:

Serving *capias* with commitment or bail-bond, and return, two dollars.

For each search on search-warrant, one dollar.

Arresting under search-warrant, each defendant, one dollar.

Serving summons, order of attachment, order of replevin, writ of injunction, *scire facias*, citation, or other mesne process, and return thereof, sixty cents.

Each defendant besides the first, fifty cents.

Copy of summons, order of attachment, twenty-five cents.

Copy of writ of injunction, *scire facias*, each ten words, one cent.

Serving subpoena for witness, each person, twenty-five cents.

Taking and filing replevin bond, or other indemnification, to be furnished and approved by the sheriff, one dollar.

Traveling expenses, for each mile actually and necessarily traveled, ten cents.

Making copy of any process or bond or paper, other than herein provided, for every ten words, one cent.

Levying writ of execution and return thereof, one dollar.

Levying writ of possession, with the aid of the county, three dollars and fifty cents.

Levying writ of possession, without the aid of the county, two dollars.

Summoning grand jury, including mileage, to be paid by the county, eight dollars.

Summoning petit jury, including mileage, to be paid by the county, sixteen dollars.

Summoning special jury, for each person impaneled, twenty-five cents.

Serving notice of motion, or other notice or order of court, fifty cents.

Executing writ of *habeas corpus*, and return, one dollar and twenty-five cents.

Serving writ of restitution, and return, one dollar and twenty-five cents.

Calling inquest to appraise any goods and chattels which he may be required to have appraised, sixty cents; and to each appraiser, to be taxed as costs, one dollar.

Advertisement of sale in newspaper, in addition to the printing, sixty cents.

Advertising in writing for sale of personal property, one dollar.

Posting notices of sale of real property, one dollar.

Executing writ or order of partition, two dollars.

Making deed for lands sold on execution or order of sale, two dollars.

Committing prisoner to prison, or discharging therefrom, fifty cents.

Opening court, and attending thereon per day, to be paid by the county, four dollars. But this *per diem* shall not be construed to apply to deputies, and shall not be allowed for attendance on justices' or probate courts.

Commission on all money received and disbursed by him on execution or order of sale, order of attachment, decree, or on sale of real or personal property, shall be, for each dollar not exceeding four hundred dollars, three cents.

For every dollar above four hundred dollars, and not exceeding one thousand dollars, two cents.

For every dollar above one thousand dollars, one cent.

In all cases in the district court where persons, in whose favor the execution or order of sale is issued, shall bid in the property sold on execution or decree, the sheriff or master making such sale shall receive the following compensation: If the amount for which the property is bid in shall be one thousand dollars or less, the sum of five dollars, and no more; if the amount for which the property is bid in be more than one thousand dollars, the sum of ten dollars, and no more.

For boarding prisoner, per day, not exceeding seventy-five cents, to be determined by the board of county commissioners.

For distributing ballot-boxes to the various precincts, two dollars per day and mileage.

For executing death-warrant, such fee as the board of county commissioners shall deem reasonable and just, to be paid by the county.

In all cases where personal property shall be taken by the sheriff on execution, or on an order of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value of the same as in case of sale. (*As amended, Sess. Laws 1881, c. 77.*)

§ 10. The sheriffs of the several counties, for performing the duties required by law to be performed by them in the probate or justices' court, shall receive the same fees as are allowed for similar service in the district court, to be taxed against the proper party or parties by the probate judge or justice.

Sheriffs and other officers to make return of their fees on writs in criminal cases when returned. See Appendix, c. 39, *§ 10a.

CORONER.

§ 11. The coroner shall be entitled to charge and receive the following fees:

For a view of each body, and taking and returning an inquest, five dollars.

For a view of each body and examination without inquest, three dollars.

For taking information, fifty cents.

For issuing subpoenas, warrant, or order for a jury, fifty cents.

For qualifying an inquest, fifty cents.

For administering oath or affirmation to witness, ten cents.

For each adjournment, fifty cents.

For taking deposition, drawing and returning inquisition, for each ten words, one cent.

For each mile traveled to and returning from an examination or inquest, ten cents.

For physician making *post-mortem* examination of dead body, ten

dollars, which fee shall be paid out of the county treasury when they cannot be obtained from the estate of the deceased; but in all cases of murder or manslaughter, out of the goods, chattels, lands, and tenements of the slayer, if he hath any, otherwise by the county, with mileage for distance actually traveled to and from the place of securing the dead body.

For all other services rendered, the same fees as are allowed the sheriff, and mileage. (*As amended, Sess. Laws 1881, c. 75.*)

MASTER IN CHANCERY.

§ 12. A master in chancery shall be entitled to charge and receive the following fees:

For copying any paper or instrument of writing, taking testimony, for every ten words, one cent.

Swearing each witness, ten cents.

Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.

And such additional fee as the court shall allow, not exceeding in any one cause the sum of ten dollars.

Certificate and seal, twenty-five cents.

Taking affidavit, twenty-five cents.

For all services pertaining to the sale of real estate, the same fees as are allowed by the law to the sheriff in like cases.

FEEES IN PROBATE COURT.

§ 13. The judge of the probate court shall be entitled to charge and receive the following fees:

Filing petition for appointment of administrator, executor, and guardian, or for the revocation of the same, fifty cents.

Granting letters testamentary or of administration, when not contested, seventy-five cents, and when contested or opposed, one dollar and fifty cents, and for order revoking the same, fifty cents.

Hearing any complaint, or an application for the appointment of a guardian, fifty cents.

Appointing a guardian, fifty cents; and when one guardian shall be appointed for more than one person at the same time, twenty-five cents for each person after the first, for whom such guardian shall be appointed.

Judgment or order for probate of will, when not contested, seventy-five cents; when contested, one dollar and fifty cents.

For reducing to writing the testimony of witness, in cases required by law, ten cents for every one hundred words.

Certificate of probate attached to will, twenty-five cents.

Recording will and certificate of probate, ten cents for every one hundred words.

For issuing warrant of arrest, or to compel attendance, fifty cents.

For every commitment to jail of any person, fifty cents.

Recording letters testamentary and of administration, and bond, in each case, one dollar.

Judgment or order for settling an estate, fifty cents.

Order for distribution, fifty cents.

Order of sale of personal or real estate, fifty cents.

Examining and allowing an inventory, fifteen cents for each folio.

Administering an oath to an executor, administrator, or other person, in cases provided for by law, ten cents.

Examining and passing upon accounts of executors, administrators, guardians, and other persons, for the first folio, twenty-five cents, and for each additional folio, ten cents.

For each citation, summons, or other process, twenty-five cents.

Issuing a commission to examine and pass upon claims against an estate, or to partition property, fifty cents.

Appointment of appraisers of the property of an estate, fifty cents.

Approving and filing a bond given on an appeal, twenty-five cents.

Approving bonds of administrators, executors, or others, twenty-five cents.

Order for an allowance to a family, widow, or minor children, twenty-five cents.

Order for sale of personal estate, or for publication of any notice, or any other ordinary order in proceedings before him, where no other provision is expressly made, twenty-five cents.

Making and entering order confirming sale, fifty cents.

For issuing order to show cause, twenty-five cents.

Filing petition for sale of property, and hearing same, fifty cents.

Each order for sale of real estate to pay debts of an estate, fifty cents.

Extending time for settling on an estate, on examining and allowing claims against an estate, twenty-five cents.

Granting reference of accounts of executors or administrators, or allowing report thereon, fifty cents.

For a bond of executors, administrators, or guardians, on an appeal, twenty-five cents.

Disallowing application for letters of administration, or probate of a will, to be paid by the party applying, fifty cents.

Proportioning an insolvent estate among the creditors, seventy-five cents.

Entering the account of an executor, administrator, or guardian, ten cents for each folio.

Entering each oath of an executor or administrator, ten cents.

Searching the records or files in his office, for each year, twenty-five cents.

Every judgment, decree, or order in nature of judgment, not otherwise provided, fifty cents.

Recording any matter required to be recorded, not otherwise herein provided for, ten cents for each folio; and when any will or other

matter is recorded in any other than the English language, for each folio, twenty cents.

For a translation of any will from any other language, for each folio, twenty-five cents.

Copies and exemplifications of the probate of any will, of letters testamentary, or of administration, or of any other proceeding or order had or made before him, or any other papers filed or recorded in his office, transmitted on appeal, or furnished on the request of any person, for each folio, ten cents.

And in counties having a population of over five thousand people, the judge of the probate court of each of said counties shall receive an annual salary of three hundred dollars per annum in addition to the foregoing fees, to be paid quarterly by the county. (*As amended, Sess. Laws 1883, c. 102.*)

§ 14. **Repealed.** Sess. Laws 1881, c. 109.

COUNTY TREASURER.

§ 15. Each county treasurer shall receive for his services the following fees:

On all money collected by him for each fiscal year, four per cent.

On all sums collected, percentage shall be allowed but once, and in computing the amount collected for the purpose of charging percentage, all sums, from whatever source derived, shall be included together.

For advertising and selling lands for delinquent tax, an additional fee of five per cent., to be paid only so far as the lands are actually sold, and out of the fund received therefor, and to be collected in each case where the lands are sold, and from the purchaser; but for all other cases and services the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, territorial or county warrants.

For each and every levy he or his deputy shall make on personal property, for the satisfaction of a tax or taxes, he shall receive a fee of one dollar and ten cents for every mile actually traveled by him, to be collected out of the property levied on by him, and for the sale of personal property so levied on by him he shall receive a fee of one dollar, to be collected out of the property so levied on by him. (*As amended, Sess. Laws 1879, c. 20, § 1.*)

§ 16. In all cases where persons residing out of the territory apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person. (*As amended, Sess. Laws 1879, c. 20, § 3.*)

NOTARIES PUBLIC.

§ 17. Notaries public are entitled to charge and receive the following fees:

- For each protest, one dollar and fifty cents.
- For recording the same, fifty cents.
- For taking affidavit and seal, twenty-five cents.
- For administering oath or affirmation, ten cents.
- For taking deposition, each ten words, one and a half cents.
- For each certificate and seal, twenty-five cents.
- For taking proof of acknowledgment, twenty-five cents.

JUSTICES OF THE PEACE.

§ 18. Justices of the peace shall be entitled to charge and receive the following fees:

- Docketing, each cause, twenty-five cents.
- Taking affidavit, twenty five cents.
- Filing petition, bill of particulars, or other paper necessary in a cause, ten cents.
- Issuing summons, *capias*, subpœna, order of arrest, or *venire* for jury, fifty cents.
- Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents.
- Issuing writ of restitution, and entering return therein, one dollar.
- Administering oath or affirmation to witness, ten cents.
- Entering judgment in any cause, fifty cents.
- Taking acknowledgment of deed or other instrument, twenty-five cents.
- Swearing jury, twenty-five cents.
- Copy of appeal, *certiorari*, or copy of pleadings, or other papers for any purpose, for each ten words, one cent.
- Taking depositions, for each ten words, one cent.
- Certificate, twenty-five cents.
- Issuing warrant or *mittimus*, fifty cents.
- Taking information or complaint, fifty cents.
- Discharge to jailer, twenty-five cents.
- Dismissal, discontinuance, or satisfaction, twenty-five cents.
- Written notice to party or parties, ten cents.
- Filing notice and opening judgment for rehearing, fifty cents.
- Each adjournment, fifty cents.
- Performing marriage ceremony, three dollars.
- Each day's attendance upon trial of a cause, after the first day, two dollars.
- Taking and approving bail-bond, twenty-five cents.
- Entering voluntary appearance of defendant, twenty-five cents.
- Issuing attachment, fifty cents.
- Entering motion or rule, ten cents.

Rule of reference to arbitrators, fifty cents.

Entering award of arbitrators, twenty-five cents.

Commission on money collected on judgment, without execution, shall be one per cent. on the amount.

CONSTABLES.

§ 19. Constables shall be allowed the same fees as are allowed to sheriffs for like services.

JURORS.

§ 20. For each day's attendance at any district court, as grand, petit, or special juror, to be paid by the county, two dollars.

Traveling expenses for each mile actually traveled, the mileage to be circular and paid by the county, five cents.

For juror in justice's court, each case, one dollar.

COUNTY SURVEYORS.

§ 21. Three dollars per day when actually employed, and mileage.

For each lot laid out and platted, in any city or town, twenty-five cents.

For each copy of plat and certificate, fifty cents.

Recording each survey, twenty-five cents.

For each mile actually and necessarily traveled in going to work, ten cents each way.

For establishing each corner, twenty-five cents.

For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars.

For surveying county roads, per day, three dollars.

Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

PRINTERS.

§ 22. In all cases when publication of legal notices of any kind are required or allowed by law, the person or officer desiring such publication shall be required to pay one dollar per square of twelve lines of nonpareil type, or its equivalent, for the first insertion, and seventy-five cents per square for each subsequent insertion. And in all cases of publication of notices in connection with commencement of actions in court, or sales upon execution, the plaintiff may designate the newspaper published within the county in which such notice shall be published; that in all legal advertisements fractional parts of twelve lines shall be paid for at the rate of ten cents per line of nonpareil type, or its equivalent. (*As amended, Sess. Laws 1883, c. 53.*)

ASSESSOR.

§ 23. Each assessor, or his deputy, shall receive for his services, for each and every day actually engaged, the sum of three dollars.

COUNTY COMMISSIONERS.

§ 24. County commissioners shall each be allowed, for the time they shall be necessarily employed in the duties of their office, the sum of three dollars per day, and five cents per mile for the distance actually traveled in attending the meetings of the board, and when engaged in other official duties, to be paid out of the general county fund. (*Amended as to Lawrence county, Sp. Laws 1881, c. 35.*)

WITNESSES.

§ 25. For each day's attendance before the district court, or before any other court, board, or tribunal, in all civil and criminal cases, one dollar; and for each mile actually traveled one way, ten cents: *provided*, that in all criminal cases witness fees shall be paid out of the treasury of the proper county.

TAXATION OF JURY FEES.

§ 26. There shall be paid by the party against whom a verdict is rendered in the district court, a jury fee of five dollars, to be taxed in the bill of costs; and, when collected, to be paid into the county treasury; and for each trial by the court, a fee of one dollar, to be taxed, collected, and paid in a like manner, for the use of the county.

§ 27. In each criminal case tried by a jury, upon a conviction of the defendant or defendants, there shall be taxed, in the bill of costs, a fee of six dollars as a jury fee, and judgment therefor shall be rendered against such defendant or defendants, which sum, when collected, shall be paid into the county treasury for the use of the county.

FEES IN MATTERS OF ESTRAYS.

§ 28. The following fees are allowed in cases of estrays:

To justices of the peace for issuing any warrant of appraisement, fifty cents.

For filing and entering in docket the sworn report of appraisers, fifty cents.

Taking and entering the affidavit of the taking up of any estray, fifty cents.

For posting notices of estray, and certifying copy of the sworn reports of the appraisers to the register of deeds, fifty cents.

Posting notices and selling an estray, two dollars.

Advertising estray, if published in a newspaper, three dollars.

To each appraiser, twenty-five cents.

To register of deeds, for entering certified copy of sworn report of appraisers, twenty-five cents, and for each inspection of the estray registry, ten cents.

MISCELLANEOUS PROVISIONS.

§ 29. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day.

§ 30. Officers authorized by law to take and certify acknowledgments of deeds and other instruments, are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents.

§ 31. In all actions, motions, and proceedings in the supreme, district, probate, or justices' courts, the costs of the parties shall be taxed and entered on record separately.

§ 32. The clerk of the supreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds, may in all cases require the party for whom any service is to be rendered, to pay the fees in advance of the rendition of such service, or give security for the same, to be approved by the officer.

§ 33. All officers whose fees are by this chapter determined, are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place for the inspection of all persons who shall have business in said office; and if any such officer shall neglect to keep a table of fees of his office as aforesaid, such officer shall, for such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed.

§ 34. It shall be the duty of the district court, at each term of court, to appoint a competent number of bailiffs to wait on the grand jury and court, during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

§ 35. Every officer, whose salary is in the nature of a *per diem*, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in form following:

I, A. B., do solemnly swear, or affirm, that I have been —— days necessarily and diligently engaged in the duties of my office as (insert title of office.)
[Officer's name.]

Any disbursing officer of this territory who shall pay any portion of the salary of any officer aforesaid, before such oath or affirmation is taken and subscribed, shall forfeit to this territory the sum of fifty dollars, which forfeiture may be sued for by any tax-payer.

Approved February 17, 1877.

FEES OF CHAPLAINS.

CHAPTER XLIV., Laws of 1874-5. An Act to Establish the Fees of Chaplains.

§ 1. *Be it enacted by the Legislative Assembly of the Territory of Dakota*, that the fees for chaplains elected by the council and house of representatives shall be two dollars (\$2.00) per day for services rendered during the session of the legislative assembly. Said fees shall be paid out of any moneys in the territorial treasury not otherwise appropriated.

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved December 30, 1874.

CHAPTER XL.

PUBLIC EDUCATION.

An Act to Establish and Provide for the Maintenance of a General and Uniform System of Common Schools, and Improve Their Usefulness.

§ 1. **Common school system established—officers.** *Be it enacted by the Legislative Assembly of the Territory of Dakota*: A general and uniform system of free public common schools is hereby established and shall be provided for and maintained in all parts of this territory included within organized counties. Those schools which are within incorporated cities, towns, and villages which now have or may hereafter have boards of education, shall be governed by such laws as now are or may hereafter be in force concerning them; but this act shall not apply to or govern such boards of education except in those matters wherein it specifically refers and applies to them. All other public schools shall be established, maintained, and governed under this act, and for their organization and government, and the administration of the affairs of all public schools, so far as they have relations thereto, the following officers shall be appointed, elected, or otherwise designated, with the various powers and duties provided in the several laws to them relating, viz.:

A superintendent of public instruction for the territory; deputy superintendent of public instruction for the territory; a county superintendent of public schools for each organized county; a board of education for every incorporated city, town, or village entitled thereto, and having the membership and subordinate officers provided by law; a school board consisting of three members for every organized school

COMPENSATION

- of assistant superintendent of public instruction. See Appendix, *c.* 40, *§ 172.
- fish commissioner. See Appendix, *c.* 41, *§ 23.
- stenographer. See Appendix, *c.* 59, *§§ 3, 4.
- secretary of territory in certain cases. See Appendix, *c.* 39, *§ 36.
- judge of first judicial district. See Appendix, *c.* 39, *§§ 37-42.
- trustees of deaf and dumb institute. See Appendix, *c.* 54, *§ 4.
- attorney general. See Appendix, *c.* 55, *§ 8.
- surveyor and engineer. See Appendix, *c.* 56, *§ 31.
- county auditor. See Appendix, *c.* 57, *§ 14.
- trustees of reform school. See Appendix, *c.* 58, *§ 3.
- officers of insane hospital. See Appendix, *c.* 51, *§ 4.
- commissioners of insane. See Appendix, *c.* 51, *§ 41.
- officers of penitentiary. See Appendix, *c.* 53.

(To face page 550.)

township; and such other officers as may be by law provided or associated with these in duty. (*Sess. Laws 1883, c. 44, § 1.*)

SCHOOL CORPORATIONS.

§ 2. Powers of school townships. Every organized school township is hereby declared a distinct municipal corporation for school purposes, by the proper corporate name of the school township, and by such name shall be capable and have power to contract and be contracted with; to sue and be sued in any court having competent jurisdiction; to take by grant, gift, bequest, or devise, and hold and dispose of, and convey, any real or personal property or estate, and to so take, hold, and dispose of the same whether transferred in terms to such corporation by its proper name and style, by designation, or to any person or persons, or body or officer, for it, for the use and benefit of common schools and for school purposes; and such property, while used or appropriated for such school purposes, shall not be levied upon or sold by virtue of any warrant, writ, execution, or other process, nor be subject to any judgment lien, nor be subject to taxation for any purpose whatsoever; and the title of the school-houses, sites, lots, furniture, books, apparatus, and all appendages and appurtenances, and all other property belonging to any such corporation for school purposes, and all such property in this act mentioned and within such corporation, shall be vested in said corporations respectively. This section, and the powers in this act granted to such corporations and the school boards thereof, shall not be construed to prevent the alteration of the boundaries of any such corporation for the good of schools or for necessary civil purposes. (*Id. § 2.*)

SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 3. Territorial superintendent—how appointed, etc. At each biennial session of the legislative assembly, the governor shall nominate, and by and with the advice and consent of the legislative council appoint, a person of suitable learning, ability, and experience as superintendent of public instruction, who shall hold his office for two years, and until his successor is appointed or elected and qualified, and who shall be a territorial officer. When any vacancy occurs in said office by death, resignation, or otherwise, the governor shall appoint some skilled, suitable, and qualified person to the vacancy, and the person so appointed shall hold the office for the remainder of the term and until his successor is appointed or elected and qualified. The governor is authorized to remove from office any superintendent of public instruction who violates, or fails to faithfully discharge, the duties of his office, and to appoint a successor as herein provided. The superintendent of public instruction shall qualify, as provided by the Political Code, before entering upon the duties of his office. (*Id. § 3.*)

§ 4. **Duties of superintendent.** It is the duty of the superintendent of public instruction to make and preserve a record of his official acts; to faithfully and constantly labor to promote the interests of public schools and education throughout the territory and in all the organized counties thereof; to visit the common schools therein, confer and advise with the county superintendents and teachers, direct and aid them in the efficient, systematic, and thorough organization of common schools, and encourage the opening and maintenance of additional schools when necessary; to prescribe and furnish blank forms for the collection of statistics and making reports of all the schools and school property within the territory, and of the receipt and disbursement of all public school funds. He shall also make a careful study of the school system from his own experience and that of others in the territory, and shall open such correspondence with other territories and states as shall be necessary to enable him to secure useful information of systems and improvements therein, and embody the results of such study in recommendations in his reports to the governor, and make such redraft of our school laws or prepare such amendments for the same as in his judgment are necessary to the more successful conduct of our schools, the care of our school funds, and the improvement of our system. (*Id.* § 4.)

§ 5. **Powers and duties of same.** He shall have power to grant certificates of qualification to persons of proper learning, ability, and experience, who hold, or would be competent to receive, first grade certificates in a county, and who are, besides this, specially meritorious, or who are graduates of normal schools, which shall authorize them to be employed and to teach in any public school in Dakota for the period of five years from and after the date thereof, and for every such certificate he may charge and receive a fee of not more than five dollars. He shall prescribe the examinations to be made by county superintendents to test the acquirements of candidates for certificates, and the respective degrees thereof which shall be required of teachers for licenses of different grades. He shall secure as far as possible uniformity in the practical working of the school laws and in the standards of qualification for teaching, and to this end may attend examinations by county superintendents, and is authorized to inspect at any time the records of county superintendents, and the examination and other papers on file in their offices; and he shall in all respects strive to render the school system and its operations efficient and useful to the people. (*Id.* § 5.)

§ 6. **Shall require reports—duty where funds are misappropriated.** He shall require and seek to secure prompt, full, and accurate reports of all statistical and financial matters required by law or useful to the system, from every officer required to make them, and shall endeavor by every means in his power to prevent all waste and every unlawful payment of school funds. If he

learns of any misappropriation or unlawful detention, embezzlement, or other criminal misuse of public school revenues or funds by any officer or person, he shall immediately inform the district attorney within whose district the act occurred, and it shall be the duty of such district attorney to promptly prosecute all such offenses, and bring actions in the name of the proper school corporations for the recovery of all such funds and revenues. (*Sess. Laws 1883, c. 44, § 6.*)

§ 7. **Compensation, mileage, etc.—shall furnish blanks—appropriations.** The salary of the superintendent of public instruction shall be fifteen hundred dollars a year, which shall be paid to him in equal parts for each calendar month after the end thereof, by warrant of the territorial auditor upon the territorial treasurer, upon his filing with the auditor his receipted account therefor. He shall also receive necessary mileage or traveling expenses for travel required in his duties to an amount in all not exceeding four hundred dollars a year. He is also authorized to procure the necessary stationery, blanks, postage, and record and account books, for his office, and to rent proper office room and provide the necessary desks, cases, tables, chairs, and other furniture necessary and required for the safe and proper keeping of books, papers, and correspondence, and to make convenient, advantageous, and accessible to the public the office and its records, books, and exhibits of educational apparatus and material, to an amount in all not exceeding five hundred dollars a year. He shall also cause to be prepared and printed, and shall furnish to the several county superintendents, the proper blanks necessary and required for their reports and for teacher's certificates, and for the reports of the officers of the school corporations, and of all teachers of public schools which are required to report to them, in their respective counties, all of which blanks shall be furnished to the number of not less than three for every such officer and teacher, and such additional number as the law may require to be used; to print circulars of instruction to the various school officers and distribute them through the county superintendents; and the account for all such blanks and printing shall not exceed fifteen hundred dollars a year. All accounts made by him for salary, for traveling expenses, for office rent and expenses, printing, postage, and stationery, and for blanks and instructions, shall be stated in detail, showing the items and the cost of each, and shall be separate for each of the four general purposes above mentioned and described; and the appropriations for these several general purposes shall be known in law, and in the accounts of the superintendent and auditor and other officers, respectively, as the salary fund, the mileage fund, the office fund, the blank fund, and a separate account shall be kept for each. Every account shall be officially certified by him as true, correct, and just, and shall be receipted to the territory of Dakota before payment. The auditor shall under no consideration audit and allow accounts against either of said funds in

any year beyond the amount appropriated therefor, but all the unexpended balances in any year may be carried over and expended in the subsequent year. There is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, the sum of fifteen hundred dollars each year for salary of the superintendent of public instruction, the sum of four hundred dollars a year for traveling expenses, the sum of five hundred dollars a year for the office expenses, and the sum of fifteen hundred dollars each year for the purchase of blanks and printing instructions. (*Sess. Laws 1883, c. 44, § 7.*)

§ 8. **Text-books, appeals, etc.** The superintendent of public instruction shall discourage the use of sectarian books for any purpose, and sectarian instruction in any form, in the schools, and shall advise in the selection of books for school township libraries. He shall examine and determine all appeals duly made to him from the decision of any county superintendent in all matters of difference arising between persons or officers in the administration of the school laws, except as limited under the sections governing decisions by county superintendents, and his decision of such appeals shall be final. Said appeals shall only be taken from the decision of the county superintendent upon the questions at issue, and then only in writing to the county superintendent, who shall upon receipt thereof forward to the territorial superintendent a brief and orderly statement of the case, together with the papers and evidence relating thereto, and the decision of the territorial superintendent shall be made in writing, indorsed upon such statement or upon paper attached thereto. (*Id.* § 8.)

§ 9. **Annual report.** The territorial superintendent shall, on or before the fifteenth day of December in each year, prepare and present to the governor a report in writing of his official acts for the preceding year, with a full statement of the condition of the public schools in the territory, the collection and expenditure of the public school funds and revenues, and statistics of the school population, number, and grade and duration of schools, attendance of pupils, wages of teachers, and other facts and statistics showing the condition, progress, and character of the public schools and of school property. He shall discuss any subject relating to public education he may deem important to the welfare of the schools, and make such suggestions as are required to advance, improve, and support them, together with drafts of law or amendments thereto which he may recommend; which report, with all accompanying papers, the governor shall submit to the next session of the legislative assembly with his message. (*Id.* § 9.)

COUNTY SUPERINTENDENT.

§ 10. **County superintendent—bond, etc.** The qualified electors of the several organized counties shall, at the same time and in the same manner that other county officers are chosen as provided

by law, elect a suitable person, either male or female, of proper character, ability, and experience, to be superintendent of public schools within such county, who shall hold office for two years from and after the first Monday in January next succeeding his or her election, (except when elected to fill a vacancy, when he or she shall immediately qualify and enter upon the duties,) and until his successor is elected and qualified. Before entering upon the discharge of his duties he shall take and subscribe an oath or affirmation that he will support the constitution of the United States and the laws thereof governing this territory, and that he will faithfully discharge the duties of his office, (naming it,) which oath shall be filed in the office of the county clerk. He shall also execute a bond in the manner required by law, with one or more sureties, in the penal sum of five hundred dollars, which bond shall run to the county, be approved by the county board, and filed in the office of the county clerk: *Provided, however,* that the board of county commissioners of the proper county shall have power to dismiss from office any county superintendent for immorality, intemperance, incompetency, or general neglect of duty; but no county superintendent shall be dismissed without giving him written notice, under the hand of the county clerk, attested by the seal of his office, twenty days or more before the day for the next regular session of the board of county commissioners, at which the cause shall be heard. The said notice shall state the charges preferred, the character of the instrument in which they were preferred, whether petition, complaint, or other writing, with the name or names of those preferring the same. If the board find the charges true, they shall dismiss the county superintendent and appoint a proper person to the vacancy, to hold as provided by law. This provision for the dismissal of a county superintendent shall not affect the powers granted by chapter twenty-two of the Political Code, but the proceedings authorized thereby may be taken against the county superintendent the same as if this law were not passed. Whenever used in this act or other law as referring to the county superintendent of public schools, the words he, his, or him, or like words, shall be also understood in the feminine gender. (*Sess. Laws 1883, c. 44, § 10.*)

§ 11. Compensation, mileage, etc. The county superintendent shall receive three dollars for each day actually employed in the discharge of the duties of his office, and the sum of ten cents a mile for each mile actually traveled by him in the necessary discharge of his duties. In addition thereto, every county superintendent shall receive from his county not less than fifty dollars nor more than four hundred dollars for each year he shall serve, to be fixed by the board of county commissioners of his county and paid to him quarterly as the salaries of county officers are paid. He shall also be allowed a reasonable amount, not less than actual cost, for record-books, stationery, and postage for the necessary use of his office and in his duties. He shall make out in detail his account for services

and mileage, stating date and time employed, kind of services rendered, and number of miles actually and necessarily traveled in his duties, which account shall be signed and verified by his affidavit, to the effect that the account and each item thereof are true. Said account may include in the same statement all and any of the several kinds of charges herein authorized, except salary, and may be rendered quarterly and filed with the county clerk for the board of county commissioners, who shall at their next session thereafter audit and allow the same, and the amount thereof shall be paid by warrant out of the county general fund. The superintendent may in such account charge for less than an entire day of service, but only by half or quarter day items. No order for paying such account shall be issued to any superintendent for the last quarter of any year, who shall have neglected to transmit his report to the territorial superintendent as required by law, and who does not show the receipt of that officer for such report, stating that it is satisfactory in matter and form. Instead of such receipt he may prove that such report was sent by registered mail, and furnish his own affidavit that it was correct in matter and form. (*Sess. Laws 1883, c. 44, § 11.*)

§ 12. **Powers and duties.** The county superintendent shall have the general superintendence of the schools in his county, except those under the management of boards of education. He shall visit each common school and graded school within his county at least once in each year, and oftener if he shall deem it necessary for the purpose of increasing their usefulness, and shall strive to elevate, as far as practicable, the poorer schools to the standard of the best. At such visit he shall examine the condition of the school in all respects, the mental and moral instruction given, the order and government prevailing, and the progress of the pupils in sound learning, and substantial training and knowledge, the teacher's ability, fitness for the school, and aptness to teach; and he shall especially observe the character of the primary instruction, and advise proper methods of practice and drill, and encourage aptness in teaching this grade. He shall further advise and direct the teacher concerning the government, discipline, and instruction of the pupils, and the course of study to be pursued and order of exercises to be observed; and shall adopt and urge such plans as will tend to improve the schools, and bring all as nearly as may be to the same course of study; and he shall record, and may permit the publication of, suitable notes of his inspection of each school. (*Id.* § 12.)

§ 13. **Duties.** The county superintendent shall encourage teachers' institutes and associations, and shall labor in every practicable way to elevate the standard of teaching, urge the continued employment of successful teachers, encourage the immigration of skilled teachers, and prevent by all proper means the employment of incompetent and inefficient teachers, and seek to make the employment of all teachers by officers a responsible public duty for the pub-

lic advantage, and to be free from favor or affection and sectarian interest. In all controversies arising in the administration of the school law, including differences about schools, school funds, and school townships, and all appeals from the decisions of school township boards, the opinion of the county superintendent shall be sought, whence an appeal may be taken to the territorial superintendent on a written statement of facts, certified to by the county superintendent, accompanied by the necessary papers. He shall at all times carry out and execute the decisions and instructions of the territorial superintendent, and shall constitute the medium between the territorial superintendent and subordinate school officers and teachers and schools: *Provided*, that nothing in this act shall be so construed as to change or abridge the jurisdiction of any court in cases arising under the school law, nor the right of any person to bring an action in any court in any case arising thereunder. (*Id.* § 13.)

§ 14. **Office room, books, etc.** The county superintendent may provide a suitable office for the transaction of his public business, and the board of county commissioners may authorize and audit accounts for such expenditures for the use and furniture of his office as they may deem just and reasonable. He shall keep a book of record of his official acts, and safely keep all books, records, and papers belonging to his office and transmit them to his successor. All books and pamphlets, circulars of information, and other publications by and from the bureau of education of the United States, and all official publications of this territory, and other public documents and books relating to education officially received by him, shall be deemed public property, and at least one copy of each thereof shall be kept in his office, and, with other public property and records, delivered to his successor. He shall prepare for the board of county commissioners, if not previously supplied, a correct sectional map of the county, showing the boundaries and names or numbers of all school townships, and he shall furnish a similar map each year to the county or township assessors in time to enable them to perform their duties correctly. (*Id.* § 14.)

§ 15. **May administer oaths.** The county superintendent shall have power to administer oaths of office to all subordinate school officers and to certify the same, and to witnesses, and to examine them under oath in cases of appeal, of petition, of revoking the certificate of a teacher, and in all controversies and questions arising in the administration of the school laws brought or coming before him for opinion, order, or decision, but he shall not receive additional pay for administering such oaths. Such oaths administered by him shall have the same binding force and legal effect as those authorized by chapter twenty of the Political Code, under the same conditions and penalties. (*Id.* § 15.)

EXAMINATION OF TEACHERS.

§ 16. **Teachers' examination.** The county superintendent shall hold public examinations of all persons over the age of eighteen years, offering themselves as candidates as teachers of common schools, at the most suitable place in his county, on the first Tuesday of April and the last Tuesday in September of each year, notice of which shall be given publicly as possible; at which times he shall examine them by a series of written or printed questions, requiring answers in writing, so far as suitable and required by the question list furnished him by the territorial superintendent, and, in addition thereto, questions may be asked and answered orally; and if, from the ratio of correct answers compared with the per cent. required by the territorial superintendent and the other evidences disclosed by the examination, including particularly the superintendent's knowledge and information of the candidate's successful experience, if any, the applicant is found to possess a knowledge and understanding, together with aptness to teach and govern, which will enable such applicant to teach, in the common schools of the territory, orthography, reading, writing, arithmetic, geography, English language and grammar, and United States history, said superintendent shall grant to such applicant a certificate of qualification, if he is satisfied the applicant is a person of good moral character. (*Sess. Laws 1883, c. 44, § 16.*)

§ 17. **Grades of teacher's certificate.** Such certificates shall be of three regular grades: the first grade for the term of two years, the second grade for eighteen months, and the third grade for twelve months, according to the ratio of correct answers of each applicant, and other evidences of qualification appearing from the examination. In addition to these regular certificates, the superintendent may grant a certificate of probation to any applicant, otherwise qualified, who shows aptness to teach and govern, who comes within ten upon each of the subjects of examination, of the standard required for a third grade certificate. Such certificate of probation shall be for the term of six months, and shall be issued once only within the territory, and shall not be repeated to any person, but all holders thereof must thereafter secure at least a third-grade certificate, or be rejected. For a certificate of the third grade or of probation, the applicant is excused from examination upon United States history. (*Id. § 17.*)

§ 18. **Who entitled to five years' certificate.** All persons of good moral character, who are graduates of any normal school of good reputation in the United States, shall, upon presentation of their certificate of graduation, or of the completion of a teacher's course, or regular diploma from such school, be granted a certificate by the superintendent of public instruction for the term of five years, which shall be known as a professional certificate: *provided*, such applica-

tion is made within three years after the date of such diploma or certificate; or if, after that period, the applicant presents evidence that he has taught school regularly for not less than six months in the three years preceding such application. (*Sess. Laws 1883, c. 44, § 18.*)

§ 19. **Qualified teachers—certificates valid for what time.** Any person over the age of eighteen years, securing and holding any such certificate, is a qualified teacher within the meaning of this act, and no person shall be employed to teach in any of the common schools of the territory unless such person shall hold and present a certificate issued from the proper territorial or county authority, and in full force at the date of the employment; and any teacher who shall commence teaching any such school without a certificate then in force, shall forfeit all claim to compensation out of the public school fund or revenue for the time he or she so teaches without such certificate; and, if a teacher's certificate shall expire by its own limitation within six weeks of a close of a term of employment, such expiration shall not have the effect to stop the school or stop the teacher's pay, but both may lawfully continue to the close of such term. All school officers are prohibited from making contracts employing persons to teach not known to them to be qualified, as in this section provided; and all such contracts made with those not so qualified are null and void. The certificates issued by a county superintendent shall be valid only within the county where issued, except a first-grade certificate, which shows on its face that it is issued the second term upon regular examination, which shall be valid throughout the territory. (*Id.* § 19.)

§ 20. **Fee for certificate—institute fund.** Every applicant for a certificate shall pay one dollar to the county superintendent, and persons applying at any other time than at regular examinations must show satisfactory reasons for not attending them, and pay the sum of two dollars additional for the superintendent's time and services in making the special examination. All money received from the one-dollar payments shall constitute an institute fund for the county, and shall be paid out by the county superintendent to employ competent conductors, and to pay other necessary expenses of teachers' institutes to be held within the county. This fund shall be used whenever it amounts to sixty dollars or more, and may be so used more often; and at the end of each year the county superintendent shall submit a full and accurate statement of the receipts and disbursements of this fund, verified by his oath, to the board of county commissioners. (*Id.* § 20.)

§ 21. **Revocation of certificate.** The county superintendent is authorized and required to revoke and annul at any time a certificate granted by him or his predecessors, or by any other county superintendent, and at the time in effect and use in his county, while in force, for any cause which would have authorized or required him

or them to refuse to grant it, if known at the time it was granted, and for incompetency, immorality, intemperance, crime against the territorial law, cruelty, or general neglect of the business of the school; and the revocation of the certificate shall terminate the employment of such teacher in the school where he or she may be at the time employed; but the teacher must be paid up to the time of receiving notice of such revocation. The superintendent must immediately notify the clerk of the school corporation where the teacher is employed, and may notify the teacher, through the clerk, of such revocation, and must enter his action in such case of record in the books of his office. (*Sess. Laws 1883, c. 44, § 21.*)

§ 22. **Same.** In proceedings to revoke a certificate the county superintendent may act upon his personal knowledge, or upon competent evidence obtained from others. In the latter case, action shall be taken only after fair hearing, and the teacher must be notified of the change, and given an opportunity to make a defense at some time and place stated in such notice. Upon his own knowledge, the superintendent may act immediately without notice. When any certificate is revoked the teacher shall return it to the superintendent; but, if the teacher refuse or neglect so to do, the superintendent may issue notice of such revocation by publication in some newspaper printed or largely circulated in the county. (*Id.* § 22.)

SCHOOL TOWNSHIPS.

§ 23. **Organization of school townships.** School townships may be organized in any county, whether townships are organized for civil purposes or not; but, when organized both as school townships and civil townships, the boundaries and name shall be the same for both purposes. Where civil townships are now organized the school townships may also be organized with the same boundaries and name. Both may be organized at the same time, or either first and the other afterwards. This act, except wherein otherwise specifically declared, shall apply to and govern school townships only when organized as distinct municipal corporations for school purposes, as declared in section two of this act. When organized as school townships they shall be known in law, and in all transactions whatever, under the proper name and style of each as a school township, as, "_____ school township of _____ county, territory of Dakota." (*Id.* § 23.)

§ 24. **Commissioners to divide county.** The board of county commissioners of each county shall, before the first day of June, eighteen hundred and eighty-three, proceed to divide the county into school townships, (except when already divided into civil townships,) fix and determine the boundaries thereof, and number the same, and in so doing shall have regard for natural boundaries; but the number of school townships shall not exceed the number of congressional town-

ships, or fractional parts thereof, greater than one-half in any county. The board of county commissioners shall, in the performance of their duty, call to their aid and counsel the county superintendent of public schools, and, if a different person, may call before them also the predecessor of that officer for his or her testimony and advice, and hear any citizens who are interested, or who are well informed of the topography and settlement of the county. And the county superintendent shall prepare and present before them a carefully prepared map of the county, which shall show the boundaries of all school-districts and other school corporations in the county, the location of all rivers, lakes, and marshes, or other topography that would affect school travel; the location of all railroads built or under construction, and of all cities, towns, and villages; and shall carefully locate thereon every school-house of the value of one hundred dollars or more. (*Sess. Laws 1883, c. 44, § 24.*)

§ 25. **Same.** After carefully weighing all these facts, and having regard thereto, the board shall so divide the county into school townships as will best subserve and promote the permanent interests and welfare of the public schools in the whole county, so that not less than four primary schools may be in one school township when settled, and so that the township shall have when settled sufficient area and population and number of schools to furnish opportunity of choice between schools, and to support a more advanced graded school from the patrons of all. To secure these ends they may include as many as four congressional townships, or parts thereof, in one school township. The board of commissioners may change the boundaries of these school township the same as may be provided by law for changing the boundaries of civil townships; and a change of boundary for one purpose changes it also for the other, and the boundaries and limits, as well as the name, shall be and remain the same for school purposes, and for civil and political purposes. (*Id. § 25.*)

§ 26. **Name of school township.** The school townships so formed and bounded shall be known by the number given to each by the county board until a name is adopted, and at the first township meeting the electors of each school township shall choose by ballot a name for their respective township, to be substituted in lieu of the number fixed by the county board, which shall be recognized by such board, and entered upon their records, after which such township shall be known and designated in law and all business by the name so elected; and should the electors of any school township fail to choose a name, as provided, the county board shall select one, and so record it, and notify the school township. (*Id. § 26.*)

§ 27. **County clerk to transmit plat.** The county clerk shall, within thirty days after the first school township election held as herein provided, transmit to the territorial auditor a plat of the

county showing the boundaries and name of each school township therein, and shall record a copy of the same, together with all the proceedings of the county board had and done under this act, in a proper book to be kept for that purpose. (*Sess. Laws 1883, c. 44, § 27.*)

§ 28. **If two names are alike.** If the auditor, on comparing the report with those previously received, finds that any two or more, whether school or civil townships, have the same name, he shall transmit to the county, the report of which was last received, the name of the township to be altered, and the county board shall, at their next meeting thereafter, adopt for such school township a new name, different from all those heretofore adopted, so that no two townships, civil or school, shall have the same name, and when such name is adopted the county clerk shall inform the auditor thereof, and note the same in the proper county record. (*Id. § 28.*)

§ 29. **Civil townships to become school townships, when.** All civil townships now organized shall become school townships by the election and qualification of the officers thereof as herein-after provided; but before they are so organized, and before the first day of June, eighteen hundred and eighty-three, the board of county commissioners of the county in which they are organized shall carefully reconsider the boundaries, area, and situation thereof, in all respects as provided herein for dividing a county into school townships, and shall, so far as necessary, change and rearrange the boundaries thereof so as to render the townships suitable and convenient for school purposes, as well for civil purposes, and they may, to this end, discontinue and consolidate townships, and otherwise suitably rearrange and fix anew their boundaries and limits. If any township be discontinued the county clerk shall report the fact and the name thereof to the auditor. (*Id. § 29.*)

§ 30. **Officers of school township.** The officers of every school township shall be a director, clerk, and treasurer, who shall be qualified electors of the county and residents of the township, and shall each be elected to serve for the term of three years and until his successor is elected and qualified, except in the organization of school townships they shall be elected for parts of such term, and so that the term of the first treasurer shall expire on the thirtieth day of June, eighteen hundred and eighty-four, or eighteen hundred and eighty-seven, or in terms of three years thereafter, and the term of the first clerk shall expire on the thirtieth day of June, eighteen hundred and eighty-five, or eighteen hundred and eighty-eight, or in terms of three years thereafter, and the term of the first director shall expire on the thirtieth day of June, eighteen hundred and eighty-six, or eighteen hundred and eighty-nine, or in terms of three years thereafter, in order that the terms of all officers of each kind in the territory shall expire in the same year, and one of the three officers shall retire, one be chosen annually. (*Id. § 30.*)

§ 31. **Election in school township.** An election shall be held in every school township upon the Tuesday before the last Saturday in June, in the year eighteen hundred and eighty-four, and each year thereafter, at which such officers shall be elected as are by law to be chosen, and such other questions may be voted upon at such election as may be submitted in pursuance of law. There shall be but one poll in each school township for such election, and the director and treasurer thereof, with one other person, being an elector, chosen by the voters present at the opening of the poll, shall act as judges of election, and the school township clerk and the clerk of the civil township shall act as clerks of election, and if there be no civil township clerk, or if any of the judges or clerks be absent or fail to act, such qualified electors of the township as may be present at the place of voting, shall fill the vacancies by vote upon motion then made, and the persons so chosen, being qualified electors of the township, shall serve. The officers of the township shall serve under their oaths of office, and one of them shall administer the oath required by law to the persons so chosen to act as judges or clerks. In the absence of all such officers the oath to one or more of the judges shall be administered by some person authorized by law to administer oaths, and the oath to the other judges and the clerks may be administered by a judge so sworn. The polls shall close at four o'clock P. M., and the ballots shall be immediately counted and the votes canvassed. The elections shall be held and conducted in the manner prescribed by the statutes of the territory providing for and governing general elections, except as in this act provided, and the votes shall be canvassed as provided by general law, and the results shall be certified and returned both to the clerk of the school township and to the county clerk, and to the clerk of the school township the ballot-box and ballots shall be returned. The certified return to the county clerk must be upon one of the regular poll-books. (*Id.* § 31.)

§ 32. **First election — procedure.** The first election held in any school township already organized as a civil township shall be held by the officers of the civil township as provided by law for elections in civil townships, and the officers thereof shall make the returns as provided in that law, and the clerk of the civil township shall immediately transmit to each person elected a certificate of his election. In school townships not organized as civil townships the county officers shall give the notices of the first election and appoint the election officers for each poll, the same as required by the general election law; and the sheriff shall serve the papers and with the county clerk do all other duties and make all provisions for the election as provided for general elections. The returns shall be made as above required to the county clerk, and the other returns shall be made to the township clerk after his qualification, and the election board shall in each case immediately make and transmit to the person having the highest number of votes for each office, a certificate of his election

to the office (naming it) signed by at least two judges and one clerk of election. (*Sess. Laws 1883, c. 44, § 32.*)

§ 33. **Certificates of election.** In all elections after the first in school townships, the school clerk shall, within three days after the canvass of the votes as hereinbefore provided, sign and transmit to each person elected to any office in the school township, a certificate of his election to the office, naming it fully. In the first election the school clerk shall, immediately after he qualifies, certify to the county clerk the name chosen for the township. (*Id. § 33.*)

§ 34. **Vacancies.** When any vacancy occurs in any office of a school township by death, resignation, ceasing to be a resident of the township, or otherwise, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school township; or, if that be the vacant office, by the director; or, if two offices become vacant at the same time, by the remaining officer; and the county superintendent shall immediately appoint in writing some qualified elector of the school township who shall qualify and serve until the next annual election of the school township, when a successor shall be chosen for the unexpired term, if any, or for the succeeding term. The county superintendent shall at the same time notify in writing the county clerk and the clerk of the school township of every such appointment. (*Id. § 34.*)

QUALIFICATIONS OF OFFICERS.

§ 35. **Treasurer—qualifications of.** The treasurer of every school township shall, before entering upon duty as such, give bond to such corporation, conditioned that he will faithfully and impartially discharge the duties of his office, (naming it fully,) and render a true account of all monys, credits, accounts, and property of every kind that shall come into his hands as such treasurer, and pay and deliver the same according to law. Such bond shall be in a penal sum equal to double the amount of money, as near as can be ascertained, to come into his hands as such treasurer in any one year, and shall have two or more sufficient sureties, to be approved by the director and clerk of the township. In case the director or clerk, or either of them, neglect or refuse to approve such bond and the sureties thereto, such treasurer may present the same to the county superintendent or the judge of the probate court or the clerk of the district court of the county, and serve notice thereof upon the director and clerk, or the one thereof who refused or neglected to approve the bond; and due proof of such service being made to the officer to whom the bond is presented for approval, he shall, unless good cause for delay appear, proceed to hear and determine the sufficiency of the bond and sureties thereto, and may approve the same, and such approval shall be in all respects valid. (*Id. § 35.*)

§ 36. **Additional bond from treasurer.** The director and clerk, or the county superintendent, may at any time require a new and additional bond from such treasurer, and shall require a new or additional bond whenever the amount of money to come into the hands of such treasurer shall be equal to three-quarters of the penal sum of such bond, or upon the failure, death, or removal from the county of any of the sureties, or for other sufficient reason. (*Id.* § 36.)

§ 37. **Forfeiture of bond.** All such bonds shall be filed with the county clerk, and in case of the breach of any condition thereof, the director (and in case of his failure or refusal so to do, the county superintendent) shall cause an action to be commenced and prosecuted thereon in the corporate name of the school township, and any money collected shall be paid into the county treasury, to be applied to the use of schools as part of the special fund of the said township. If such director and county superintendent both fail or refuse to bring such action upon the breach of the bond, then any tax-payer of the township may cause such action to be commenced and prosecuted; and the necessary expense of such action shall be paid, unless otherwise ordered by the court, out of the special fund of the township. (*Id.* § 37.)

§ 38. **Oath of treasurer.** Each treasurer shall take and subscribe on the back of his bond, or a paper attached thereto, to be certified by the officer administering it, an oath that he will faithfully and impartially perform all the duties of his office (naming it fully) as provided by the condition of his bond written within. (*Id.* § 38.)

§ 39. **Oath of school officer.** Every director and clerk of a school township shall, before entering upon his duties, take and subscribe upon the back of his certificate of election or appointment, or upon paper attached thereto, an oath that he will faithfully and impartially perform all the duties of his office, (naming it fully,) which oath shall be filed with the county clerk. (*Id.* § 39.)

§ 40. **Affirmation.** Any person who is conscientiously scrupulous of taking an oath may be allowed to make affirmation, adding at the end thereof the following: "This I do affirm under the pains and penalties of perjury." (*Id.* § 40.)

§ 41. **Penalty for refusal to qualify.** Every person duly elected to the office of director, clerk, or treasurer of any school township, who shall willfully neglect or refuse, for the period of one month after his election, without sufficient cause, to accept and qualify for such office and serve therein, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of twenty-five dollars to the special school fund of his township, which amount may be recovered from him in a civil action before any justice of the peace in the county, at the suit of any officer or tax-payer of his district or township. (*Id.* § 41.)

§ 42. **Proceedings to recover moneys.** If any person shall refuse or neglect to pay over any money in his hands as treasurer of a school township to his successor in office, such assessor must without delay bring action upon the official bond of such treasurer for the recovery of such money. (*Sess. Laws 1883, c. 44, § 42.*)

POWERS AND DUTIES OF THE BOARD.

§ 43. **General powers.** The school board of the township shall exercise its corporate powers, and shall have charge and direction of the public schools and their affairs therein, and the control and management of its schools and all school property belonging to it, both real and personal, and in the discharge of these duties they shall have power:

1. **Shall provide school-house.** To purchase, sell, exchange, and hire school-houses and rooms, lots or sites for school-houses, and to fence and improve them as may be suitable and proper; but they shall erect or purchase no school-house upon leased ground.

2. **Same.** Upon such sites or lots as are now owned by school-districts, and upon others purchased or taken according to law, to build, enlarge, alter, improve, and repair school-houses, out-houses, and appurtenances as to them may seem advisable and necessary.

3. **Have custody of school property.** To have the custody and safe keeping of the school-houses, out-houses, books, furniture, appurtenances, library, and other school property of the township, and to see that all laws of the territory, and the rules, regulations, or ordinances of any town, village, or township relating thereto, are properly observed and enforced.

4. **Have power to establish schools.** To organize, locate, and establish conveniently such and a sufficient number of schools as are necessary for the education of all the children of school age within the township, and to discontinue or change any of them.

5. **Employ teachers.** To contract with and employ all teachers in said schools.

6. **Pay teachers.** To pay the wages of such teachers out of the moneys apportioned and provided by law for the purpose of public common schools in the township.

7. **Pay contingent expenses.** To defray the necessary contingent expenses of the schools, of the board, and other expenses for school journals and publications and for Webster's Unabridged Dictionary for each school, which they are authorized to purchase.

8. **Adopt rules.** To have in all respects a proper supervision and management of the common or public schools of the township, to make and adopt rules and regulations for their organization, grading, government, and efficient instruction, and for the reception of pupils not residents of the township, or the transfer of pupils from one school to another, and generally for their good order, prosperity,

and utility; and to prescribe and adopt the text-books that shall be used in the schools.

9. **Prepare reports.** To prepare and forward the reports required by law, and perform all required duties concerning them.

10. **Make rules for care of school property.** To make such rules as may be necessary and proper for the protection, safe-keeping, care, and preservation of school-houses, lots, sites, appurtenances, books, and all other school property.

11. **Procure books, etc.** To purchase, sell, exchange, improve, and repair school apparatus, books for needy pupils, furniture, and appendages for the school-house, and to provide fuel for the schools; and, if they deem it advisable, to purchase class and text books, and stationery and other necessary articles required by pupils in their school work, and sell and rent them to the pupils in the schools under their control and management.

12. **Graded schools.** They shall also have power, as hereinafter provided, to establish, maintain, and control graded schools, or such modified graded schools as may be practicable, and provide for the instruction therein of pupils from the primary schools of the township who are sufficiently advanced.

13. **Two-room school-houses.** They may locate and build one school-house at some convenient and accessible point in the township which shall have two school-rooms, and in one of these may be held a regular primary common school, and in the other shall be taught a more advanced school, to which shall be admitted all such pupils in the township as are properly advanced in their studies to enter the same. When the township is of a larger area than a congressional township, they may so locate and build two or more such school-houses, and open and maintain such an advanced school in each. This they may do upon their own motion, and without the special authority required for regular graded schools. (*Id.* § 43.)

§ 44. **School-houses to be numbered.** All the school-houses in a township shall be numbered by the board from one upward, and record shall be made of such numbers, and thereafter the school-houses and schools shall be known and referred to in all matters, and in contracts with teachers, and in the minutes and proceedings of the board, by this number, so assigned and recorded, which numbers shall be the same for school-houses and schools therein, and when more than one school is held in one house they shall be otherwise distinguished by their grade. (*Id.* § 44.)

§ 45. **Time schools shall be taught.** All the schools in a township shall be taught an equal length of time, as nearly as the same can practically be done, without regard to the diversity in the number of pupils attending the different schools, or in their ages or advancement in learning or the cost of the school. The school board

calendar month, and at a stated time and place, so as to accommodate those having business with them, and may hold stated or special meetings more frequently by resolution of the board; or any member of the board may call such special meeting by giving or sending in writing twenty-four hours' notice thereof to the other members. And all meetings of the board shall be public, and all matters requiring the action, decision, or order of the school board shall be acted upon at a meeting of the board when two or more of the members are present, and a record shall at the time be made by the clerk, or, in his absence, by the director, in the record-book, to be kept by the clerk, of all motions, orders, decisions, directions, and other proceedings of the board; and no action shall be legal and valid that does not receive the votes of two members of the board. When no resolution of the board declares otherwise, the stated monthly meetings will be held at the house of the clerk on the first Saturday in each month, at the hour of seven o'clock P. M. When assembled in any meeting, stated or special, they may transact any lawful business of the school township. (*Sess. Laws 1883, c. 44, § 48.*)

SCHOOL MONEYS AND FUNDS.

§ 49. **Funds, how designated.** All money received by the school township from township taxes, from subscription, donation, sale of property, penalties, or any other source whatever, except from apportionment by the county or territory, shall be called the special school fund; and all moneys apportioned by the county superintendent from the county school fund, or from the territory of the United States, shall be called the tuition fund. The treasurer shall keep one general account, wherein shall be set down upon the debit side all the money he shall receive as such treasurer from all sources whatever, each item of entry showing plainly the source of the particular payment to him, with the date thereof; and he shall set down upon the credit side all the money he shall pay out for all purposes whatever, each item thereof showing to whom and for what purpose each payment was made, with the date thereof. The total of the debit side shall always be balanced by the total of the credit side, with the funds on hand added thereto. At the beginning of every school year he shall open such accounts anew for that year, and the first item shall be an entry on the debit side of the balance on hand, if any, from the preceding year.

Treasurer's accounts, how kept. He shall also keep a separate set of accounts of different classes of receipts and expenditures, showing severally the following:

RECEIPTS.

- The amount received into the special fund from all sources.
- The amount received by apportionment.
- The amount received from sale of bonds.
- The amount received from all other sources.

EXPENDITURES.

The amount paid for school-houses, sites, furniture, and appendages.

The amount paid for teachers' wages,

The amount paid for incidental expenses.

The amount paid as interest on bonds.

The amount paid upon debts and liabilities not included in other items.

These several accounts shall be separately kept, and are not required to balance, but the accounts for different classes of receipts shall be kept separately from the accounts of the different classes of expenditures, but every entry in each shall fully and clearly designate its source of purpose, with the date. (*Sess. Laws 1883, c. 44, § 49.*)

§ 50. **Warrants, how signed, etc.** The clerk shall draw and sign all warrants for the payment of money for any purpose legally ordered by the board, whether for the regular school purposes of the township, to pay judgments or other authorized payments, except principal and interest on bonds, which shall be paid on the presentation of the coupons and bonds, as when provided for them. The director shall sign all such warrants, and they shall be paid by the treasurer in the order of their presentation, and when presented, so long as there is any money whatever in the treasury, except money raised and necessary to pay interest on bonds or the principal of bonds, for which purposes sufficient funds shall always be reserved and so applied. Every warrant shall specify the purpose for which the money is paid, and the person, firm, or corporation to whom paid. In case the treasurer has no money applicable to the payment of the warrant, he shall indorse it, "Presented this ———, and not paid, for want of funds," inserting the date of presentment in the blank, and sign the indorsement, and if he has money to pay a portion of the amount he shall pay so much of the warrant, and shall indorse thereon the date and amount paid, and add "the balance not paid, for want of funds," and sign the same, and interest at eight per cent. per annum shall accrue upon the amount unpaid of all warrants substantially so indorsed, from the date of such indorsement. (*Id.* § 50.)

§ 51. **Payment of warrants.** A memorandum shall be made and kept by the treasurer of all such indorsements, and of the name and post-office address of the then holder of the warrant, and whenever sufficient money is received in the treasury to pay these warrants, or any one of them, the treasurer shall immediately notify by letter, postage paid, such holder thereof, and interest shall cease on such warrant at the end of seven days after such notice is sent. The treasurer shall reserve and use a sufficient amount of money to pay all such indorsed warrants, from the first money received there-

after for any purpose, except money received or held to pay interest and principal on bonds. (*Sess. Laws 1883, c. 44, § 51.*)

§ 52. **School tax.** The county clerk of each county shall, at the time of making the annual assessment and levy of taxes, levy a tax of one dollar on each elector in the county for the support of common schools, and a further tax of two mills on the dollar upon all the taxable property in the county, to be applied to the same purpose, to be collected at the same time and in the same manner as prescribed by law for the collection of taxes, which taxes when collected shall be distributed to the several school corporations in the county in proportion to the number of children resident in the territory of each, over seven and under twenty years. (*Id. § 52.*)

§ 53. **Certain funds to be applied to schools.** All fines, forfeitures, and pecuniary penalties prescribed as a punishment for crime, and collected under the general codes, laws, and acts of the territory; and all money paid into the county treasury for licenses to sell intoxicating liquors; all moneys received by the county as proceeds from the sale of estrays; and all money paid as an equivalent for or as an exemption from military duty, and all moneys due the county for school purposes, in any manner or from any source, shall be faithfully collected by the county treasurer, and shall when collected be paid into the treasury of the proper county and be added to the funds provided in the preceding section for the support of schools, and be distributed at the same time as therein provided. (*Id. § 53.*)

§ 54. **County treasurer to make payment.** All money received under the two preceding sections, by tax or from other sources, shall constitute the county general tuition fund; and the county treasurer shall, on the first Mondays in January, April, July, and October in each year, furnish the county superintendent of public schools with a statement of all the moneys in the county treasury belonging to this fund, and he shall pay the same upon the order of the said superintendent to the treasurers of the respective public school corporations in the county. (*Id. § 54.*)

§ 55. **Apportionment of school funds.** The county superintendent shall, as soon as he receives the statement of the county treasurer, provided for in the preceding section, apportion such amounts to the several public school corporations within the county in proportion to the number of children residing in each over seven and under twenty years of age, as the same shall appear from the last annual reports thereof, and he shall immediately notify by mail, or otherwise, in writing, each school treasurer of the amount of money due his school corporation, and he shall draw his orders upon the county treasurer in favor of the several school treasurers aforesaid for the amount so apportioned to each school corporation, and he

shall deliver said orders to said treasurers upon their application, taking their receipt therefor. (*Sess. Laws 1883, c. 44, § 55.*)

§ 56. **Order for money not to be delivered, when.** The county superintendent shall not deliver said order for money so apportioned to any treasurer, unless the bond and oath of such treasurer, duly approved and certified, are on file in the office of the county clerk, or, in case of boards of education, a certificate from the secretary or clerk of the board that the treasurer thereof has duly qualified. (*Id. § 56.*)

§ 57. **Duty of county treasurer to collect taxes.** It shall be the duty of the county treasurer to collect the taxes for school purposes at the same time and in the same manner that the county and territorial taxes are collected; and full power is hereby given him to sell the property, or any property, for school taxes, the same as is now by law provided for other taxes; and he shall execute a tax deed upon tax sales of property made for school taxes the same as is provided in the case of other taxes, and he shall receive the same fees as is provided in case of other taxes. He shall collect all delinquent school taxes as by law provided for other taxes, and he shall pay the same over to the school treasurer entitled thereto, less his fees and cost of collecting; and if any county treasurer shall refuse to deliver over on the order of the superintendent any money in his possession, or shall use, or permit to be used, for any other purposes than are specified in this act, any school money in his possession, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. (*Id. § 57.*)

§ 58. **Refunding taxes improperly collected.** Whenever any error may be discovered in any school tax or tax-list the township school board may order any money so improperly collected to be refunded, and nothing in this act shall prevent or limit the power of any board of county commissioners, or any mayor and council of any city, or president and trustees of any town or village, to exercise all the powers given them by law to equalize tax-lists, correct errors, and refund any tax or abate any part thereof. (*Id. § 58.*)

§ 59. **City schools entitled to proportion of school funds.** The public schools of every city, town, or village which may be regulated by special law in the charter thereof, or by other special acts, or by any general act, providing boards of education therefor, shall be entitled to receive their proportion of the county general tuition fund: *provided*, that the clerk or secretary of the board of education thereof shall make report to the county superintendent of the census of children of school age therein, at the time and in the manner prescribed in this act for other school corporations. (*Id. § 59.*)

§ 60. **Moneys donated—how disposed of.** Whenever any sum of money shall be paid into the county treasury by an educational aid society, or benevolent person or persons, for the cause of education, the county treasurer shall issue to such society or person a certificate of deposit, stating the amount of money received, from what source, and for what purpose the same is applied, whether to the payment of teachers' wages, the building or leasing of school-houses, or the purchase of a site, and the particular school corporation or corporations to which said money is donated; and the said educational fund may thereafter be drawn from the county treasurer by order of the county superintendent of schools, and applied by the school board of the proper corporation to the object specified in the certificate of donation. Any school corporation may accept and receive such donations directly, and accurate account shall be made of all such funds by the officers or corporations that handle or use them. (*Id.* § 60.)

§ 61. **Liability for money lost.** If, by neglect of any treasurer, any school money shall be lost to any school township which has been received from the county treasurer, such school treasurer shall refund and pay to such township the full amount of money so lost. (*Sess. Laws 1883, c. 44, § 61.*)

§ 62. **Quarterly payments of school funds.** The treasurer of each school township shall apply for and the county treasurer shall pay over to him all of the school money collected for such township, when notified by the county clerk, in writing, that such school treasurer has qualified and filed his oath and bond as provided by law. But one such notice of qualification is required during the term of each school treasurer, and when a new one is appointed for any reason, or the incumbent has become disqualified, the clerk of the proper school board and the county superintendent shall so inform the county clerk, who shall also inform the county treasurer. Such payments shall be made four times per year, of the amount on hand as reported by the treasurer. Any person who so draws school money from the county treasury, who is not at the time a duly qualified treasurer of the school corporation for which he draws the money, and authorized to act as such, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not less than twenty-five dollars, and not more than double the amount of the money so drawn, if beyond twenty-five dollars, which fine shall, when collected, be paid into the special school fund of the township for which the money was unlawfully drawn. (*Id.* § 62.)

§ 63. **When treasurer guilty of embezzlement.** Every treasurer of a school township who shall loan any portion of the money in his hands belonging to such township, whether for consideration or not, or who shall expend any portion thereof for his own or any other person's private use, is guilty of embezzlement, and shall, upon conviction, be punished as provided by law. And no

treasurer of a school township shall pay over or deliver the school money in his hands to any officer or person, or to any committee, to be expended by him or them, but all public school fund shall be paid out only by the proper treasurer as hereinbefore provided. (*Sess. Laws 1883, c. 44, § 63.*)

TOWNSHIP SCHOOLS.

§ 64. **Census of school children.** The clerk of every school township and every board of education and school corporation shall make, or cause to be made, each year, an enumeration of all the children who are residents within the limits of the corporation on the first day of June, who are over seven and under twenty years of age, but shall exclude from such enumeration all such persons who are married. The clerk of the school township, in making such enumeration, shall first, in a column, list the names of parents, guardians, or heads of families having charge of such child or children, but only one in each case,—first the father, if he is living; then the mother, if he is not living; and the same in other cases. Opposite each name, in appropriate columns, he shall enter the names of all the children in charge of the person so named, the males in one column and the females in another column. Upon taking the first enumeration he shall ask each person so having children in charge to which school he or she desires to be attached within the township, and the school selected shall be set down by its number in a proper column. All such persons so selecting a particular school shall be considered as forming and belonging to the particular school so selected, and they shall not be allowed to attach themselves to any other school without permission from the township board, upon showing cause for the change. At subsequent enumerations the same inquiry shall be made of the parent, guardian, or other person having charge of children, whose residence has been changed, or whose child or children have become subject to enumeration since the last enumeration; and in case of change in the location of a school, or of a new and additional school-house, in the township, the enumerator shall make the same inquiry, and note the selection of all persons whose school conveniencies or advantages have been affected by any such change. (*Id.* § 64.)

§ 65. **School-districts abolished.** There shall be no districts or subdistricts, or any territorial subdivisions of a school township, but the only division shall be this of the people, and persons of school age, among and between the several schools, as patrons thereof, and these shall be based, so far as is convenient and practicable, upon the free choice of the parent, guardian, or other person having in charge the children of school age. And the township board shall permit changes from one school to another of any such persons and their families, being school children, for reasonable cause, based upon convenience or the advantage of the pupil. But the township

board may, upon the recommendation of the moderator or other evidence, transfer any pupil, or all the pupils, in any family, from one school to another in order to improve the discipline, the advantages, or the classification of pupils or schools, and may so change a part or all the children from any family; but they shall take care to wrong no one in so doing, but shall take all such action with care, for good cause, and after due consideration. (*Sess. Laws 1883, c. 44, § 65.*)

§ 66. **Who to be voters, etc.** The persons so selecting and listed as belonging to and forming a particular school, who are parents, guardians, or other persons having in charge children of school age, shall be the voters at the school meeting, and such voters or patrons of a school, and the children belonging to the school, shall be known as a school under the number assigned it by the school board of the township, and for convenience are so referred to in this act, and may be so referred to and designated in all contracts, records, notices, and other acts and proceedings, as school-house No. —, school No. —, meeting of school No. —, and like designation in all cases. All persons who are included within the definition of voters at such meetings, men and women alike, are and shall be recognized as voters therein. (*Id.* § 66.)

§ 67. **Annual meeting—proceedings.** The voters so defined and qualified and belonging to a particular school, shall meet annually on the last Saturday in August, and elect one of their number moderator of such school, who shall, before entering upon duty, take and subscribe an oath faithfully to discharge the same, which shall be certified by the officer administering it, and shall be filed with the clerk of the school township within ten days after the election, which oath and filing shall be the notice to the township school board of the election of such person as moderator. In case of failure to elect such moderator, or of the moderator to qualify and give notice, or in case of a vacancy in the office of moderator for any cause, the township school board shall forthwith appoint a moderator for said school; but any moderator so appointed may be removed and another appointed in his place upon a petition of more than one-half of the persons so entitled to vote at the school meetings thereof. Upon the organization of a township for school purposes and the enumeration for each school, and upon the location of a new and additional school, the township school board shall call and give ten days' notice of a special meeting for each school, at which said voters shall elect a moderator to hold until the next annual school meeting and ten days thereafter, unless the new moderator shall qualify before that time; and all moderators, whether elected or appointed in any such way or for any term, shall, within ten days, qualify as above provided. The moderator of each school shall preside at all meetings of the voters connected therewith, and record their proceedings. He shall also act as the organ of communication be-

tween the inhabitants and voters and the school board of the township. In the absence of the moderator, or when he declines to preside, any voter at the school meeting may, on motion, be chosen to preside, and may perform all the duties of the moderator, if necessary, in the execution of the directions of the meeting. The moderator shall take charge of the school-house and all property belonging thereto, under the general direction of, and in concurrence with, the school board of the township, and preserve the same, and shall make all temporary repairs of the school-house, furniture, fixtures, fences, and out-houses, and provide the necessary fuel for the school, and report the cost thereof to the school clerk of the township for payment by order of the township school board. He shall visit and inspect the school from time to time, and, when necessary, may exclude any refractory pupil therefrom; but the exclusion of any pupil from the school for disorderly conduct shall not extend beyond two months, and may, in the discretion of the moderator, be for any shorter period. If a pupil be incorrigible, the teacher may suspend the pupil from school for not more than five school days, but the fact must be reported to the moderator, with the reasons therefor, within two days after such suspension, whereupon the moderator must decide and order what further action shall be taken, and he may order the pupil to be restored, reprimanded, punished, or excluded, as above provided. The decision of the moderator in excluding a pupil from school shall be subject to appeal to the township school board, whose decision must be given within ten days after notice in writing to the school clerk of such appeal, and their decision shall be final. (*Sess. Laws 1883, c. 44, § 67.*)

§ 68. **Powers of annual school meeting.** The voters at school meetings as above defined may hold other school meetings at any time upon the call of the moderator or any five voters. Ten days' notice shall be given of all meetings by posting notices thereof in three of the most public places in the vicinity, and the moderator shall cause timely notice to be given of the annual meeting; but no meeting shall be illegal for want of such notice, in the absence of fraud, and the legality of such meetings and their proceedings, if called in question, shall be determined by the school board of the township, subject to an appeal to the county superintendent, whose decision shall be final. All such school meetings shall have power:

1. **Branches taught.** To determine what, if any, branches, in addition to those required by law for common schools, they desire shall be taught in such school, and the time at which such school shall begin and be taught: *provided*, that all the tuition fund appropriated to the township shall be expended within the school year for which it is apportioned, and for all the schools thereof.

2. **Fill vacancies.** To fill vacancies that may occur in the office of moderator, or elect another in place of one appointed.

3. **Repair school-houses.** To direct such repairs as they may deem necessary in their school-house, and in its furniture and apparatus, and other belongings.

4. **May petition.** To petition the township school board for the removal of their school-house to a more convenient location, for the sale of the school-house and lands therewith belonging, and for the erection of a new one, and upon any other subject connected therewith.

5. **May protest against teacher.** To protest against the employment of any particular teacher, and the township board shall not employ for that school any teacher whom the meeting decides they do not wish employed. And at any time after the commencement of any school, if any meeting, or if a majority of the voters belonging to such school, petition and ask the dismissal of the teacher, the township school board may dismiss such teacher, but only upon due notice and after good cause shown; and such teacher, if not otherwise lawfully debarred, shall be entitled to pay for services rendered. (*Sess. Laws 1883, c. 44, § 68.*)

§ 69. **Estimate to be furnished.** When such meetings shall so petition the township school board in regard to repairs, removal, or erection of a school-house, they shall also furnish to such board an estimate, as near as practicable, of the probable cost of such repair, removal, or erection. And such school board shall consider the petitions from all the school meetings and voters thereof in the township, and have a careful regard for the need of new and additional school-houses; and nothing herein contained shall prevent the board from exercising a sound discretion as to the propriety or expediency of making such repairs, removals, or erections. The board shall, in all expenditures and contracts, have reference to the amount of moneys which shall be subject to their order during the current school year, for the particular expenditures in question; and shall particularly expend for teachers' wages each year all that is apportioned to the township for that purpose, and in all things faithfully endeavor to give equal school advantages, terms, and accommodations, as near as may be practicable, to all the school children of the township; and they shall build proper public school-houses for each school as soon as resources sufficient may be properly secured. (*Id.* § 69.)

GRADED AND HIGH SCHOOLS.

§ 70. **Graded schools.** Besides the two-room school-houses and advanced schools which the township school board is authorized to locate, build, and open, under section forty-two of this act, and in addition thereto, whenever a school township has within and belonging to it four or more common schools, and owns and has well-furnished good and sufficient school-houses for them, the township school

board may submit to the voters belonging to the several schools the question whether a graded school shall be established and maintained for the township. The proposition shall be accompanied by a careful estimate of the probable cost of the building proposed for such school, including furniture therefor and the cost of the site, and the proposed location of such school, with a statement of the method proposed for raising the necessary funds for building and furnishing the school-house. The proposition shall be made in writing, and copies of the same, signed by at least two members of the school board, shall be delivered to the moderator for each of the several schools, and shall fix a day, at least forty days in advance, when the school meetings shall be held to consider the same. The moderator for each school shall at once, and not less than thirty days before such meeting, post notices of the same, stating plainly the time, place, and purpose of the meeting, in not less than five of the most public places in the vicinity, and within the school territory. At the meeting the question shall be presented by the moderator, or some voter in his place, and, after due consideration, the vote shall be taken before adjournment. If a majority of the voters entitled to vote at the school meeting favor the proposition, it shall be declared carried, and, if not, it shall be lost; and no such proposition shall be declared carried without the affirmative vote of a majority of all who would be entitled to vote, if present at the meeting. The moderator shall certify the action of the meeting, and the number of affirmative and negative votes, to the township school board. If a majority of the school meetings so authorized to be held in the township, and of the school voters in the township, favor the proposition, the township school board shall execute the plan proposed as nearly as may be, and shall not increase the total cost of site, school building, and furniture more than ten per cent. beyond the estimate submitted, under any pretense or claim of necessity whatever, unless previously authorized thereto by a majority of the schools and of the voters of the township. (*Id.* § 70.)

§ 71. **Proceedings to procure graded schools.** Instead of submitting the proposition for a graded school to the several school meetings for their consideration and action, a majority of the voters entitled to vote at any such meeting may sign and assent thereto in writing. This assent shall be signed upon and to the copy of the proposition made by the board, which shall contain all the points required in the preceding section. These several propositions shall be in all cases identical in terms and conditions, whether to be voted upon, or signed and assented to. When such assent is duly signed, the paper should be filed with the clerk of the school township, and shall have the same authority and legal effect as an affirmative vote of the school meeting duly called and held as required by the preceding section towards adopting the uniform proposition so submitted. Part of the schools may so assent in writing, and part may act upon the proposition by the meeting duly called; and when the township

school board has so received, by vote of meetings or written assent, the affirmative vote of a majority of the schools, and a majority of the school voters of the township, in favor of a graded school, they are authorized to proceed as in the preceding section provided. (*Id.* § 71.)

§ 72. **Concerning graded schools.** The graded school herein provided shall be more advanced in grades and studies, and in the learning, skill, and experience of their teachers, than the common or graded schools otherwise provided for in this act. The school board of the township may, in the corporate name of the school township, receive and use donations of land for sites, and money and materials for erecting and furnishing buildings, for such graded schools, from individuals, communities, towns, villages, or other bodies or persons, and may accept and use buildings and other property suited to such use. When such donations are sufficient to supply the site and buildings without cost to the township, the board may expend the money necessary to furnish the building and its different rooms, and may open and maintain the graded school without submitting the question to a vote. The graded schools shall not be opened and taught more than six months in one school year without authority from a majority of the schools and voters, to be obtained in the manner hereinbefore provided for obtaining authority to erect and open a graded school, but when the authority is once given, it cannot be reduced for two full school years thereafter by action of the schools or the voters, but the board of the school township may so reduce it. (*Id.* § 72.)

§ 73. **Advanced schools.** When no graded school of any kind is established and maintained in a school township, the school township may employ a teacher more advanced in learning, skill, and experience in one or more of the common schools, wherein the accommodations are ample, and the attendance of primary pupils is not large, and may authorize the more advanced pupils from two or more of the schools to attend one of such schools. Such schools shall not be taught longer than the other common schools of the township, and the board must take care not to overcrowd such schools to the detriment in any manner of the comfort, thorough instruction, and progress of pupils in the primary classes. The township board is further authorized to open and have taught one or more advanced schools for the admission and instruction of pupils from all the township for the period of two months after the regular common schools close, or before they open, or during the vacation therein, if the terms of other permit it, and to these schools shall be admitted the more advanced pupils from other schools under such rules as the board may prescribe. The board may also employ, temporarily, and for a limited term each year, a skilled instructor in penmanship, who shall instruct the pupils of the schools for not more two hours upon any day, visiting as many different schools each day as practicable, and the several teachers in the township may be required to meet at one

school-house and receive such instruction in penmanship for three hours a day for not less than three Saturdays in the school year. (*Sess. Laws 1883, c. 44, § 73.*)

§ 74. **Transferring pupils.** The township school board is further authorized, upon the recommendation of a moderator, to transfer any pupil, whether advanced or not, for convenience, better discipline, the good of the schools, or other good cause, from attendance upon one school to another; and when a pupil has, from sickness or other unavoidable cause, been prevented from attending the school to which he belongs for a considerable period, so as to affect his classification and advancement, the board may authorize such pupil to attend another school a reasonable time, if one be in session, or may provide for his admission to a school in another township. When a school in another township is more convenient for the pupils from any family, or any part of them, the board is authorized to contract with such township for the admission of such pupils to the schools thereof, and to pay for the same out of the funds of the township; but they shall not pay such tuition for a longer period than the schools are taught in their township, and not less than the time for which schools are provided by law to be kept open. The board of any township may also admit non-resident pupils into schools in their own township upon such contract, taking care not to overcrowd their own schools. The school board may also admit any other pupils to the primary or graded schools upon paying in advance the tuition per month they may fix. (*Id. § 74.*)

§ 75. **Joint graded schools.** The school board of two or more distinct municipal corporations for school purposes shall have power, when thereunto authorized by their respective townships, as hereinbefore provided, to establish a joint graded school or schools, or such modifications of them as may be practicable, and provide for admission into them from the primary schools of the respective corporations of such pupils as are sufficiently advanced for such admission. The school boards of the corporations shall jointly have the care and management of such graded schools. They shall purchase suitable grounds, and erect proper buildings thereon, and the title to all such property, and the furniture and apparatus necessary and required for such purpose, shall vest jointly in the corporations so establishing the graded schools. The boards shall jointly select and employ the teachers therefor. The several corporations shall pay equal shares of all costs and expenses for such schools, unless they agree upon other terms, which they are authorized to do. Such schools shall be free from charge for tuition, and equally open to all qualified pupils from all parts of each corporation uniting in establishing and maintaining them. (*Id. § 75.*)

§ 76. **Petitions by inhabitants of township.** The inhabitants of any part of a township who have ten or more children of school age, may petition the township school board, showing in their

petition that they have that number of children of school age, and that none of them live nearer than a mile and a half to any school-house in the township; that they are permanent residents, and desire the location of a school and the building of a school-house to accommodate their community. The board shall carefully consider the petition, and shall grant and carry out its requests so far and so soon as they are able to do so with the resources at their command, and with equal regard to the requirements of other parts of the township. From a refusal to grant any such request the petitioners may appeal to the county superintendent of public schools, who shall fully hear both parties and decide; an appeal may be taken from his decision to the territorial superintendent. If the final decision be in favor of the petitioners, the township board shall proceed as early as practicable to locate and open a school, and, when the resources can be provided, to build and furnish a school-house proper and convenient for the petitioners, and for other residents near them. (*Id.* § 76.)

§ 77. **Location of school-houses.** The school board of a township shall not locate, build, or remove any school-house nearer than one mile to any boundary of the school township, and not nearer than two miles to any other public school-house; but this provision shall not apply to school-houses in cities, towns, or villages, whether incorporated or not, which have seventy or more resident persons of school age, nor to union graded schools belonging to two or more corporations. (*Id.* § 77.)

§ 78. **Members of school township boards, how chosen.** When there are three or more schools in any school township, but a single member of the township school board shall at any time be elected, appointed, or otherwise chosen, or shall qualify and hold office as one of the board from the same school, or the territory thereof; and when there are two schools, but one shall so hold from each, and the other shall be chosen or appointed from the territory not included by any school; and when there is but one school established in a township, but one member shall be chosen therefor, and the remaining members from the territory not so included. When an officer is elected or appointed contrary to the provisions of this section, such election or appointment is void, and it shall not affect the title to office or the right to act of the officers who were previously elected and qualified. (*Id.* § 78.)

§ 79. **Use of school-house for other purposes.** If a majority of the legal voters of any school desire the use of the school-house of such district for other purposes than common school when unoccupied for common school purposes, the township school board may, upon such application, authorize the moderator for such school to permit the people, under careful restrictions, to use the house for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, without any regard whatever to

the numerical strength of any religious denomination or political party in such school township or county. (*Sess. Laws 1883, c. 44, § 79.*)

TEACHERS AND SCHOOLS.

§ 80. **Educational papers.** The clerk of a school township is authorized to subscribe for and take school or educational periodicals and publications to the value of two dollars a year for each school in the township, but not exceeding in all ten dollars a year for the whole township, and he shall draw a warrant upon the treasurer of the township for the amount of such subscriptions, and the director shall sign such warrant and the treasurer pay it out of the special fund. When but one publication is so taken, it shall be a weekly, and as much as three dollars may be paid therefor; and all periodicals and publications shall be circulated among the teachers of the township, at township institutes and otherwise, and shall be carefully preserved and delivered to other teachers or returned to the clerk, and the board may make rules governing the use and circulation of the same. To further encourage educational study the township board is further authorized to pay each teacher in its employ, who teaches four months or more in the township in any school year, one dollar each year, if such teacher satisfies the board that he subscribes and pays two dollars or more in the year for educational periodicals taken by him. (*Id.* § 80.)

§ 81. **Township institutes.** At least one Saturday in each month during which the public schools may be in progress shall be devoted in each township to township institutes or model schools, and normal instruction and matters relating to methods of teaching, organizing, classifying, and governing schools, and for the improvement of teachers, and two Saturdays may be so used, at the discretion of the township board. Such institute shall be presided over by a teacher, one of the board, or other person designated by the school board. Each teacher shall attend the full session of each institute in the township, contemplated herein, and participate in the duties and exercises thereof, or forfeit one day's wages for every day's absence therefrom, unless such absence is occasioned by sickness of the teacher, or of others to whom their attention is due. When the county superintendent is present he may preside at and conduct such institute, and it is his duty to visit and inspect the schools of a township immediately before his meeting with such institute, and there give special attention to the defects and needs of the instruction and government of the schools. (*Id.* § 81.)

§ 82. **Who entitled to school privileges.** The common schools provided for by this act shall be at all times equally free, open, and accessible to all children over seven and under twenty years of age, residents of the school townships where they are held, or entitled to attend the school under any special provision of this

act, subject to the regulations herein made, and to such as the several school boards of the townships may prescribe, which shall always be equal and just, and never in conflict with the law. (*Id.* § 82.)

§ 83. **Branches to be taught.** In every common school there shall be taught to all pupils of sufficient capacity to properly attend to the same, the following branches of a common English education: Orthography, reading, writing, geography, arithmetic, English language lessons and grammar, and United States history, unless it is excepted by the board in any particular school; or so many of said studies as the ability and advancement of each pupil will permit in the judgment of the teacher; also such other branches as may be required in any school by vote at the school meeting, or may be agreed upon by the school board and the teacher: *provided*, that a more advanced course of studies may be prescribed by the township boards for the graded schools herein provided. (*Id.* § 83.)

§ 84. **Teacher's qualifications and contract—conditions.** Teachers shall be employed only upon the exhibition of a certificate valid in the county where employed, and then only upon a written contract signed by the teacher and at least two members of the township school board, which shall specify the date at or about which the school shall begin, the length of time it shall continue, the wages per month, and the time of payment thereof; and said contract shall be so signed in duplicate, and one copy filed in the office of the clerk and the other retained by the teacher. The following conditions shall be understood as forming a part of every such contract, whether expressed therein or not:

1. The teacher shall not hold school upon any legal holiday, but such days shall count as part of the term and the teachers be paid therefor, but such pay shall not be drawn for any Saturday or Sunday.

2. School shall be adjourned during any time that an institute is held in the county, to attend which the teachers have been notified by the county superintendent, and the teachers shall draw pay for and have counted as part of the term one-half day for every day's actual attendance upon the institute, as certified by the conductor of the institute or county superintendent.

3. Teachers shall receive into their schools pupils transferred thereto by order of the township board or admitted by its authority.

4. The teacher is to send the notice, keep the proper entries in the register, and make the reports as and when required by law; and the school corporation shall promptly furnish, without cost to the teacher, the blank forms for such reports, and furnish for use a proper register, prepared so that the required facts and statistics can be kept in an orderly manner. (*Id.* § 84.)

§ 85. **Clerk to provide teacher's register.** The clerk of every school township shall provide one suitable school register for

each school therein, and keep the same as a part of the records of his office, except during each term of school, when the teacher shall keep said register and record therein each day, the attendance of each pupil and the absence of those enrolled, and all other items necessary for making the report in the next section required. (*Id.* § 85.)

§ 86. **Teacher's report.** Every teacher of a common school, under this law, shall, at the expiration of each term, immediately make out full duplicate reports and deliver one copy thereof, with the register, to the school clerk, and one to the county superintendent. Said reports shall show the names, ages, and sex of all pupils admitted during such term, the branches taught, the studies pursued by each pupil, the text-books used, the number of days taught, the number of days each pupil was present, the average daily attendance, the date when school began and ended, the salary per month, including board, and information concerning the school and property; and until such report shall have been so filed with the clerk the school board shall not pay more than ninety per cent. of the wages for such teacher for his or her services as such for the time required to be covered by such report. (*Id.* § 86.)

§ 87. **Teacher to give notice.** Every teacher, on commencing a term of school, shall give written notice to the county superintendent of the time and place of beginning such school, and the probable time when it will end. (*Id.* § 87.)

§ 88. **Reports, etc., to be kept in English language.** All reports and records of school officers and proceedings of all school meetings shall be kept in the English language, and if any money belonging to any school township shall be expended for supporting a school in which the English language shall not be taught exclusively, the county superintendent, or any tax-payer of the school corporation, may, in a civil action in the name of the corporation, recover for the corporation all such money from the officer or officers so expending it or ordering its expenditure. (*Id.* § 88.)

§ 89. **Penalty for disturbing school.** Every person, whether a pupil or not, who shall willfully molest or disturb a public school when in session, or who shall willfully interfere with and interrupt the proper order or management of a public school by acts of violence, boisterous conduct, or threatening language, so as to prevent the teacher or any pupil from performing their duty, shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars, or by imprisonment in the county jail not more than ten days, or by both such fine and imprisonment. (*Id.* § 89.)

§ 90. **Fine for insulting teacher.** If any parent, guardian, person having a child in charge, or other person, from any cause, fancied or real, in the presence of a school, whether at intermission, recess, during its session, or before or after the day's session, in the

presence of a considerable number of the members of the school, shall upbraid, insult, or threaten the teacher of such school, such person shall, upon conviction thereof, be punished by a fine not exceeding twenty-five dollars. (*Sess. Laws 1883, c. 44, § 90.*)

§ 91. **The Bible.** The Bible shall not be excluded from any public school, nor deemed a sectarian book. It may be read in school, without sectarian comment, not exceeding ten minutes daily, and no pupil shall be required to read it contrary to the wishes of his parent or guardian, or other person having him in charge. The highest standard of morals shall be taught, and industry, truthfulness, integrity, and self-respect inculcated, obedience to law enjoined, and the aims of an upright and useful life cultivated. (*Id. § 91.*)

PROCEEDINGS TO OBTAIN SITES FOR SCHOOL-HOUSES.

§ 92. **Obtaining school-house site.** The school board of any school township may take, by purchase and deed of conveyance in the corporate name thereof, any real property, not exceeding two acres in area, legally chosen as a site for a school-house by a resolution of the township school board, and may hold and use such tract for public school purposes, but for no other purpose. If the owner of such real property refuse or neglect to grant and convey such site to the school corporation, or is a non-resident of the county, or is absent and cannot be conveniently found, the county clerk of the county in which the real property is situated shall, upon the written application of the township school board, after ten days' notice to the opposite party, or, if they are non-residents, or absent, or cannot be conveniently found, by notice printed for four weeks in succession in some newspaper published in the county, describing the tract to be taken and naming the owner, appoint three resident freeholders of the county as assessors, who shall be sworn to faithfully perform their duties, and they shall then assess the damages the owner of such tract will sustain by taking the same for school purposes and uses; and said assessors shall directly file their written report with the county clerk, giving an exact description of the tract taken for the site and the amount of damages so assessed. If said school board shall, before taking said real property for school uses and purposes, deposit, in the name of the school township, with the county treasurer, to the credit and for the owner of the tract taken, the amount of money so assessed as damages, they shall then be fully authorized to permanently use said premises for school purposes: *Provided*, that the report of the assessors may be reviewed by the district court upon written exceptions filed by either party in the clerk's office of the district court within twenty days after the report of the assessor is filed in the county clerk's office, but this shall not delay or prevent the use of the tract for school purposes. The additional amount, if any, found in damages shall be paid by the school township: *Provided*,

further, that no site, except in a village, town, or city, shall be thus taken within forty rods of any residence, the owner of which objects to its being placed nearer, and in no case in any orchard, garden, or public park. (*Sess. Laws 1883, c. 44, § 92.*)

§ 93. **Site to be used for school purposes.** The title acquired to such school site shall be for school purposes only; and if not used for maintaining a public school thereon, for two successive years, the title shall revert to the owner of the fee, upon repayment of the original sum paid, with the value of improvements made by the school corporations, and without interest. (*Id. § 93.*)

REPORTS.

§ 94. **County superintendent's reports.** The county superintendent of each county shall make full and complete report to the superintendent of public instruction, on or before the first day of September in each year, of the school statistics of the preceding school year, showing for each school corporation in the county the following facts and statistics:

The number, name, or other proper designation of the school corporation.

The number of graded schools.

The number of ungraded schools.

The average number of days school was taught.

The number of teachers employed, males, females, and total.

The average compensation paid teachers per month, males and females separately.

The number of persons resident, between the ages of seven and twenty years, (excluding those married,) showing males, females, and total.

The number enrolled in the schools.

The per cent. of attendance of those enrolled.

The average cost of tuition per month for each pupil.

The number of school-houses erected during the year.

The number of school-houses for graded and for ungraded schools.

The total value of school-houses, including sites and furniture.

The total sittings in school-houses.

The total par amount of bonds outstanding.

The average rate of interest paid thereon.

The total amount paid to and due the officers of school corporations for services during the year.

The total amount paid the county superintendent for services, including expenses during the year.

The following financial report:

RECEIPTS.

1. The total amount on hand at beginning of the year.

2. The amount received into the special fund from all sources.

3. The amount received by apportionment.
4. The amount received from sale of bonds.
5. The amount received from all other sources.

The total school receipts.

EXPENDITURES.

1. The amount paid for school-houses, sites, furniture, and appendages.
2. The amount paid for teachers' wages.
3. The amount paid for all incidental expenses.
4. The amount paid as interest on bonds.
5. The amount paid upon other debts and liabilities not included in any other items.
6. The balance on hand at end of year.

The total expenditures, not including balance on hand.

He shall also report all private schools, academies, and colleges within his county, in a table separate from all public schools, showing the name of the school or institution, if incorporated, and, if not, by brief description, the name of the principal, or person, officer, or president in charge, the number of teachers employed, the number of pupils in attendance during the year, the value of the buildings and permanent property, the value of the endowment. (*Id.* § 94.)

§ 95. **Clerk's report.** The clerk of each school township shall, on or before the first day of August in each year, make, sign, and transmit or deliver to the county superintendent, a report in writing, covering the preceding year, and including all the facts and statistics of the school townships which are required by the preceding section to be included in the county superintendent's report, and in the same order therein required, except any item therein peculiar to the county and not belonging to the township. He shall also report the branches studied in the graded and ungraded schools separately; the names and addresses of the township school officers and the dates when their terms severally expire; and all other facts and statistics which the county superintendent may require for his report to the territorial superintendent. (*Id.* § 95.)

§ 96. **Treasurer's report.** On or before the fifteenth day of July in each year, the treasurer of each school township shall make, sign, and deliver to the clerk of the same, and deliver or transmit to the county clerk, a report in writing which shall cover all the financial accounts and transactions of the school township for the preceding school year, and shall show by items the following:

RECEIPTS.

1. Total amount on hand at the beginning of the year.
2. The amount received into the special fund from all sources.
3. The amount received by apportionment.
4. The amount received from sale of bonds.

5. The amount received from all other sources.
The total school receipts.

EXPENDITURES.

1. The amount paid for school-houses, sites, furniture, and appendages.
2. The amount paid for teachers' wages.
3. The amount paid for all incidental expenses.
4. The amount paid as interest on bonds.
5. The amount paid upon debts and liabilities not included in any other items.
6. The balance on hand at the end of the year.
The total expenditures, not including balance on hand.

The total expenditures added to the balance on hand shall equal the total receipts, but the balance on hand must not be added as part of the total expenditures. He shall also supply the clerk of the school township with any other fact which his books should show required by the clerk for his report. (*Sess. Laws 1883, c. 44, § 96.*)

§ 97. **School board to examine treasurer's report.** Before the date for the treasurer's report, or upon that date, the township school board shall hold a session, to be called by the clerk, and the treasurer shall then submit to the board all his books, accounts, and vouchers, and the board shall carefully examine the same and the items thereof, and compare the report therewith; and if they find the same to be correct and to agree, they shall indorse upon triplicate copies of the report, duly signed by the treasurer, the following: "Examined, compared, and found correct, this _____ day of _____, 18—;" and sign such indorsement upon each copy. They shall also cause the clerk to make entry in the record-book of their proceedings, the fact of such examination and comparison, and the fact whether or not the books, accounts, vouchers, and report are found correct. If the reports are so found correct, one copy shall be immediately delivered to the clerk of the school township, who shall receipt in writing therefor; another shall be immediately transmitted or delivered to the county clerk; and the third shall be retained personally by the treasurer. The clerk of the school township shall copy the report received by him in his record-book, together with the indorsement thereon, and file it in his office. If the county clerk fails to receive the copy sent to him, the clerk shall, upon notice, send him a certified copy of the report on file in his office, together with the indorsement. (*Id.* § 97.)

§ 98. **Treasurer's account.** Every county treasurer shall keep a regular account with each school corporation, in which he shall charge himself with all taxes collected by levy of the township board, and all sums apportioned to the township by the county superintendent or other authority, and all other sums received for the school township; and he shall credit himself with all payments made

to the treasurer of the school township, distinguishing between the items paid by apportionment, those from local taxes, and those from other sources. To these credits, to balance the account, he shall add all items for legal fees for collection, and other duties. These accounts shall be kept for each school year separately, beginning July first and ending June thirtieth of the following year. At the first meeting of the board of county commissioners, after the close of a school year, he shall submit an abstract of these several accounts. (*Id.* § 98.)

§ 99. **County commissioners to examine reports of treasurers.** The board of county commissioners shall, at its first session after the close of every school year, examine the reports of the treasurers of school townships and compare them with the accounts of the county treasurer, presented in accordance with the preceding section. If the reports are found correct they shall be passed and approved accordingly; and to every treasurer of a school township whose report is so approved, the board of county commissioners shall order the payment from the county general fund the sum of not less than ten nor more than twenty-five dollars, based on the relative amount of money handled and duties performed by each. The county superintendent shall also present the reports of the clerks of the school townships, and the financial statements presented therein shall be also examined and compared with the reports of the treasurers of the school townships and the account of the county treasurer, and, so far as found correct and approved, the several clerks shall be paid the same amount as is paid to the school treasurers of their respective townships, all upon warrants drawn upon the county general fund. The clerk's reports shall be retained in the files of the county superintendent's office, and those of the treasurers shall be filed by the county clerk. The superintendent shall have access to, and the privilege of examining, all treasurers' reports, and the accounts of the county treasurer with school corporations. The county board shall publish in its proceedings a statement of the school township treasurers' reports that it approves, and a list of those disapproved or not received. (*Id.* § 99.)

§ 100. **Duties of county superintendent.** The county superintendent shall actively endeavor at all times to secure the several reports of the treasurers and clerks of school townships to be correctly made, and to be delivered within the time required by law; and to promote this he shall, so far as appears advisable or necessary, visit the several treasurers and clerks beforehand, and carefully examine into their records, files, and accounts, and shall instruct them in the correct keeping, entry, and statement of the same. Immediately after the board of county commissioners has passed upon the accounts and reports of the treasurers and clerks, as required in the preceding sections, the county superintendent shall visit and inspect the accounts and records of all those whose reports have not

been received and approved, and endeavor, by his inspection, advice, and aid, to secure the prompt forwarding of their respective reports. He shall report in writing to the county clerk the fact and date of every such visit, and a brief statement of the condition in which he finds the particular office in these respects. The reports shall be made at as early a day as practicable, and shall include every such delinquent officer. (*Sess. Laws 1883, c. 44, § 100.*)

§ 101. **Duties of county commissioners.** At the next session of the board of county commissioners the county clerk shall lay before the board all these reports of inspection, and all additional reports received from such officers, and the board shall carefully examine each case upon all the facts that can be ascertained from the county superintendent, the county treasurer, and the several officers from whom such reports are due. If it be found that any treasurer of a school township has willfully or carelessly neglected and failed by that time to account for all school funds and make report thereof to the proper officers, as hereinbefore required, his office shall be declared vacant by resolution of the county board, and a successor appointed as provided by law. And if it be found that any clerk of a school township has willfully or carelessly neglected and failed by that time to make a proper report of the facts and statistics required in his report for the preceding school year, his office shall be declared vacant by resolution of the board of county commissioners, and a successor appointed as provided by law. (*Id.* § 101.)

§ 102. **Same.** The clerk of a school township may be excused from making that part of his report which depends upon the financial report by the treasurer to him, if he shows that, after reasonable effort, he has failed to receive such report. No other notice but this law and the visit of inspection by the county superintendent shall be necessary to any such delinquent treasurer or clerk, and the board of county commissioners shall, at their first session after the failure to report correctly was found, proceed to determine every such case without adjournment beyond that session. The board shall accept no excuses except those which are a reasonable compliance with the law, or serious or prolonged illness, or personal calamity or misfortune of a serious nature, or the accidental loss or destruction of books and records, or like unavoidable cause. Nothing in this act shall be taken to limit the application of chapter twenty-two of the Political Code to any of the officers of a school township, and an appeal may be taken to the district court from the action of the board of county commissioners declaring an office vacant, as hereinbefore provided; but in every such case the declaration of vacancy shall operate as a suspension of the officers, and the office shall be temporarily filled by appointment. (*Id.* § 102.)

§ 103. **School clerk's report.** In every school township the clerk thereof shall make copies of his report, when it has been

approved, and certify the same, and send or deliver one to each of the moderators therein who shall submit the same for information to the meeting of the school, or cause the same to be done, and shall keep the same for the inspection of any voter or tax-payer. (*Id.* § 103.)

§ 104. **School records shall be open to inspection.** All reports and all books, records, vouchers, contracts, and papers of all kinds relating to school-houses, schools, and school business in a township, in the office of the clerk or treasurer, shall be at all times open to the inspection of the director, who shall advise and aid toward securing correct records and accounts and legal reports; and they shall likewise be open to the inspection of the territorial and county superintendent, and any particular paper or record shall be exhibited at reasonable hours to the examination of any voter or tax-payer. (*Id.* § 104.)

§ 105. **Distribution of territorial superintendent's report.** The superintendent of public instruction shall cause his report to be printed in the month of December in each year. In those years when the report does not immediately precede a session of the legislative assembly, not more than three hundred copies shall be printed, and one copy each shall be sent to the county superintendent of each organized county, to the chief educational officer or board of every state and territory, and not less than two copies to each territorial officer, while not less than twenty copies shall be preserved in the office, and other copies may be given to libraries and prominent educational organizations and representatives. In the year to be followed by a legislative session the above number shall be printed, and an additional number sufficient to furnish not less than ten copies each to all members of the legislative assembly. The territorial auditor shall audit and draw warrants upon the treasurer for the payment of reasonable and just accounts therefor. (*Id.* § 105.)

MISCELLANEOUS PROVISIONS.

§ 106. **School month.** A school month shall consist of twenty school days, a school week of five school days, and no Saturdays shall be counted as school days. (*Id.* § 106.)

§ 107. **Penalty for false report.** Every clerk or treasurer of a school township or district who shall willfully sign or transmit a false report to the county superintendent, or willfully sign, issue, or publish a false statement of facts, purporting or appearing to be based upon books, accounts, or records, or of the affairs, resources, and credit of the school township, shall, upon conviction, be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding fifteen days in the county jail. (*Id.* § 107.)

§ 108. **Penalty for refusing to deliver books, etc.** Every clerk or treasurer of a school township or district, who shall willfully neglect or refuse to deliver to his successor in office,

whether elected or appointed to a regular term, a vacancy declared, or temporarily during his suspension, all records, books, papers, accounts, money, and other property belonging thereto, and to the township, shall, upon conviction, be fined not less than five dollars nor more than fifty dollars; and the successor shall prosecute without delay upon the official bond of such officer for the recovery of all such money. (*Sess. Laws 1883, c. 44, § 108.*)

§ 109. **Officer to qualify before performing duty.** No officer of a school township or district shall perform any duties of the office, nor receive any of the property, money, books, or papers belonging to the office, nor any money from the county treasurer, or warrant therefor, until he has fully qualified as required by law. (*Id. § 109.*)

§ 110. **Office, when deemed vacant.** If any officer, elected or appointed, of a school township or district shall fail to qualify or to give bonds as required for one month after the time required, the office shall be deemed vacant, and a successor appointed as required by law. Whenever a treasurer of a school township, by election or appointment, becomes his own successor, he shall give new bonds, and all such officers shall qualify anew upon entering upon a new term. If, from sickness or any other cause, such officer shall become incapacitated or unable to attend to the duties of his office, the fact shall be certified to the county superintendent by the remaining officer or officers of the school township, and a successor shall be appointed as to a vacancy. Ceasing to be a resident of the township shall be deemed an immediate vacation of the office. (*Id. § 110.*)

§ 111. **Responsibility for money lost.** If any treasurer of a school township or district shall by neglect lose, or suffer to be lost, any money belonging thereto, which has been received from the county treasurer, said treasurer shall forfeit such township the full amount of money so lost, and it may be recovered by an action upon his official bond. (*Id. § 111.*)

§ 112. **Penalty for money lost.** Every treasurer of a school township or district who shall loan any part of the money in his hands belonging to the township, whether for a consideration or not, or who shall expend any part thereof for his own or any other person's private use, is guilty of embezzlement, and shall, upon conviction, be punished as provided by law. (*Id. § 112.*)

§ 113. **Duty of county treasurer.** The county treasurer shall collect all moneys due the county for school purposes from fines, penalties for crimes, or other acts or failures, forfeitures, licenses, proceeds from the sale of estrays, from exemption from military duty, and all other moneys from any source, or by any law due to said school fund, and shall add the same to the proceeds of the county general school tax in his report to the county superin-

tendent for apportionment. He shall collect all delinquent school taxes as by law provided for other taxes, and at the same time, and he shall pay the same over to the treasurers of school corporations entitled thereto, less his fees and costs of collecting; and if any county treasurer shall refuse to deliver over any money in his possession upon legal order, or shall use or permit to be used, for any other purposes than are specified in this act, any school money in his possession, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. (*Sess. Laws 1883, c. 44, § 113.*)

§ 114. **Refunding moneys erroneously collected.** Whenever an error may be discovered in any school corporation tax-list, the school board thereof may order any money which may have been improperly collected on such tax-list to be refunded. The board of county commissioners may, while all taxes are collected by the county treasurer, correct and refund such improper collection of school taxes the same as for county taxes. (*Id.* § 114.)

§ 115. **Tax to pay judgment.** Whenever any final judgment shall be obtained against any school corporation, the board thereof shall levy a tax upon the taxable property in the corporation for the payment thereof. Such tax shall be collected as other school taxes, but no execution shall issue against any school corporation. Such tax or taxes shall not be greater than two per cent. in any one year, and any surplus funds in the treasury of the school corporation may be appropriated to the payment of a judgment. If the school board shall fail or refuse to levy such tax, the judgment creditor may apply to the board of county commissioners, who shall cause such tax to be levied upon the property of the school corporation. When collected it shall be paid over by the county treasurer to the judgment creditor, whose receipt therefor shall be delivered the same as money to the treasurer of the school corporation by the county treasurer. Such levy may be repeated until the judgment is paid. (*Id.* § 115.)

§ 116. **Jurisdiction of justices.** Justices of the peace shall have jurisdiction in all cases in which a school corporation is a party interested, when the amount claimed by the plaintiff does not exceed one hundred dollars, and the parties shall have the right to appeal as in other cases. (*Id.* § 116.)

§ 117. **Fines, how collected.** All fines and penalties not otherwise provided for in this act shall be collected by action in any court of competent jurisdiction. (*Id.* § 117.)

§ 118. **Parent may demand school privileges.** In any organized school township it shall be lawful for the parent, guardian, or other person having charge of any child or children of school age,

to demand and require each school year as many as four months' school to be taught at the school to which he belongs, or some other accessible to him, and to attend which provision is made for the children in his charge, without tuition; and in case of failure of the school township to make such provision the persons having in charge such school children may send them to any school in any adjoining school corporation, whether in the county or not, which will admit them, for the period of four months each school year, and the school corporation in which said pupils so attend school shall be entitled to collect and receive from the corporation in which they are residents the sum of fifty cents a week for each and every pupil so admitted and attending school. And when twelve or more such children are organized by the persons having them in charge into a school within the township where they reside, and a qualified teacher is employed and teaches such school, with an average daily attendance of nine or more, the pay of such teacher, at the rate above declared, shall be a charge upon such school township, not exceeding twenty dollars a month for four months in each year: *provided*, that before employing such teacher and opening such school they shall serve two weeks' notice of their intention to do [so] upon the township school board, in order that it may provide the school. No other charge for such school shall be made. (*Sess. Laws 1883, c. 44, § 118.*)

§ 119. **Compulsory education.** Every parent, guardian, or other person having in charge any child or children between the ages of ten and fourteen years, is required to send such child or children to a public school at least twelve weeks in each school year, at least six weeks of which shall be consecutive, unless such child or children are excused from such attendance by the school board by reason of bodily or mental infirmity such as to prevent attendance at school or application to study, or that such child or children are taught an equal time in some private school or regularly at home in such branches as are ordinarily taught children of that age in public schools, or that no public school is taught for the time required, and within two miles by the nearest way to the home of such person within the school township. (*Id. § 119.*)

§ 120. **Complaint by moderator.** The director of the township, and the moderators assisting him, shall ascertain if there are any such children deprived of school privileges while an accessible school is taught, and he shall notify the parent, guardian, or other person having them in charge, and direct that they be sent to school as herein required. If they fail or refuse to send such child or children to school, as required in the preceding section, he shall make complaint before some justice of the peace of the failure, and every such person having in charge a child he so fails to send to school shall, upon conviction, be fined not less than three nor more than ten dollars. If the director fails to make such complaint, any

moderator or citizen may do so, after having served notice of his intention to do so, for two weeks previously, upon such parent, guardian, or other person. (*Sess. Laws 1883, c. 44, § 120.*)

§ 121. **Assessor to furnish certificate.** Every township or county assessor shall, on or before the fifteenth day of June in each year, furnish to the clerk of each school corporation the property of which he assesses, a certificate of the valuation of all real property and all personal property, and of the total of these, subject to taxation within the corporation for the current year. (*Id.* § 121.)

§ 122. **What school report to include.** The school year ending June thirty, eighteen hundred and eighty-four, shall take up and include in its accounts, statistics, and reports, all the affairs, accounts, statistics, and other items of school business after the thirty-first day of March, eighteen hundred and eighty-three; but thereafter each school year shall begin upon July first and end upon the thirtieth day of June of the year following, and all accounts, records, and reports shall conform to these provisions, and the officers of all school corporations shall be elected and shall qualify accordingly. (*Id.* § 122.)

TEACHERS' INSTITUTE.

§ 123. **Institute fund.** There is hereby appropriated out of any funds in the territorial treasury, not otherwise appropriated, the sum of six hundred dollars each year as an institute fund, which shall be used exclusively in employing persons of learning, ability, skill, and experience as conductors of teachers' institutes. The superintendent of public instruction shall appoint the times, places, and duration of these institutes, after such consideration of the requests of county superintendents as in his judgment the need of the various parts of the territory will permit. Of this fund not more than sixty dollars shall be paid for the expenses of any one institute in a year, and such institute shall continue for two weeks. No institute aided by this fund shall continue for less than five days. (*Id.* § 123.)

§ 124. **Institutes—extension of time.** The money assigned for any particular institute may be added to any fund furnished for the purpose by any county, and the institute extended so long as the entire fund will allow, not exceeding four weeks. If a sufficient county fund be not otherwise provided, the board of county commissioners may appropriate not more than fifty dollars in any county each year in aid of institutes. The territorial superintendent may require a statement of the amount of funds a county may have for the purpose, before setting apart any territorial funds in aid of an institute therein. (*Id.* § 124.)

§ 125. **Institute conductors.** The territorial superintendent shall employ or designate every conductor for an institute aided by territorial funds, and no such funds shall be paid to any conductor of an institute not previously appointed or employed by him. Two or

more counties may be grouped into one institute; and for any joint county institute which the territorial superintendent is satisfied will be well attended from each of the counties included, the sum of eighty dollars may be used from the territorial fund. (*Id.* § 125.)

§ 126. **Institute moneys—how paid.** The money hereby appropriated from the territorial treasury for an institute fund shall be paid to the persons to whom it is due by warrant of the territorial auditor upon the territorial treasurer, which shall be issued upon the presentation of an account in due form, receipted by the person to whom due, and approved by the territorial superintendent. All the incidental expenses of such institutes shall be paid out of the county institute fund, or by the several counties for which they are held. (*Id.* § 126.)

RESIGNATIONS.

§ 127. **When school office becomes vacant.** Any office of a school corporation shall become vacant by the formal written resignation of the incumbent thereof, but such resignation shall not take effect until a successor has qualified according to law. The resignation shall be addressed to the county superintendent, who shall immediately appoint a successor, and notify the county clerk thereof in writing. (*Id.* § 127.)

BOARDS OF EDUCATION.

§ 128. **Act not to apply to boards of education.** This act shall not apply except where, by its terms, it is especially made applicable to boards of education established by any statute, general, special, or local, now in force or which may hereafter be passed, establishing such boards or affecting their powers; and it is specially provided that all amendments to every such law shall not be affected by this act, and all acts and parts of acts, and amendatory acts, authorizing such boards of education to issue bonds, and providing for the payment of the same, shall remain in full force as by their terms provided. The public schools of any city, town, or village which may be regulated by special law, or by the charter of said city, town, or village, or by any general acts establishing boards of education, shall be entitled to receive their proportion of the public school and other funds: *Provided*, that the clerk or secretary of the board of education of said city, town, or village, shall, at the time required by law for school townships to do the same, make a report to the county superintendent of public schools of the county in which such board of education is situated, showing the whole number of children between the ages of seven and twenty years residing within the territory of such board on the day in this act required for such enumeration in the school townships; but no further report to such superintendent shall be required. (*Id.* § 128.)

TOWNSHIP LIBRARIES.

§ 129. **School libraries.** The school board of any school township shall have power, when thereunto organized as in this act required for establishing a graded school, by a majority of the schools and the voters thereof, to purchase and keep for the use of the inhabitants of the school township a circulating library of the value of not more than five hundred dollars, to be selected by the school board from any list of books furnished or approved by the superintendent of public instruction. (*Sess. Laws 1883, c. 44, § 129.*)

§ 130. **Purchase of books.** The superintendent of public instruction shall, upon the application of any county superintendent, furnish such list to him, or approve, if he finds it suitable, any list furnished by the county superintendent, which shall then be the list for such county from which any board may so select and purchase; and additional lists may from time to time be so furnished or approved by selection, and no books shall be purchased for any such library except from such lists. The books so listed shall include publications of not less than four different publishing houses or firms, independent of each other, and shall be, as far as practicable, accompanied by the lowest prices that can be secured thereon, with terms and other items of value to the purchasers. The board may at any time accept donations of books for the library, not included in the lists, but shall exclude from the library all books of an immoral nature, or otherwise unsuited to the cultivation of good character, and good morals and manners; and no sectarian publications, devoted to discussions of sectarian differences and creeds, or partisan political pamphlets and books, shall be admitted to the library. (*Id.* § 130.)

§ 131. **Care of, and rules of, library.** The township school board shall have the care and keeping and custody of the library, and shall make rules to govern the drawing, circulation, and care of the books while in the hands of the people, and shall prescribe and collect penalties for the injury, defacement, or other harm done to any book by the act, negligence, or permission of the person who draws the same, or while in his possession, by any other person. No book shall be loaned for a longer period than two weeks at any time to one person, and never to any person not a resident of the township. The library shall be open at least once each week, for not less than three hours, for the accommodation of the people in returning and drawing books. (*Id.* § 131.)

§ 132. **Townships may change libraries.** Any township may at any time exchange any part or all of its library with any other township, or other library or person, so far as different books may be so obtained, for equal values of the books exchanged. (*Id.* § 132.)

§ 133. **Library to be preserved.** The school board of the township must see that the library is properly kept and cared for, and

the books preserved from harm, except that arising from ordinary proper use; and they may pay any person suited thereto, including one of their own number, not more than twenty-five dollars a year for services as librarian. (*Sess. Laws 1883, c. 44, § 133.*)

§ 134. **Use of books.** The board shall, under proper rules and safeguards, permit teachers to take books from the library temporarily to their schools for use there in illustrating any subject, and for purposes of general information and instruction; and all school corporations are authorized, without further authority, to purchase, and, during term time, leave at each school one copy of Webster's Unabridged Dictionary, which is recognized as the standard for the English language in all the schools of this territory. (*Id. § 134.*)

§ 135. **Permit use of school-house for meetings.** The board may, and under proper rules and restrictions it is their duty to, permit the use of the school-houses for the meetings and sessions of literary societies, associations, and lyceums, for meetings or schools for instruction and training in vocal music and for public, literary, scientific, and other lectures, and for other exercises, entertainments, and meetings of like character and purpose. (*Id. § 135.*)

UNITING DISTRICTS IN TOWNSHIP.

§ 136. **Union of districts.** The adoption of the system herein provided, and the passage and approval of this act, shall not have the effect to discontinue, abolish, and render null such school-districts or their organization as they may now exist in any county, but they shall continue to exist and their officers to act as such in law and fact until the school township organization is complete, so far as it includes any particular district or districts, or the larger part of any particular district. And such township organization shall not be deemed complete, nor such districts so cease to exist and their officers to act as such, until all matters between the district and the township are adjusted and the property delivered, funds paid over, and an adjustment is reached for the equalization of taxes and property between the districts which enter into the school township, so far as such taxes and property remain permanent in houses, sites, furniture, and other parts of houses and grounds. (*Id. § 136.*)

§ 137. **School-districts to equalize property and funds.** After the boundaries of school townships shall have been fixed and declared as provided by this act, all those districts the school-houses of which are included in any particular school township, (whether all the area of such districts is included or not,) shall effect an equalization of property, funds on hand, and debts. To effect this the school boards of all such districts so included in a school township, or one or more members of each, shall meet together at a time and place appointed by the county superintendent, who shall meet with them. They shall first agree upon the valuation at that time of all the per-

manent school property of each district, consisting of school-houses, sites, and furniture, and other permanent appendages. To this they shall add all money on hand or due from the county treasurer, (not counting any delinquent taxes,) and from the sum they shall subtract all debts owed by the district, including bonds and warrants outstanding. The result will show the net permanent property owned by each district. If in any district the debt is greater than all the assets, it shall be so stated and treated as hereinafter required. (*Id.* § 137.)

§ 138. **Manner of determining equalization.** Taking the district having the highest or largest value of net permanent property so ascertained, they shall next determine the difference between this and each of the other districts in succession, and then taking the valuation of taxable property in that district having the largest value of net permanent property, they shall find what rate if levied thereon would produce each of the several amounts which each district lacked in property of equaling the one having the most. These several rates shall be the equalizing rates to be levied upon the property of the districts respectively. In ascertaining and determining these several amounts and rates, and in all the proceedings of the joint session of these district boards, each district shall have but one vote, whether represented by one or more officers, which vote shall be cast as may be determined by the officers present from such district. The county superintendent shall preside at the sessions, and in case of disagreement, when a majority of all the districts does not vote in favor of any particular amount or rate, or other definite settlement, the county superintendent shall decide the question, governing himself by the facts as they appear, and, so far as practicable, by the several opinions expressed, and his decision shall be final. (*Id.* § 138.)

§ 139. **Same.** In determining each amount and rate regard shall be had to the previous history, areas, taxation, changes of boundary, and other facts which may have affected the different values of permanent property, and allowance shall be made for the same so far as can fairly and clearly be done. They shall not consider property not paid for, nor for which outstanding bonds or warrants were issued or other debts created; but they shall consider property and debts both, as hereinbefore provided. If, in the opinion of the boards, excessive amounts of bonds were issued or paid for the property, or the proceeds or funds were wasted in any other manner, or extravagant prices were paid for any part, they must allow for the same against such district in the levy of the equalizing rates. And they shall also consider a debt owed by a district beyond the value of property had by it, and such net debt shall be added and used as a part of the difference between such district and the one having the highest value of property. The said boards are authorized to levy such tax upon property which is not in any district, but is included in the school township.

§ 140. **Proceedings to levy tax.** When the rates to be levied upon the several districts shall be fixed, a list thereof shall be made, wherein the rate shall be set down in mills opposite each district. The whole shall be stated substantially in the form herein required for certifying school taxes, and it shall be addressed to the county clerk, and shall be signed by one or more officers of each district, and at least by a representative of one officer from each of a majority of the districts included, and shall then be approved by the county superintendent, and by him forwarded to the county clerk, and it shall be deemed a valid and legal levy upon the taxable property of each district, at the rates therein respectively stated for each. Not more than two per cent. shall be so levied in any one year as an equalizing tax upon any one district, and not more than six per cent. in all shall be so levied upon any one district as an equalizing tax; and when in any case the equalizing tax upon any district shall exceed two per cent., that amount of the rate shall be levied the first year, and not more than that, if necessary, the second year, and so for the next year thereafter, until the whole amount shall be so levied. The county clerk shall preserve such levies, and shall extend the several rates from year to year as above required by law for district taxes, and the taxes shall be collected at the same time and in the same manner as other taxes are collected. (*Sess. Laws 1883, c. 44, § 140.*)

§ 141. **Limit of taxes.** Such equalization taxes shall not limit the power of the school board of the township to levy taxes generally upon property of the township for school purposes, as in this act provided, but they shall not levy any rate which shall with the equalizing rate amount to a rate of more than three per cent. in any one year upon any part of the school township. Upon the completion of the agreement and levy of the equalizing rates, and upon the qualification of the officers of the school township, the organization of the school township shall be complete and in full force. If any part of a district be excluded from the boundaries of a school township, with and for which its equalization tax was levied, the said tax shall extend over and upon all the property of the entire district, and the proceeds shall be paid over as in the next section required. (*Id. § 141.*)

§ 142. **Taxes, where applied.** Opposite the several descriptions of property on the tax-lists shall be entered the school township within which it lies, and all the proceeds of these equalizing taxes shall be collected and paid over to the treasurer of the proper school township within which the property is situated. The proceeds of taxes upon parts of districts lying outside of townships with which they were equalized shall be paid to the treasurer of the school township within which the property is situated, the same as hereinbefore provided for regular taxes. (*Id. § 142.*)

§ 143. **Township school board to assume management.** Immediately upon the organization of the school township

as hereinbefore provided, the township school board shall assume the management and control of the public schools and the school property therein, and the officers of the several districts shall turn over to the township school board all moneys, books, papers, accounts, files, school property, and other property of the districts, and it shall all vest in the township as a school corporation for the use of schools, and under the provisions of this act: *provided, however*, that all taxes before that date voted in such districts, and levied but not collected, shall be collected, and, together with all the money in the hands of the county treasurer, be paid over to the treasurer of the school township in which the property upon which it was levied is situated, and the debts and liabilities of such school-districts shall be assumed and paid by the school township the same as if incurred thereby, and to that end the officers of each school-district shall make to the township school board full, true, and accurate statements of the property, debt, finances, and condition of their district. (*Sess. Laws 1883, c. 44, § 143.*)

§ 144. **Liability of school township.** Every school township shall be liable for and shall assume and pay fully, according to their legal tenor, effect, and obligation, all the outstanding bonds, and the interest thereon, of every school-district, the school-house and furniture of which are received and included within the school township and owned thereby, the same as if said bonds had been issued by said school township; and the law which authorized the school-district to issue bonds shall apply to the school township the same as if it had originally been authorized to issue, and had issued, the said bonds. The bonds shall be deemed in law the bonds of the school township, with the same validity for securing and enforcing the payment of principal and interest that they would have against the district that issued them. (*Id. § 144.*)

§ 145. **Act to be published.** This act shall take effect and be in force from and after its passage and approval, and the superintendent of public instruction is authorized to contract for and cause to be printed six thousand copies thereof in pamphlet form, and to distribute the same through the county superintendents to the school officers throughout the territory; and the sum of eight hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the territorial treasury not otherwise appropriated, to pay for printing the same. The accounts for the same shall be certified by the territorial superintendent, and shall be paid by warrants of the territorial auditor, drawn upon the territorial treasurer. (*Id. § 145.*)

§ 146. **Conflicting acts repealed.** All acts and parts of acts in conflict with this act are hereby repealed, except as in this act saved, extended, and limited, but such repeal shall not affect the validity of any contract heretofore entered into, or any act done, or any right accruing or accrued, or any suit or proceeding had or com-

menced in any civil or criminal action before such repeal; but all rights and liabilities under said acts shall continue and may be enforced as if said repeal had not been made, nor shall said repeal affect the right to any office, or change the term or tenure thereof, except as in this act especially provided; but this act shall, so far as applicable, be used for the adjustment and settlement of all matters provided for herein, and in proceedings thereto, not impairing the obligation of any contract, or affecting any vested or legal right. (*Id.* § 146.)

§ 147. **Words, how construed.** Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it be otherwise expressed in the section or law giving the authority; and when a decision or direction is made by the majority of such officers or persons, it is the duty of the one to whom its execution belongs by law to execute the same in all respects as if he had favored the particular decision or direction, or as if it were authorized unanimously. (*Id.* § 147.)

§ 148. **Certain counties exempt from provisions of act.** The provisions of this act requiring the division of counties into school townships, and the election and qualification of officers for the same, and for the organization and execution of the powers of such school townships, shall not have force and take effect in the counties of Union, Lincoln, Clay, Turner, Yankton, Minnehaha, Moody, Brookings, Lake, Duel, Codington, Cass, Grand Forks, Walsh, Pembina, Barnes, and Lawrence until so ordered by the respective boards of county commissioners of said counties, upon said boards being satisfied respectively that the conditions of the school-districts and their affairs, and of the civil townships when now organized therein, and the needs and circumstances of the schools and school property therein, and of all other matters relating to the good of schools, are such as to permit and justify the full carrying into effect of this act. Such boards of county commissioners shall carefully examine this act, and inform themselves fully of the state of the foregoing affairs and conditions relating to schools in their several counties, and shall consult with the county superintendent, and other school officers and citizens, and thereupon decide the matter at such time as they deem best. (*Id.* § 148.)

§ 149. **Proceedings by boards of commissioners of temporarily exempted counties.** Whenever the board of county commissioners of either of said counties shall decide by resolution that the condition of school affairs in their county is such as to justify the carrying out of this act therein, they shall cause notice thereof to be given by publication, and they may proceed at any time they deem convenient to divide the county into school townships as herein provided, and to change the boundaries of townships now organized for civil purposes, and all the proceedings and acts necessary and required to be done by this act by any person, officer, board, or author-

ity at a particular time to organize school townships may be done and executed in any such county at any time the board of county commissioners may direct, or, if not dependent upon them, when directed by the proper officer. When any time, date, or act is fixed by this act, it need not be regarded in the organization of school townships in any such county as required at the date herein named, but the time therefor may be appointed by the said board of commissioners, unless it is by law left to some other authority to appoint it. In all such counties the present school law, entitled "An act to establish a public school law for Dakota territory," approved February twenty-second, eighteen hundred and seventy-nine, and all acts amendatory thereof; and the act entitled "An act to empower school-districts to issue bonds for building school-houses," approved March third, eighteen hundred and eighty-one, and all acts amendatory thereof and dependent thereon; and the act entitled "An act making provisions for the schooling of children living in any organized district," approved February seventeen, eighteen hundred and eighty-one,—shall, except as hereinafter provided and changed, continue in force for the organization, government, control and change of school-districts, and their boundaries therein, the same as if this act had not passed, until this act shall take effect therein as provided by this and the preceding section. (*Sess. Laws 1883, c. 44, § 149.*)

§ 150. **Certain portions of act to take effect generally.** In all counties, however, the following parts of this act shall take effect at once and be in force whether the school townships or school-district be the form of school corporation and organization, viz.: Sections one to twenty-two, inclusive; sections thirty-four to forty-two, inclusive; sections forty-nine to sixty-three, inclusive; sections eighty-two to ninety-one, inclusive; sections ninety-four to one hundred and seventeen, inclusive; and sections one hundred and twenty-one to one hundred and twenty-seven, inclusive; and in said sections the word "district" shall be inserted or understood in place of the word "township," and like word for like word whenever necessary to clearly apply the law to the school-district, and its officers and school board, the same as to the school township and its officers and school board; and the word "corporation" or the phrase "school corporation" shall apply to and signify school-district as well as school township. (*Id.* § 150.)

§ 151. **Date of school-district annual meeting.** The school-district annual meeting shall, after the year eighteen hundred and eighty-three, be held upon the last Tuesday in June of each year, with like notice therefor as now required by law, and with the powers provided by law, and all that time after the thirty-first day of March, eighteen hundred and eighty-three, to and including the thirtieth day of June, eighteen hundred and eighty-four, shall be included as part of the school year ending June thirtieth, eighteen hundred and eighty-four. All school-district officers elected in eighteen hundred and eighty-three shall be chosen for a term to end on the thirtieth day of

June in the proper year next after the thirty-first day of March, whereon by the present law their terms would end. (*Sess. Laws 1883, c. 44, § 151*)

§ 152. **This act to govern in all new counties.** Except as to those counties herein specially excepted and provided for, this act shall take effect immediately, and it shall take effect in all new counties hereafter organized. Whenever a new county is organized the county board of commissioners shall, at a convenient and suitable time, divide their county into school townships, and do all things necessary for carrying this act into effect. (*Id. § 152.*)

§ 153. **When school township may be smaller.** In all counties whereof any part is mountainous, or very hilly or broken, so as to render it impracticable to organize school townships of the area required by this act, then they may organize them of a suitable area, smaller than herein required. (*Id. § 153.*)

§ 154. **Officers, how to qualify.** Hereafter all school-district officers shall qualify as herein required for school township officers in all respects, and all the bonds of school-district treasurers now on file in the offices of school-district clerks, with their oaths of office, shall by such clerk be forwarded to the county clerk, and filed in his office. Officers of school townships and of school-districts shall hereafter be deemed township officers within the provisions of the Political Code, but their qualifications, resignation, and succession shall be governed by this act, and the act governing school-districts. (*Id. § 154.*)

§ 155. **Four months' school.** All school corporations shall maintain public schools for not less than four months in each school year, and for a longer period if the schools can be maintained according to the principle and rule declared in the act entitled "An act making provision for the schooling of children living in any organized district," approved February seventeen, eighteen hundred and eighty-one. The school boards of all school corporations, whether townships or districts, shall determine the length of time each term of school shall be taught, and what part shall be taught in winter and in summer; and they must so divide the terms and time schools are taught between the summer and winter as to accommodate the attendance equally, as near as may be, each year of pupils of all ages. (*Id. § 155.*)

§ 156. **Treasurer's annual statement.** Besides the requirements herein provided for the reports of officers of corporations for school purposes, the treasurer of every school-district shall submit to the annual school meeting of his district the statement, with the items thereof, herein required for the reports of school treasurers, and shall exhibit the vouchers for all disbursements, and shall be prepared and make answer to the school meeting concerning the financial condition of the district and any feature thereof. (*Id. § 156.*)

§ 157. **When school-district compelled to maintain school—forfeiture.** Every organized school-district which has

fifteen or more persons of school age, and which has taxable property amounting by assessment to four thousand dollars or more, shall erect or otherwise provide a public school-house, which, with site and furniture, is worth not less than seven hundred dollars, and shall maintain a regular public school therein for not less than four months in each school year. Such school-house shall be placed upon ground held by the school-district for school purposes, whether by purchase or condemnation, as provided by law, and the title to the house and furniture shall vest in the school-district only, and neither in part or whole in any other owner. The school shall be a regular free, public school, as required by law, and shall be taught by a regularly qualified teacher. If any district fails for one year after the passage of this act, and for two years after its organization, to comply with and fulfill the requirements of this act, the county superintendent shall declare its organization null and void, and may attach the territory embraced in the district to other districts, as he may deem best for the good of schools. (*Sess. Laws 1883, c. 44, § 157.*)

Approved March 8, 1883.

School townships to issue and dispose of their bonds, to provide funds for building and furnishing school-houses. See Appendix, c. 40, *§§ 159-171.

Office of assistant superintendent of public instruction. See Appendix, c. 40, *§ 158.

CHAPTER XLI.

PROTECTION OF BIRDS.

An Act for the Protection of Game.

§ 1. **Unlawful to sell.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That it shall be unlawful for any person or persons to kill, insnare, or trap in any form or manner, or by any device whatsoever, for the purpose of sale, trade, or traffic, any quail, prairie chicken, grouse, plover, snipe, or curlew, at any time.

§ 2. **Unlawful to kill at certain times.** That it shall be unlawful for any person or persons to kill, insnare, or trap in any form or manner, or by any device whatsoever, any quail, prairie chicken, grouse, snipe, plover, or curlew, between the first day of January and the fifteenth day of August in each and every year.

§ 3. **Unlawful to kill on other's premises.** That it shall be unlawful for any person or persons to kill, insnare, or trap

in any form or manner, or by any device whatsoever, any quail, prairie chicken, grouse, snipe, plover, or curlew, on any premises owned or occupied by any other person or persons, without the consent of such person or persons.

§ 4. **Penalty for violation.** Any person or persons who shall violate sections one, two, or three of this act, and every person or corporation, or any employe thereof, who shall sell, expose for sale, or shall have in his or their possession or custody with intent to sell, dispose of, or transport, any quail, prairie chicken, grouse, snipe, plover, or curlew, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined two dollars for each such quail, prairie chicken, grouse, snipe, plover, or curlew so killed, destroyed, taken, sold, exposed for sale, or had in possession for transportation, together with costs of prosecution: *provided*, that any person or persons or corporation may expose for sale and sell any prairie chicken, grouse, snipe, plover, or curlew, at any time between the fifteenth day of August and the thirty-first day of December, in each and every year, to any person or persons, for his or their own use, and to be consumed within this territory. (*As amended, Sess. Laws 1881, c. 81.*)

§ 5. **Repeal of former act.** Chapter forty-nine of the eleventh general assembly, being "An act making it unlawful to kill quail during certain months," approved January fifteen, eighteen hundred and seventy-five, is hereby repealed.

§ 6. **Immediate effect.** This act shall take effect and be in force from and after its passage and approval.

Approved February 16, 1877.

See "An act for the protection of large game." See Appendix, c. 41, *§§ 7, 8.

"An act to protect quail in Dakota territory." See Appendix, c. 41, *§§ 9-11.

"An act for the protection of game in the territory of Dakota." See Appendix, c. 41, *§§ 12-18.

"An act to protect fish in the territory of Dakota." See Appendix, c. 41, *§§ 19-21.

"An act to stock with food fishes the waters of Dakota, and to protect the same, and for other purposes." See Appendix, c. 41, *§§ 22-26.

CHAPTER XLII.

COUNTY BOUNDARIES AND ORGANIZATION.

An Act to Define the Boundaries of, and Name Certain Counties in, the Territory of Dakota.

§ 1. **Custer county defined.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That the county of Custer shall be bounded as follows: Commencing at the north-west corner of

Forsythe county, where the west fork of the Big Cheyenne river intersects the boundary line dividing the territory of Dakota and the territory of Wyoming, and running thence north along said boundary line to a point ten (10) miles south of the point where the forty-fourth parallel of north latitude intersects said boundary line; thence east in a direct line to the channel of the South Fork of the Big Cheyenne river, and the northern boundary of the county of Forsythe, to the place of beginning.

§ 2. **Pennington county.** That the county of Pennington shall be bounded and described as follows: Commencing at a point where the forty-fourth parallel of north latitude intersects the boundary line dividing the territory of Dakota and the territory of Wyoming; thence running north along said boundary line ten (10) miles; thence east in a direct line to the channel of the South Fork of the Big Cheyenne river; thence southerly along said channel of the South Fork to the point where the northern boundary line of Custer county intersects the said South Fork of the Big Cheyenne; thence west along the northern boundary of Custer county to the boundary line dividing the territory of Dakota and the territory of Wyoming; thence north along said boundary line ten (10) miles to the place of beginning.

§ 3. **Lawrence county.** The county of Lawrence shall be bounded as follows: Commencing at a point on the boundary line dividing the territory of Dakota and the territory of Wyoming at the northwest corner of Pennington county; thence east along the northern boundary of Pennington county to its intersection with the channel of the South Fork of the Big Cheyenne river; thence northerly along said South Fork to its confluence with the Belle Fouché or North Fork; thence north-easterly along said North Fork to the point where the said North Fork intersects the boundary line dividing the territories of Dakota and Wyoming; thence south along said boundary line to the place of beginning. (*As amended, Sess. Laws 1881, c. 45.*)

§ 4. **Ziebach county.** That all that part of the county of Pennington, as laid down and described in section six, chapter twenty-nine, Laws of eighteen hundred and seventy-four and eighteen hundred and seventy-five, as is not included within the metes and bounds, as described in section two of this act, be made a separate county, and the same to be called Ziebach county.

§ 5. **Boundaries modified.** The boundaries of the counties of Custer and Lawrence are hereby modified and corrected in accordance with the provisions of this act.

§ 6. **Governor appoints officers.** The governor is hereby authorized, and it is made his duty, when the country embraced within said counties herein described comes under the jurisdiction of

this territory, or as soon as practicable and he can obtain the necessary information after the passage and approval of this act, and without the petition of voters otherwise required, to appoint for each of said counties three county commissioners, who shall constitute the board of county commissioners, one register of deeds, one sheriff, one treasurer, one judge of the probate court, and one assessor; and said officers so appointed shall hold their offices respectively until their successors shall be elected and qualified according to law.

§ 7. **Officers qualify.** Immediately after the appointment the said commissioners for each of said counties respectively shall meet at a place within their county, to be agreed upon, and elect one of their number chairman of the board, who shall immediately administer the oath of office to the other commissioners, and one of them shall then administer the like oath to him. The chairman shall then administer the oath of office to the judge of the probate court, and he is then authorized and required to administer the like oath to each of the other officers herein authorized to be appointed. Said oaths shall be in writing, and certified by the person or officer administering them, and must be filed in the office of the register of deeds for the county. Such officers must each thereafter, and as early as practicable, give the bond as required by law, and shall immediately enter upon the discharge of their respective duties according to law.

§ 8. **Boards appoint—special election—terms.** Said board of county commissioners for each county is hereby authorized to appoint all other officers authorized by law for said counties, except justices of the peace, and they shall qualify as required by law. The said boards shall also cause an election to be held in each of their counties respectively, upon notice, to be posted in writing, not less than twenty days before said election, in five public places in the county, for the election of four justices of the peace in each county, which election shall be held, and the returns thereof made, as provided by the election law of the territory, except that the returns must be made to the register of deeds within six days, and the canvass thereof within ten days, after said election; and the justices of the peace so elected may qualify as provided by law, immediately, or as soon as practicable, after their election, and shall enter upon their duties at once. Such justices shall hold their offices until their successors shall be elected at the general election in eighteen hundred and seventy-seven, and shall qualify.

§ 9. **Quorum of board, clerk, and record.** Any two commissioners, appointed as herein provided, shall constitute a quorum, and may perform all the acts required, to all legal intents and purposes, the same as if the three were present and acting; and the register of deeds so appointed shall be, *ex officio*, county clerk, and act as such; and the said board of county commissioners must make

a journal, and preserve the official record of their proceedings from the first, according to law.

§ 10. **Effect—other laws apply.** This act shall take effect and be in force from and after its passage and approval, and it amends and modifies all acts and parts of acts inconsistent with its provisions, so far only as it is necessary to carry this act into effect, but all other such acts, except those bounding and defining counties herein defined, are in force, except so far as this act governs and takes the place of other law.

Approved February 10, 1877.

An Act Changing the Boundaries of the County of Hamlin, Creating the County of Codington, and for Other Purposes.

§ 1. **Hamlin county defined.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That the boundaries of the county of Hamlin be, and the same are hereby, changed and modified, so that hereafter the said county of Hamlin shall be bounded as follows, to-wit: Beginning at the south-west corner of Duel county; thence north along the west line of said county of Duel to the north-east corner of township one hundred and fifteen, of range fifty-one; thence west, along the line between townships one hundred and fifteen and one hundred and sixteen, to the north-west corner of township one hundred and fifteen, of range fifty-five; thence south along the line between ranges fifty-five and fifty-six to the north line of Wood county; thence east along the north line of said county of Wood to the north-west corner of the county of Brookings; thence east along the north line of said county of Brookings to the place of beginning.

§ 2. **Codington county bounded.** That all that district of county included within the following boundaries, to-wit: Beginning at the north-east corner of the county of Hamlin, as bounded in the last section; thence north along the line between ranges fifty and fifty-one, to the north-east corner of township one hundred and nineteen, of range fifty-one; thence west along the line between townships one hundred and nineteen and one hundred and twenty, crossing the Wahpeton and Sisseton Indian reservation in the same course, and continuing in same course to the north-west corner of township one hundred and nineteen, of range fifty-five; thence south along the line between ranges fifty-five and fifty-six, to the north-west corner of the said county of Hamlin; thence east along the north line of said county of Hamlin to the place of beginning,—be and the same is hereby made and constituted the county of Codington.

§ 3. **Grant and Clark counties modified.** The boundaries of the counties of Grant and Clark are hereby changed and modified to conform with the provisions of this act.

§ 4. **Repeal.** All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

§ 5. **Immediate effect.** That this act shall take effect and be in force from and after its passage and approval.

Approved February 15, 1877.

See the following legislative enactments defining the boundaries of counties:

County.	Sess.	Laws.	Chap.	Sec.	County.	Sess.	Laws.	Chap.	Sec.
Allred.....	1883		39	4	Kingsbury.....	1879		12	11
Aurora.....	1879		12	10	Lake.....	1879		12	8
Beadle.....	1879		12	12	".....	1879		63	—
Benson.....	1883		12	1	La Moure.....	1881		44	—
Billings.....	1879		11	5	Martin.....	1883		40	3
Bowman.....	1883		38	2	McCauley.....	1883		13	1
Brown.....	1879		12	15	McCook.....	1881		46	1
".....	1883		13	4	McIntosh.....	1883		26	—
Brule.....	1883		14	—	McKenzie.....	1883		39	2
Buffalo, changed.....	1883		14	—	McLean.....	1883		25	—
Buford.....	1883		39	6	Mercer.....	1881		49	—
Burdick.....	1883		38	4	Miner.....	1879		12	9
Burleigh.....	1879		11	1	".....	1881		47	—
Butte.....	1883		15	—	Morton.....	1879		11	3
Choteau.....	1883		40	6	".....	1881		50	—
Cavalier.....	1883		37	3	Nelson.....	1883	27,	28	—
Codington, changed...	1883		30	3	Nickeus.....	1883		29	—
Custer, ".....	1881		39	—	Nowlin.....	1883		16	5
Davidson.....	1881		42	1	Potter.....	1883		19	2
".....	1881		46	3	Pyatt.....	1883		16	3
Day.....	1879		12	14	Ramsey.....	1883		12	3
" changed.....	1883		30	3	Ransom, changed....	1883		32	—
Delano.....	1883		16	1	Rinehart.....	1883		40	5
De Smet.....	1883		12	4	Roberts.....	1883		30	1
Dewey.....	1883		17	—	Rolette.....	1883		37	4
Dickey.....	1881		40	—	Richland, changed...	1883		30	3
Dunn.....	1883		39	1	Rusk, ".....	1883		17	—
Edgerton.....	1883		13	2	Sanborn.....	1883		31	—
Emmons.....	1879		11	2	Sargent.....	1883		32	—
Ewing.....	1883		38	3	Schnasse.....	1883		34	—
Fall River.....	1883		18	—	Scobey.....	1883		16	2
Faulk.....	1883		19	1	Spink.....	1879		12	13
Flannery.....	1883		39	5	Stanley.....	1883		35	—
Foster.....	1883		20	—	Stark.....	1879		11	4
Griggs.....	1881		41	—	Steele.....	1883		36	—
Hand.....	1879		12	16	Sterling.....	1883		16	4
Hanson.....	1879		12	5	Towner.....	1883		37	1
Harding.....	1883		38	5	Villard.....	1883		38	1
Harvey.....	1883		22	—	Wallace.....	1883		39	3
Hettinger.....	1883		39	7	Walsh.....	1881	51,	52	—
Hutchinson.....	1879		12	2	Washington.....	1883		40	1
Hyde.....	1883		21	—	Washabaugh.....	1883		40	2
Inman.....	1883		13	3	Wagner.....	1883		40	4
Jackson.....	1883		16	6	Wells.....	1881		53	—
Jerauld.....	1883		23	—	Wynn.....	1883		41	—

CHAPTER XLIII.

PUBLICATION OF LAWS.

An Act Making Appropriations for the Purpose of Publishing the Laws of Dakota Territory, Passed at the Twelfth Session of the Legislative Assembly, and Reimburse E. A. Sherman for Expenses Incurred as a Witness for Attendance before the Committee of Ways and Means.

§ 1. **Five thousand dollars to print laws.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* There is hereby appropriated, from any funds in the territorial treasury not otherwise appropriated, the sum of five thousand dollars, the same to be paid in territorial warrants at their par value, for the purpose of printing, indexing, and binding one thousand copies of the laws of the Territory of Dakota, passed at the twelfth session of the legislative assembly; and the printing of said laws shall be under the sole and exclusive management and control of the secretary of said territory, and any and all moneys which may be appropriated by congress for the purpose of printing said laws, shall be used for the purpose of reimbursing the territory, and shall be paid into the territorial treasury for such purpose and no other.

§ 2. **What laws to be printed.** There shall only be published the general laws and public acts of the territory, passed at said twelfth session of the legislative assembly, after the same shall have been approved by the governor.

§ 3. **Witness fees reimbursed.** There is hereby appropriated from any funds in the territorial treasury, not otherwise appropriated, the sum of twenty dollars, to be paid by territorial warrants, to E. A. Sherman, to reimburse him for expenses incurred as a witness before the ways and means committee, by order of the house of representatives.

§ 4. **Immediate effect.** This act shall take effect and be in force on and after its passage and approval.

Publication of reports of supreme court. See Appendix, c. 60, *§ 5.

Reports of territorial officers. See Appendix, c. 43, *§ 5.

Approved February 17, 1877.

CHAPTER XLIV.

LEGALIZING ACTS OF TERRITORIAL OFFICERS.

An Act to Legalize the Official Acts of Certain Territorial Officers Therein Named.

§ 1. **Act of elected territorial officers legalized.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That the official acts of the persons who have from time to time, since the first organization of the territory, held the offices of territorial auditor, territorial treasurer, territorial superintendent of public instruction, territorial superintendent of immigration, and territorial commissioner of immigration, by authority of election by the people, under any territorial laws, be and the same are hereby confirmed and legalized, and the same shall be deemed and held as valid and binding as though the said officers had been nominated by the governor, by and with the consent of the territorial council.

§ 2. **Immediate effect.** This act shall take effect and be in force from and after its passage and approval.

Approved February 13, 1877.

CHAPTER XLV.

REPEAL OF RELIEF BOND ACT.

An Act Relative to Territorial Bonds.

§ 1. **Grasshopper bond act repealed.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That the act passed the fifteenth day of January, eighteen hundred and seventy-five, by the legislative assembly of the territory of Dakota, being chapter twenty-four, entitled "An act to provide assistance and seed grain to those settlers in the territory who are needing aid by reason of a failure of crops," be, and the same is hereby, repealed.

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved January 24, 1877.

CHAPTER XLVI.¹

DEFINING JUDICIAL DISTRICTS.

An Act to Establish the Boundaries of the Judicial Districts of this Territory.

§ 1. **First district boundaries.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* All that portion of the territory of Dakota west of the right bank of the Missouri river at low-water mark and south of the forty-sixth parallel of latitude shall constitute the first judicial district.

§ 2. **Second district.** All that portion of this territory north of the forty-sixth parallel of latitude shall constitute the third judicial district.

§ 3. **Third district.** All that portion of this territory not embraced in the first and third judicial districts shall constitute the second judicial district.

§ 4. **Pending cases.** All criminal cases in which the United States is a party shall be tried and disposed of in the court of the district in which they are now pending, unless the place of trial shall be changed, as provided by law.

§ 5. **Location of court in third district.** That the district court in and for the third judicial district shall be held at Bismarck, in the county of Burleigh, on the second Tuesday of April and third Tuesday of September of each year.

§ 6. **Location of second district court.** The district court in and for the second judicial district shall be held at Yankton, in Yankton county, on the second Tuesday of March and November of each year.

§ 7. **Location of first district court.** The district court in and for the first judicial district shall be held at the county seat of Pennington county, on the first Tuesday of May and October of each year.

§ 8. **United States jurisdiction.** The district courts mentioned in this act shall exercise the power appertaining to district and circuit courts of the United States for the several districts in which they are located.

§ 9. **Repeal of acts.** Chapter fifty-five, Laws 1874-5, and all acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

§ 10. **Effect on contingency.** This act shall take effect and be in force from and after its passage and approval, and the rat-

¹See Political Code, cc. 12, 13; and Appendix, cc. 12, 13.

ification by congress of the agreement with the Sioux Indians ceding the Black Hills.

Approved February 15, 1877.

SUPPLEMENTAL ACT.

An Act Supplemental to "An Act Establishing the Boundaries of the Judicial Districts of this Territory," Passed at the Twelfth Legislative Session.

§ 1. **Part of Boreman county in the third district.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* All that portion of the county of Boreman lying north of Grand river shall be embraced within, and it is hereby made a part of, the third judicial district.

§ 2. **Addition to second district.** The counties of Todd, Gregory, Lyman, and Presho are attached to, and made a part of, the second judicial district.

§ 3. **Location of first district court.** The district court within and for the first judicial district shall be held at the county seat of Pennington county, on the fourth Tuesday of May and the second Tuesday of September in each year.

§ 4. **Location of third district court.** The district court within and for the third judicial district shall be held at Bismarck on the third Tuesday of April and the second Tuesday of October in each year.

§ 5. **Certain terms authorized.** Nothing contained in this act, nor the one to which it is supplemental, shall be construed as to prevent the holding of the courts within and for the first and second judicial districts in February and April, respectively, of the present year, as provided for in chapters fifty-five and fifty-six of the session laws of 1874-5, but said terms shall be held as therein provided.

§ 6. **Construction and force of act.** This act shall be construed in connection with the act to establish the boundaries of the judicial districts of this territory, passed at the present session, which is so far modified and amended as to allow this act to have full force and effect, and no further.

§ 7. **Effect contingent.** This act shall take effect and be in force from and after its passage and approval by the governor, and the ratification by congress of the agreement with the Sioux Indians ceding the Black Hills.

Approved February 17, 1877.

See Political Code, cc. 12, 13; and Appendix, cc. 12, 13.

CHAPTER XLVII.

CONTEST OF LEGISLATIVE ELECTIONS.

An Act to Regulate the Mode of Procedure in Cases of Contested Elections of Members of the Legislative Assembly.

§ 1. **Notice of Contest.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* Whenever any person intends to contest an election of any member of the legislative assembly of the territory of Dakota, he may, within ten days after the result of such election shall have been determined by the officers or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest.

§ 2. **Answer of notice.** Any member upon whom the notice mentioned in the preceding section may be served, shall, within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer in the contest; and all allegations set forth in the notice not denied in the answer shall be taken as admitted.

§ 3. **Periods for canvass limited.** In all elections in any council or representative district, at which any member of the legislative assembly is elected, the officers or board of canvassers whose duties it is to canvass the returns of said district, shall do so within twenty days from said election, and the canvass for county officers shall take place within fifteen days after said election; and sections thirty-one and thirty-six of chapter seventeen, approved January thirteen, eighteen hundred and seventy-one, being an act entitled "An act providing for elections, and to prescribe the canvass and return of the same," is hereby amended accordingly.

§ 4. **Testimony, when taken.** In all contested election cases the contestant may begin to take testimony as soon as the notice specified in section one is served; and the returned member may take testimony as soon as his answer is served; and both parties to said contest may continue to take testimony for ten days after the time for serving the answer of the returned member has expired, after which time the contestant may take testimony in rebuttal only for five days.

§ 5. **Depositions—notice, how served.** The party desiring to take a deposition under the provisions of this chapter, shall

give the opposite party notice in writing of the time and place when and where the same will be taken, of the names of the witnesses to be examined, and their place of residence, and the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or by any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest. If by the use of reasonable diligence personal service cannot be made, the service may be made by leaving a copy of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual routes of travel to attend, and one day for preparation, exclusive of Sundays and the day of service.

§ 6. **Places to take testimony.** Testimony on contested election cases under this chapter shall not be taken at more than two places at the same time by either party.

§ 7. **Subpœnas applied for.** When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna to any officer having a seal, or any justice of the peace for any county where the testimony is to be taken.

§ 8. **Subpœnas authorized.** The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpœna directed to all such witnesses as shall be named to him, requiring their attendance before him at some time and place named in the subpœna, in order to be examined respecting the contested election.

§ 9. **Depositions without notice.** It shall be competent for the parties, their agents or attorneys, authorized to act in the premises, by consent in writing, to take depositions without notice. Any written consent given as aforesaid shall be returned with the depositions.

§ 10. **Subpœna served.** Each witness shall be duly served with a subpœna by a copy thereof, delivered to him or at his place of abode.

§ 11. **Attendance only in county.** No witness shall be required to attend an examination out of the county in which he may reside, or be served with a subpœna.

§ 12. **Penalty for failure.** Any person who, having been summoned in the manner above described, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered with costs of suit, by the party at whose instance the subpœna was issued, and for his use, by action of debt, and shall also be liable to an indictment for a misdemeanor, and punishment by fine and imprisonment.

§ 13. **Non-resident witnesses.** Depositions of witnesses residing outside of the district and beyond the reach of subpœna may be taken before an officer authorized to take testimony in civil actions.

§ 14. **Examination of witnesses.** All witnesses who attend in obedience to a subpœna, or who attend voluntarily at the time and place appointed, of whose examination notice has been given, as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpœna; or, in case of his absence, by any other officer who is authorized to issue such subpœna, or by the officer before whom the depositions are to be taken by written consent, as the case may be, touching all such matters respecting the election about to be contested as shall be proposed by either of the parties, or their agents or attorneys.

§ 15. **Evidence confined to issue.** Tho testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections one and two of this chapter.

§ 16. **Testimony written.** The officer shall cause the testimony of the witnesses to be reduced to writing in his presence, and in the presence of the parties, or their agents or attorneys, if attending, to be duly attested by the witnesses respectively.

§ 17. **Production of papers.** The officer before whom any deposition is taken shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce certified or sworn copies of the same, in case they may be official papers, such person shall be liable to all the penalties prescribed in section twelve. All papers thus produced, and all certified or sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the secretary of the territory for the use of the legislative assembly.

§ 18. **Adjournments.** The taking of the testimony may, if so stated in the notice, be adjourned from day to day.

§ 19. **Documents to be attached.** The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpœna, where any has been served, shall be attached to the deposition, when completed, together with a copy of the notice of contest and answer of the returned member, which shall be annexed to the depositions taken and transmitted with them to the secretary of the territory.

§ 20. **Transmitted to secretary.** All parties taking testimony to be used in a contested election case, when the taking of the same is completed, and without necessary delay, shall certify and carefully seal and forward the same to the secretary of the territory,

by mail, at Yankton, Dakota territory, and shall indorse on the same the title of the same; and the secretary is hereby authorized to open the same at the instance of either party, his agent or attorney.

§ 21. **Fees of officers and witnesses.** Every witness attending by virtue of any subpoena herein directed to be issued, and all officers who may be employed in taking testimony in contested election cases under this chapter, or serving any subpoena or notice herein authorized, shall be entitled to receive from the party at whose instance service or attendance shall have been performed, such fees as are allowed for similar service in civil actions in courts of record in this territory.

§ 22. **No legislative expense.** No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to a contested election case for expenses incurred in prosecuting or defending the same.

§ 23. **Immediate effect.** This act shall take effect and be in force from and after its passage and approval.

Approved February 16, 1877.

CHAPTER XLVIII.

LEGISLATIVE APPORTIONMENT.

§ 1. **First district.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That chapter six of the Session Laws of 1881 be, and the same is hereby, amended to read as follows: "The counties of Clay, Union, and Lincoln shall constitute the first council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Union county shall be the senior county." (*Sess. Laws 1883, c. 7, § 1.*)

§ 2. **Second district** The counties of Yankton, Hutchinson, and Turner shall constitute the second council and representative district, and shall be entitled to one member of the council and one member of the house of representatives, and Yankton county shall be the senior county (*Id.* § 2.)

§ 3. **Third district.** The counties of Bon Homme, Charles Mix, Douglas, Aurora, Jerauld, Davison, Brule, Buffalo, and Hanson shall constitute the third council and representative district, and shall be entitled to one member of the council and two members of

the house of representatives, and Bon Homme county shall be the senior county. (*Sess. Laws 1883, c. 7, § 3.*)

§ 4. **Fourth district.** The counties of Minnehaha, McCook, and Miner shall constitute the fourth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Minnehaha county shall be the senior county. (*Id.* § 4.)

§ 5. **Fifth district.** The counties of Brookings, Kingsbury, Lake, and Moody shall constitute the fifth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Brookings county shall be the senior county. (*Id.* § 5.)

§ 6. **Sixth district.** The counties of Hamlin, Clark, Spink, Beadle, Sanborn, Hand, Faulk, Potter, Sully, Hyde, and Hughes shall constitute the sixth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Beadle county shall be the senior county. (*Id.* § 6.)

§ 7. **Seventh district.** The counties of Deuel, Grant, Codington, Day, Brown, Edgerton, McAuley, Inman, McPherson, Edmunds, Campbell, Roberts, and Walworth shall constitute the seventh council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Codington county shall be the senior county. (*Id.* § 7.)

§ 8. **Eighth district.** The counties of Lawrence, Pennington, Custer, Butte, and Fall River shall constitute the eighth council and representative district, and shall be entitled to one member of the council and three members of the house of representatives, and Lawrence county shall be the senior county. (*Id.* § 8.)

§ 9. **Ninth district.** The counties of Barnes, Stutsman, Griggs, Foster, Wells, Kidder, Burleigh, Sheridan, Stevens, Renville, Montraille, Walette, Howard, Williams, Mercer, Morton, Stark, Billings, Emmons, Logan, Benson, De Smet, Rollette, Bottineau, and McHenry shall constitute the ninth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Stutsman county shall be the senior county. (*Id.* § 9.)

§ 10. **Tenth district.** The counties of Cass, Richland, Ransom, Sargent, La Moure, and Dickey shall constitute the tenth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Cass county shall be the senior county. (*Id.* § 10.)

§ 11. **Eleventh district.** The counties of Grand Forks, Nelson, Traill, and Steele shall constitute the eleventh council and rep-

representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Grand Forks county shall be the senior county. (*Sess. Laws 1883, c. 7, § 11.*)

§ 12. **Twelfth district.** The counties of Pembina, Niekus, Cavalier, Walsh, Harvey, and Ramsey shall constitute the twelfth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives, and Pembina county shall be the senior county. (*Id. § 12.*)

§ 13. All acts and parts of acts in conflict with this act are hereby repealed. (*Id. § 13.*)

§ 14. This act shall take effect and be in force from and after its passage and approval. (*Id. § 14.*)

Approved March 9, 1883.

CHAPTER XLIX.

REAL ESTATE OF RELIGIOUS BODIES.

An Act Relative to the Holding and Transferring of Real Estate by Any Legal Officer of a Religious Society and their Successors in Office.

§ 1. **Title vests in successors in trust.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That all grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying, or granting real estate in this territory to any bishop, dean, rector, vestryman, deacon, director, minister, or any other officer or officers of any church or organized religious society, in trust for the use and benefit of such society of which they are such officer or officers, which have been or may be made, done, or executed, shall vest in their successor or successors in office, or other officer which such society may at any time designate, all the legal or other title, to the same extent, and in all respects the same, as trustee of such trust for the use and benefit of such society, which such bishop, dean, rector, vestryman, deacon, director, minister, or other officer or officers, had under such grant, deed, or act; and all transfers or sales made by such officer or officers so acquiring title by virtue of this act by succession in office shall have all the validity, force, and effect that it would have had, had it been made by such bishop, dean, rector, vestryman, deacon, director, minister, or other officer or officers, while holding under and by virtue of such grant, deed, or act of such legislative body.

§ 2. **Immediate effect.** This act shall take effect and be in force from and after its passage and approval by the governor.

Approved January 11, 1871.

CHAPTER L.

REGISTRATION OF WARRANTS.

An Act to Provide for the Registration of Warrants and Regulating the Order of Paying the Same.

§ 1. **Order of payment.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That all warrants upon the territorial treasurer, the treasurer of any county, or any municipal corporation therein, issued after January first, eighteen hundred and seventy-five, shall be paid in the order of their presentation therefor.

§ 2. **Warrant register—entries.** The territorial treasurer and the treasurer of every organized county, and every incorporated city or town therein, shall provide himself with and keep a warrant register, which register shall show, in a column arranged for that purpose, the number, date, and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person to whose name the same is registered, the date of payment, when made, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed, as hereinafter provided.

§ 3. **Duty of officer—fee.** It shall be the duty of every such treasurer, upon the payment of a fee of ten cents, when the amount is less than twenty-five dollars, and twenty-five cents if over that amount, by the holder of any warrant, or by any person presenting the same for registration, in the presence of such person, to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall indorse, "Registered for payment," with the date of such registration, and shall sign such indorsement: *provided*, that nothing in this act shall be construed to require the holder of any warrant to register the same, or to modify or repeal the law as it now is relating to presentation and indorsement, if "not paid for want of funds," and interest thereafter.

§ 4. **Duty of county treasurer.** It shall be the duty of every such treasurer to set aside the money for the payment of each registered warrant in the order of its registration, as soon as money sufficient for the payment of such warrant is received to the credit of the particular fund upon which such warrant is drawn, and the interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, and shall pay over to the party holding such warrant such sum when called for. (*As amended, Sess. Laws 1881, c. 140.*)

§ 5. **Daily footing of receipts.** Every such treasurer shall daily, as moneys are received, foot the several columns of his cash-book, and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he shall close the account for that year in such register, and shall carry forward the excess.

§ 6. **Failure of officer—forfeiture.** Any such treasurer who shall fail regularly to enter upon his cash-book the amounts so received, or who shall fail to keep his cash-book footed from day to day, as required by this act, for the space of three days, shall forfeit for each offense the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer.

§ 7. **Inspection of books.** The cash-book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid.

§ 8. **Failure to mail notice—penalty.** Any treasurer who shall, for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, fail to mail notice thereof to the person registering such warrant, shall forfeit to such person ten per cent. on the amount of such warrant, and ten per cent. additional for every thirty days thereafter during which such failure shall continue.

§ 9. **Penalty on bond.** Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person, the payment of whose warrant is thereby postponed, in the sum of three hundred dollars, to be recovered in civil action.

§ 10. **Repeal.** All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 11. **Warrants for taxes.** Nothing in this act shall be so construed as to prevent payment of taxes in warrants, as now provided by law: *provided, further*, that this act shall not apply to the counties of Minnehaha and Union.

§ 12. **Immediate effect.** This act shall take effect and be in force from and after its passage and approval.

Approved January 14, 1875.

APPENDIX.

CHAPTER I.

SEAT OF GOVERNMENT.

*§ 1. **Removed from Yankton.** The seat of government of the territory of Dakota is hereby removed from the city of Yankton, in the county of Yankton, and territory of Dakota, and is located and established as herein-after provided. (*Sess. Laws* 1883, c. 104, § 1.)

*§ 2. **Names of commissioners.** Milo W. Scott, Burleigh F. Spaulding, Alexander McKenzie, Charles H. Myers, George A. Matthews, Alexander Hughes, Henry H. De Long, John P. Belding, M. D. Thompson, be, and they are hereby, appointed commissioners for the purpose of locating the permanent seat of government and the capital building of the territory of Dakota. (*Id.* § 2.)

*§ 3. **Bond and oath—organization—bond of treasurer.** Said commissioners shall, before entering upon the discharge of their duties, enter into bonds in the sum of forty thousand dollars each, with good and sufficient sureties, to be approved by one of the justices of the supreme court, payable to the territory of Dakota, and conditioned for the faithful performance of their duties under this act, to fully account for all moneys that may come into their hands as such commissioners, and they shall also take and subscribe an oath to fully, faithfully, and impartially carry out the provisions of this act, which said oath shall be indorsed on their bond, and the same shall be filed in the office of the territorial treasurer. If any of the commissioners fail to qualify, as provided in this section, within thirty days after the passage of this act, or should a vacancy occur at any time, the governor shall fill the vacancy by appointment, and the person so appointed shall qualify in the manner provided in this act. After having qualified, and within thirty days after the passage of this act, the commissioners shall meet in the city of Yankton, and proceed to organize by electing a president, secretary, and treasurer, each of which officers, except the secretary, shall be a member of the commission herein provided for. The treasurer of the board of commissioners shall give a good and sufficient bond, payable to the territory of Dakota, and conditioned for the faithful performance of the duties of his office; said bond shall be in the sum of one hundred thousand dollars, to be approved as above provided. (*Id.* § 3.)

*§ 4. **Shall select site for capital.** On or before the first day of July, A. D. 1883, the commissioners, or a majority of them, shall select a suitable site for the seat of government of the territory of Dakota, due regard being had to its accessibility from all portions of the territory, and its general fitness for a capital, when at least one hundred thousand dollars shall be paid or guarantied in money; if the amount be not paid in money, then its payment to the territory shall be secured by a bond, with good and sufficient

sureties, payable to the territory, which bond shall be approved by said commissioners, or a majority thereof. And after the site is determined upon as aforesaid, said commissioners shall secure good and sufficient title deeds of at least one hundred and sixty acres of land, upon which the capital buildings shall be erected, and a sufficient amount of said grounds shall be laid out into squares and suitable landscapes, and the same is hereby declared to be the permanent seat of government of the territory of Dakota, at which all of the public officers of the territory shall be kept, and at which all of the sessions of the legislature shall hereafter be held. (*Id.* § 4.)

*§ 5. **Disposition of residue of lands.** The residue of the said one hundred and sixty acres, and any other lands secured by the said commissioners, shall be laid off and staked out into lots, blocks, streets and alleys, and public squares, and shall be disposed of, as hereinafter provided, for the sole benefit of the territory of Dakota. (*Id.* § 5.)

*§ 6. **Plats of town—sale of lots.** After said lands shall have been properly surveyed, staked off, and laid out, three accurate plats of the same shall be made, showing the blocks, lots, streets, alleys, parks, squares, and reservations for public buildings, one of which shall be recorded in the office of register of deeds of the county in which such site is situated, and by him entered in the proper deed-book; one of said plats shall be filed in the office of the secretary of the territory, and the third plat shall be retained by the commission. Said commissioners shall fix a minimum price upon each lot not reserved for public uses, which said price shall be marked upon each lot in said plat. The said commissioners shall then advertise in six daily newspapers, published within the territory of Dakota, that they will, upon a day to be therein named, not less than thirty days after the date of the first publication of the notice, offer, or cause to be offered, for sale to the highest and best bidder at public sale each lot not reserved as aforesaid. Said sale shall be held first at or near said capital grounds, and shall be opened from day to day at ten o'clock A. M., and be kept open for at least five consecutive days, Sundays excepted, and thereafter any remainder of said lots may be sold by said commissioners at public or private sale, and at such times and places as said commissioners may decide, and at said sales no lots shall be sold for any sum less than the minimum price marked upon the plat above provided for, nor upon any other terms than for cash in hand. (*Id.* § 6.)

*§ 7. **Deeds, how procured.** Every purchaser of lots shall deposit the purchase money therefor with the commissioners, who shall give a receipt for said money, which receipt shall specify the amount of money and the number of the lot and block for which the money was paid, and which receipt, upon its presentation to the secretary of the territory, shall entitle the person named therein to a deed in fee-simple, absolute, from the territory of Dakota, to the real estate named in the receipt, which conveyance shall be executed for and in behalf of the territory, by the governor, and attested by the secretary of the territory, under the seal of said territory, and said secretary shall file and safely keep all receipts thus presented. (*Id.* § 7.)

*§ 8. **Moneys to be deposited with territorial treasurer.** All moneys received by the commissioners for the sale of lots shall be forthwith deposited by them in the territorial treasury, and said money shall be held by the treasurer as a territorial building fund, and shall be kept by him separate from other funds and be separately accounted for. (*Id.* § 8.)

*§ 9. **Compensation of commissioners and surveyors.** All expenses incurred by the commissioners for a surveyor, at not exceeding five dollars per day, and necessary assistants, not exceeding two and one-half dollars per day each, with necessary bills for team hire, advertising, stationery, and other necessary expenses, shall be paid by the auditor of the territory by his war-

rant upon the territorial building fund upon the certificate of the said commissioners; and the commissioners shall be paid for their services the sum of six dollars each, for each and every day actually employed, by the warrant of the auditor of the territory upon the territorial building fund: *provided*, that in the aggregate they shall not receive as compensation more than ten thousand dollars. (*Id.* § 9.)

***§ 10. Advertising for plans and specifications.** As soon as said commissioners have secured a suitable site, and a building fund of at least one hundred thousand dollars, they shall issue a notice to architects, asking for plans and specifications for a building, the foundations of which shall be of stone, and the superstructure of which shall be of stone, brick, or iron, which shall be suited for the executive offices and the assembly of the two houses of the legislature, which said building may be designed as a portion of a larger edifice. (*Id.* § 10.)

***§ 11. Commissioners to adopt plan and advertise for erection of building.** The commissioners shall, from the plans presented, adopt the one best adapted to the wants of the territory, and shall appoint a competent person to superintend its construction, who shall be paid not exceeding five per cent. on the contract price for his services. The commissioners shall then advertise in at least four daily newspapers published in the territory, for one month, for sealed proposals for the erection of said buildings, according to the plans and specifications to be furnished by them. (*Id.* § 11.)

***§ 12. Letting of contract and bond of contractor—payments—removal of capital.** The contract shall be let to the lowest and best bidder, and the contractor shall enter into sufficient bonds of not less than double the contract price, with sureties, to be approved by the commissioners, conditioned for the faithful performance of the contract. The commissioners shall reserve the right to reject any and all bids, if in their judgment they are too high, and may again proceed to advertise for proposals in the manner provided in this act. The commissioners shall, from time to time, upon the requisition of the superintendent, draw, through the auditor of the territory, upon the territorial treasury for the amount necessary to carry on the construction of the capitol, which said warrants shall be paid out of the territorial building fund: *provided*, that said contractor shall not be paid at any time any sum or amount in excess of eighty per cent. of the actual value of the work done or material furnished at the time of such payment. The balance due the contractor shall be paid when the building is completed and accepted by the commissioners, and said building shall be completed as soon as practicable. As soon as the capitol building, provided for in this act, is erected and completed, it shall be the duty of said commissioners to report such facts to the governor, who shall thereupon issue his proclamation, setting forth the action of the commissioners, and declaring said building ready for occupancy; and it shall then be the duty of all territorial officers, whose offices are properly kept at the capitol, to remove within thirty days thereafter their several offices, together with the public property, archives, records, books, and papers to the building and place so declared ready for occupancy, and all sessions of the legislature shall thereafter be convened in the said building at the said place. (*Id.* § 12.)

***§ 13. Title to the territory.** The title to all lands secured by the commissioners for the location and erection of capitol buildings shall be conveyed to the territory of Dakota. (*Id.* § 13.)

***§ 14. Commissioners to make report—shall not purchase certain lands or have interest in contract.** The said commissioners shall make a full and complete report to the next legislature of all their doings, specifying

to whom, for what service or material, and the amount paid to each person; the number of lots sold, to whom, for what amount, to whom and for what amount the contract or contracts were let, together with a copy of all such contracts, and the said commissioners and their sureties shall be held responsible on their bonds for all their acts until the legislature shall order the said bonds to be delivered up to the said commissioners. No member of said board of commissioners shall purchase or in any other manner acquire any real estate or interest therein, directly or indirectly, within ten miles of the site selected for a capital within one year from the passage of this act, nor shall he be interested directly or indirectly in any contract made under the provisions of this act. (*Id.* § 14.)

*§ 15. **Penalty for violation of section fourteen.** Any violation of section fourteen of this act by any of the commissioners shall work a forfeiture of his official bond, and he shall be deemed to have committed a felony, and upon conviction thereof shall be punished by imprisonment in the territorial penitentiary not exceeding three years. (*Id.* § 15.)

*§ 16. **Temporary capital.** Until the territorial capital building shall be ready for occupancy as provided by this act, the territorial officers shall temporarily keep their offices, archives, books, records, and papers at the city of Yankton, unless the governor shall designate some other place by written order, in which case the said officers shall remove their respective offices, together with the archives, books, records, and papers pertaining thereto, to the place so designated, within the time prescribed in such order. (*Id.* § 16.)

*§ 17. **Acts repealed.** Chapter one of the Political Code, and all acts or parts of acts in any manner in conflict with this act or repugnant thereto, are hereby repealed. (*Id.* § 17.)

CHAPTER II.

LEGISLATURE.

*§ 10a. **Appointment of assistant sergeant-at-arms, and duties.** There shall be appointed by the president of the council and the speaker of the house of representatives, each, one assistant sergeant-at-arms, who shall discharge their several duties under the direction of the sergeant-at-arms of the respective houses, and during the absence of the sergeant-at-arms shall perform his duties as assistant, and they shall alternately serve as night-watchmen of the halls of the council and house of representatives. (*Sess. Laws 1883, c. 78, § 1.*)

*§ 10b. **Compensation.** The *per diem* of said officers shall be four dollars each, to be audited and paid out of the territorial treasury upon an account certified by the respective presiding officers of each house of the legislative assembly, and a sufficient sum to pay said certificates is hereby appropriated out of territorial funds not otherwise appropriated. (*Id.* § 2.)

*§ 10c. **Employment of pages, and per diem.** There shall be appointed by the president of the council one, and by the speaker of the house of representatives two, pages, who shall each receive the sum of one dollar per day for such services, to be audited and paid out of the territorial treasury on accounts certified by the presiding officers of the respective houses. (*Sess. Laws 1881, c. 12, § 1.*)

*§ 10*d*. **Election of clerks of judiciary committee.** There shall be elected and employed by the house of representatives and council, each, one clerk, whose duty it shall [be] to act as clerk of the judiciary committee of the house of representatives and council when said committees are in session; and it shall be the duty of such clerks, when said committees are not sitting, to act as assistant engrossing and enrolling clerk of their respective houses. (*Sess. Laws 1883, c. 80, § 1.*)

*§ 10*e*. **Compensation.** The *per diem* of such clerks shall be four dollars each, to be audited and paid out of the territorial treasury, upon an account certified by the respective presiding officers of each house of the legislative assembly, and a sufficient sum to pay said certificates is hereby appropriated out of the territorial funds not otherwise appropriated. (*Id. § 2.*)

CHAPTER III.

STATUTES.

*§ 4*a*. **Laws to remain property of territory.** The session laws as furnished under the provisions of this act shall remain the property of the territory of Dakota, except those furnished to the members and officers of the Legislature; and upon the expiration of their several terms of office such officers shall turn over all such laws to successors in office. (*Sess. Laws 1879, c. 37, § 2.*)

CHAPTERS XII AND XIII.

BOUNDARIES OF JUDICIAL DISTRICTS.

An Act to Define the Boundaries of the Judicial Districts of the Territory of Dakota and to Subdivide the Same, and to Fix the Terms of Court therein, and for Other Purposes.

*§ 1. **Third district court—where held.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That all that portion of the territory of Dakota bounded and described as follows, constitutes the third judicial district, viz.: Commencing at the north-east corner of the Sisseton and Wapeton reservation; thence in a north-westerly direction on the boundary line of said reservation to the north-west corner thereof; thence in a southeasterly direction on the western boundary line of Ransom county; thence west on the south boundary line of the counties of Ransom and La Moure, Logan and Emmons, to the right bank of the Missouri river at low-water mark; thence down said river along the right bank at low-water mark to the mouth of Grand river; thence up the center of the main channel of Grand river to a point where said river is intersected by the one hundred and second meridian of longitude west from Greenwich; thence north on said meridian to the forty-sixth parallel of north latitude; thence west on said parallel to the western boundary of

the territory; thence north along the western boundary of the territory to the northern boundary thereof; thence east along the northern boundary of said territory to the north-east corner thereof; thence southerly along the eastern boundary to the place of beginning; and the district court in and for said third judicial district, exercising the powers and jurisdiction appertaining to the district and circuit courts of the United States, shall be held at the city of Fargo, in the county of Cass, on the first Tuesday of June and December of each year. (*Sess Laws*, 1881, c. 84, § 1.)

*§ 2. **First district court—where held.** That all that portion of the territory of Dakota west of the Missouri river, and south of the south boundary line of the third judicial district, except the Fort Randall military reservation, and the counties of Todd, Gregory, Lyman, Presho, Pratt, Stanley, Rush, and that part of the county of Boreman south of the Grand river, shall constitute the first judicial district; and the district court in and for said first judicial district, exercising the powers and jurisdiction appertaining to the district and circuit courts of the United States, shall be held at Deadwood, on the first Tuesday of August and the third Tuesday of January in each year. (*Id.* § 2.)

*§ 3. **Second district court—where held—proviso.** That all that portion of the territory of Dakota not embraced in the first and third judicial districts shall constitute the second judicial district for the exercise of the powers and jurisdiction appertaining to the district and circuit courts of the United States; and the district court in and for said second judicial district, exercising such powers and jurisdiction, shall be held at Yankton, in the county of Yankton, on the first Tuesday of April and the second Tuesday of November in each year: *provided, however*, that in the subdivision of the second judicial district, hereinafter provided, no part of the fourth judicial district shall be considered a part of said second judicial district. (*Id.* § 3.)

*§ 4. **Fourth judicial district.** That the counties of Union, Clay, Lincoln, Turner, Minnehaha, McCook, Moody, Lake, Brookings, Kingsbury, Deuel, Hamlin, Clark, Grant, Codington, and Day shall constitute the fourth judicial district, created by act of congress entitled "An act providing for an additional associate justice of the supreme court of the territory of Dakota," approved March 3, 1879. (*Id.* § 4.)

*§ 5. **Subdivisions of first district.** That the first judicial district is subdivided as follows:

1. **Pennington.** The county of Pennington constitutes one subdivision, and the district court shall be held therein at the county seat of Pennington county on the second Tuesdays of April and November in each year. (*Id.* § 5, *subd.* 1.)

2. **Custer.** The county of Custer constitutes one subdivision, and the district court shall be held therein at the county seat of Custer county on the fourth Tuesdays of April and November in each year. (*Id.* § 5, *subd.* 2.)

3. **Lawrence, etc.** The county of Lawrence, and all other portions of said first judicial district not included in the preceding subdivisions, shall constitute one subdivision, and the district court shall be held therein at the county seat of Lawrence county on the first Tuesdays of August and January of each year, and in addition thereto special terms shall be held at said county seat on the first Mondays of March, July, September, and December. (*Id.* § 5, *subd.* 3.)

*§ 6. **Subdivisions of second district.** All that portion of the second judicial district not included in the fourth judicial district thereto attached is subdivided as follows:

1. **Yankton.** The county of Yankton constitutes one subdivision, and the district court shall be held therein at the county seat of Yankton county on the first Tuesday of April and the second Tuesday of November in each year; and in addition thereto special terms shall be held at said county seat on the first Mondays of January, March, July, and September in each year. (*Id.* § 6, *subd.* 1.)

2. **Bon Homme.** The county of Bon Homme constitutes one subdivision, and the district court shall be held therein at the county seat of Bon Homme county on the second Tuesday of September of each year. (*Id.* § 6, *subd.* 2)

3. **Charles Mix and Douglas.** The counties of Charles Mix and Douglas shall constitute one subdivision, and the district court shall be held therein at the county seat of the said Charles Mix county at such time or times as the judge of said court shall appoint. (*Id.* § 6, *subd.* 3.)

4. **Hutchinson.** The county of Hutchinson shall constitute one subdivision, and one term of the district court shall be held therein each year, at the county seat of said county, at such time as the judge of said district court shall appoint. (*Id.* § 6, *subd.* 4.)

5. **Davidson, Hanson, Miner, and Aurora.** The counties of Davidson, Hanson, Miner, and Aurora constitute one subdivision, and one term of the district court shall be held therein on the second Tuesday of June of each year, at the county seat of Hanson county, and such other special terms of district court may be held therein each year at said county seat as the judge of said district shall appoint. (*Id.* § 6, *subd.* 5.)

6. **Brule and Buffalo.** The counties of Brule and Buffalo constitute one subdivision, and the district court shall be held therein at the county seat of Brule county on such time or times as the judge of said court shall appoint. (*Id.* § 6, *subd.* 6.)

7. **Hughes, Hyde, Sully, etc.** The counties of Hughes, Hyde, Sully, Potter, Walworth, and Campbell constitute one subdivision, and one term of the district court shall be held therein each year, at the county seat of Hughes county, at such time as the judge of said district court shall appoint. (*Id.* § 6, *subd.* 7.)

8. **Beadle, etc.** The county of Beadle and all other portions of the second judicial district not included in any other subdivision shall constitute one subdivision, and the district court shall be held therein at the county seat of Beadle county, and one term of the district court shall be held therein each year, at such time as the judge of said district shall appoint. (*Id.* § 6, *subd.* 8.)

*§ 7. **Subdivions of the third district.** That the third judicial district is subdivided as follows:

1. **Pembina, Cavalier, and Rolette.** The counties of Pembina, Cavalier, and Rolette constitute one subdivision, and the district court shall be held therein at the county seat of Pembina county on the first Mondays of April and October of each year. (*Id.* § 7, *subd.* 1.)

2. **Grand Forks, Ramsey, De Smet, and Walsh.** The counties of Grand Forks, Ramsey, De Smet, and Walsh constitute one subdivision, and the district court shall be held therein at the county seat of Grand Forks county on the second Tuesdays of April and October of each year. (*Id.* § 7, *subd.* 2.)

3. **Traill.** The county of Traill constitutes one subdivision, and the district court shall be held therein at the county seat of Traill county on the third Tuesdays of April and October of each year. (*Id.* § 7, *subd.* 3.)

4. **Cass.** The county of Cass shall constitute one subdivision and the district court shall be held therein at the county seat of Cass county on the first Tuesdays of June and December of each year. (*Id.* § 7, *subd.* 4.)

5. **Richland and Ransom.** The counties of Richland and Ransom shall constitute one subdivision, and the district court shall be held therein at the county seat of Richland county on the fourth Tuesday of April of each year. (*Id.* § 7, *subd.* 5.)

6. **Barnes and Griggs.** The counties of Barnes and Griggs constitute one subdivision, and the district court shall be held therein at the county seat of Barnes county on the third Tuesday of September of each year. (*Id.* § 7, *subd.* 6.)

7. **Stutsman, La Moure, Foster, Gingras, etc.** The counties of Stutsman, La Moure, Foster, Gingras, Kidder, and Logan shall constitute one subdivision, and the district court shall be held therein at the county seat of Stutsman county on the second Tuesday of May of each year. (*Id.* § 7, *subd.* 7.)

8. **Burleigh, Emmons, and Stevens.** The counties of Burleigh, Emmons, and Stevens constitute one subdivision, and the district court shall be held therein at the county seat of Burleigh county on the third Tuesday of May and the second Tuesday of November of each year. (*Id.* § 7, *subd.* 8.)

9. **Morton, Mercer, Stark, and Billings.** The counties of Morton, Mercer, Stark, and Billings shall constitute one subdivision, and the district court shall be held therein at the county seat of Morton county on the fourth Tuesday of May of each year. (*Id.* § 7, *subd.* 9.)

*§ 8. **Subdivisions of the fourth district.** The fourth judicial district, with the powers and jurisdiction conferred upon the courts therein by law and by said act of congress, is subdivided as follows:

1. **Clay.** The county of Clay constitutes one subdivision, and the district court shall be held therein on the first Tuesday in January and August in each year. (*Id.* § 8, *subd.* 1.)

2. **Union.** The county of Union constitutes one subdivision, and the district court shall be held therein on the second Tuesdays of January and August in each year. (*Id.* § 8, *subd.* 2.)

3. **Lincoln.** The county of Lincoln constitutes one subdivision, and the district court shall be held therein on the fourth Tuesdays of January and August in each year. (*Id.* § 8, *subd.* 3.)

4. **Minnehaha and McCook.** The counties of Minnehaha and McCook constitute one subdivision, and the district court shall be held therein on the first Tuesday of April and the second Tuesday of November in each year, at the county seat of Minnehaha. (*Id.* § 8, *subd.* 4.)

5. **Turner.** The county of Turner constitutes one subdivision, and the district court shall be held therein on the fourth Tuesday of March and the fourth Tuesday of September in each year. (*Id.* § 8, *subd.* 5.)

6. **Moody.** The county of Moody constitutes one subdivision, and the district court shall be held therein on the first Tuesday of June in each year. (*Id.* § 8, *subd.* 6.)

7. **Brookings and Hamlin.** The counties of Brookings and Hamlin constitute one subdivision, and the district court shall be held therein at Brookings, in Brookings county, on the second Tuesday of June in each year. (*Id.* § 8, *subd.* 7, *as amended, Sess. Laws 1883, c. 71, § 1.*)

8. **Kingsbury.** The county of Kingsbury constitutes one subdivision, and the district court shall be held therein at the county seat of said county of Kingsbury on the third Tuesday of June in each year. (*Id.* § 8, *subd.* 8, *as amended, Sess. Laws 1883, c. 71, § 2.*)

9. **Deuel.** The county of Deuel constitutes one subdivision, and the district court shall be held therein at the county seat of the said county of Deuel on the fourth Tuesday of June in each year. (*Id.* § 8, *subd.* 9, *as amended, Sess. Laws 1883, c. 71, § 3.*)

10. **Codington and Clark.** The counties of Codington and Clark constitute one subdivision, and the district court shall be held therein at the county seat of Codington county on the first Tuesday after the fourth Tuesday in June in each year. (*Id.* § 8, *subd.* 10, *as amended*, *Sess. Laws* 1883, c. 71, § 4.)

11. **Grant and Day.** The counties of Grant and Day constitute one subdivision, and the district court shall be held therein at the county seat of Grant county on the second Tuesday after the fourth Tuesday in June of each year. (*Id.* § 8, *subd.* 11, *as amended*, *Sess. Laws* 1883, c. 71, § 5.)

12. **Lake.** The county of Lake constitutes one subdivision, and the district court shall be held therein at the county seat of said county on the fourth Tuesday of May in each year. (*Id.* § 8, *as amended*, *Sess. Laws* 1883, c. 71, § 6.)

*§ 9. **In fixing venue, what shall be sufficient.** In the entitling of a cause and fixing the venue in actions or proceedings in any judicial subdivision as herein created, it shall not be necessary to name all the counties comprising the whole subdivision, but it shall be sufficient to name the county wherein the court is held. (*Id.* § 91.)

*§ 10. **Concerning actions now pending.** All actions or proceedings, civil or criminal, now pending in any of the subdivisions in this territory, which do not properly belong therein under the provisions of the Code of Civil Procedure and Code of Criminal Procedure, by reason of the change in the subdivisions heretofore existing by law, the venue thereof may be changed by order of the court or judge thereof, upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found within the territory; but if neither can conveniently be found within the territory, then such change of venue may be made as herein provided, upon filing such demand with the clerk of the court in which such action or proceeding is pending: *provided, however*, that if no such change of venue is made as in this section provided, then all such actions or proceedings shall remain, and be tried or be disposed of according to law, in the courts of the subdivision where they are now pending. (*Id.* § 10.)

*§ 11. **Judge authorized to create a new subdivision.** The judge of the district courts, respectively, have authority at any time, by an order to that effect, to create a new subdivision out of any subdivision or subdivisions composed of two or more counties, and to fix the place of holding courts therein, which place shall be a county seat, and from the time of making such order such counties wherein courts are so appointed shall cease to be a part of the subdivision or subdivisions as herein provided, and shall itself constitute a subdivision, and the district courts shall be therein held at the times provided in such order. (*Id.* § 11.)

*§ 12. **Clerk and sheriff, when subdivision made up of two or more counties.** In subdivisions composed of two or more counties the clerk of district of the county where the court is held shall have authority to issue, and the sheriff thereof shall have authority to execute, all proper writ and process in any county or other place embraced within such subdivision, the same as if such subdivision were composed of his county only. (*Id.* § 12.)

*§ 13. **Payment of the expenses of courts in subdivisions made up of two or more counties.** For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the county clerks of the organized counties therein shall annually, as soon as the assessment roll is received, transmit to the clerk of the court of that county wherein the court is held, a statement of the aggregate amount of the assessment roll of their counties, respectively, and at the close of each term of the

district court the clerk thereof shall, under the supervision of the judge, calculate the expenses of such term, and the proportionate amount to be paid by each organized county, according to the proportion which the amount of the assessment roll bears to the aggregate amount of all the assessment rolls in such subdivision, and shall certify to the boards of county commissioners of the respective counties, amounts for such proportionate amounts and in favor of the persons to whom such expenses shall be due, which accounts shall be audited and allowed, and warrants issued accordingly in like manner as other claims against the county. (*Id.* § 13.)

*§ 14. **When judge may fix the amount.** If any county shall fail to furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge of the district court may fix the proportionate amount of the expenses of *the* which each county shall pay, and may at any time by *mandamus* compel the assessment and levy of a tax, or the doing of any other act necessary to carry out the provisions of this chapter. (*Id.* § 14.)

*§ 15. **Jurisdiction of justices over unorganized counties — when territory to pay expenses.** The civil and criminal jurisdiction of justices of the peace, in organized counties in any judicial subdivision containing one or more unorganized counties, shall extend over all such unorganized county or counties in such subdivision; and all summons, warrants, orders, or process issued by such justice of organized counties, shall be served or executed by the sheriff or any constable of the same county, and the costs in all criminal prosecutions in the district and justices' courts for offenses heretofore or hereafter charged to have been committed, when the same is not collected from the defendant, shall be audited and paid out of the territorial treasury; but no such costs shall be so audited or paid unless a duplicate itemized account of the same shall be certified to as correct by the district attorney of the district, and examined and allowed by the district court, one of which accounts shall be preserved as a public record in the office of the clerk of the district court of the subdivision; and the court shall have full authority to disallow any or all such costs and fees whenever it deems the same illegally or unnecessarily incurred. And the expenses of all criminal prosecutions arising or having arisen in such unorganized counties, including the lawful costs of keeping the prisoners, shall be audited and paid out of the territorial treasury, when the same is certified and allowed in the manner prescribed in this section. But no fees, costs, or charges shall be certified or allowed unless the same is first duly adjusted; and no fees, costs, or charges shall be so certified, allowed, or audited, as in this section provided, unless the officer prosecuting the same shall attach to such itemized account an affidavit that the same and every item thereof has been actually, legally, and necessarily incurred, and that no part thereof has been paid. (*Id.* § 15.)

*§ 16. **Additional terms of court.** The judges of the district courts respectively shall have power, whenever thereunto requested by the board of commissioners of the county wherein terms of court are regularly holden, or upon their own motion, without such request, by an order to that effect, to appoint and hold additional terms of the district court in any county or subdivision; and such judges shall have power to adjourn courts from time to time as they shall deem expedient for the due administration of justice; and such additional terms shall in all respects be considered the same as the general terms provided in this act. The courts herein appointed shall continue as long as the business therein shall require. (*Id.* § 16.)

*§ 17. **Acts repealed.** All acts and parts of acts in conflict with this act are hereby repealed, and all acts and parts of acts fixing the terms of

courts in the judicial subdivisions and defining the boundaries thereof are hereby abrogated and annulled. (*Id.* § 17.)

*§ 91. [18.] This act shall take effect and be in force from and after its passage and approval. (*Id.* § 18.)

Approved February 23, 1881.

CHAPTER XIV.

CLERKS OF DISTRICT COURTS.

*§ 1. **Clerk of court to be elected—proviso.** There shall be elected, at the same time as provided in this act for the election of district attorneys, for each organized county in this territory, a clerk of the district court, who shall be a resident of the county for which he is elected and a qualified voter thereof, and shall possess the necessary qualifications for holding office, as provided in section forty-seven, chapter twenty-seven, of the Political Code; and all of the provisions of chapter twenty-four of the Political Code, not inconsistent with the provisions of this section, shall be applicable in governing said clerks of the district court: *provided*, that in the counties of Brookings and Moody the clerk of the district court herein provided for shall be elected at the election in November, eighteen hundred and eighty-three, and thereafter as otherwise provided in this act. (*Sess. Laws* 1883, c. 43, § 12.)

*§ 2. **When to qualify.** Said clerks of the district court shall qualify within ten days after receiving their certificates of election, and immediately after qualifying shall enter upon the discharge of the duties of their offices. (*Id.* § 13.)

*§ 3. **Certain act repealed.** That chapters fourteen and fifteen of the Political Code, and chapter eighteen of the Session Laws of eighteen hundred and seventy-nine, shall cease to have effect and shall be void on and after January first, eighteen hundred and eighty-five. (*Id.* § 14.)

*§ 4. This act shall take effect after its passage and approval. (*Id.* § 15.)

Approved March 7, 1883.

See Appendix, c. 15, *§ 1.

Compensation. See Political Code, c. 39, § 4.

CHAPTER XV.

DISTRICT ATTORNEY.

*§ 1. **District attorney to be elected—oath and bond.** A district attorney shall be elected in each county in this territory, organized for judicial purposes, at the general election in the year eighteen hundred and eighty-four, and biennially after the last-mentioned election a district attorney for each county, who shall hold his office for the term of two years, and until his suc-

cessor shall be elected and qualified; and shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by law, and shall execute a bond to his county in the penal sum of one thousand dollars, with two or more sureties, to be approved by the county clerk of such county, which bond shall be conditioned for the faithful performance of his duties as such district attorney, and that he will pay over to the treasurer of his county, in the manner prescribed by law, all moneys which come to his hands by virtue of his office, and shall deposit such oath and bond in the county clerk's office: *provided*, that no person shall be eligible to the office of district attorney who is not duly admitted to practice as an attorney in some court of record in this territory. (*Sess. Laws 1883, c. 43, § 1.*)

***§ 2. Duties.** It shall be the duty of the district attorney of the several counties to appear in the district courts of their respective counties and prosecute and defend on behalf of the territory, or his county, all actions or proceedings, civil or criminal, in which the territory or county is interested, or a party; and whenever the venue is changed in any criminal case, or in any civil action or proceeding in which his county or the territory is interested or a party, it shall be the duty of the district attorney of the county where such indictment is found, or the county interested in such civil action or proceeding, to appear and prosecute such indictment, and to prosecute or defend such civil action or proceeding in the county to which the same may be changed. (*Id. § 2.*)

***§ 3. Shall appear for county.** Each district attorney shall, when requested by any magistrate of his county, appear on behalf of the territory before any such magistrate, other than those exercising police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the territory, except for common assault and battery, of which such magistrate shall have jurisdiction. (*Id. § 3.*)

***§ 4. Shall give counsel to certain officers.** The district attorney shall, without fee, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the *counties* [county] is interested, or relating to the duties of such board or officers in which the territory or county may have an interest. (*Id. § 4.*)

***§ 5. When court may appoint.** Each of the district courts, whenever there shall be no district attorney for the county, or when the district attorney shall be absent from the court or unable to attend to his duties, may, if the court shall deem it necessary, appoint, by an order to be entered in the minutes of the court, some suitable person to perform for the time being the duties required by law to be performed by the district attorney, and the person so appointed shall thereupon be vested with all the powers of such district attorney for that purpose. (*Id. § 7.*)

***§ 6. Moneys received for fines, how disposed of.** It shall be the duty of every district attorney, whenever he shall receive any moneys for fines, recognizances, penalties, or costs, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer. (*Id. § 8.*)

***§ 7. Shall file statement.** Every district attorney shall, on or before the first day of January in each year, file in the office of the county treasurer an account in writing, verified by his affidavit, to be filed with said account, of all moneys received by him during the preceding year by virtue of his office, or any fines, recognizances, forfeitures, penalties, or costs; and he shall specify in such account the name of each person from whom he may have received such moneys, the particular amount paid by each person, and the

cause for which each payment was made. But he shall pay over to the county treasurer all money he may receive as such district attorney within ten days after he receives it. (*Id.* § 9.)

*§ 8. **Penalty for neglect.** Whenever such district attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by the foregoing section, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars; but it shall be the duty of the county treasurer, in his official name and capacity, to cause an action to be instituted upon the bond of such district attorney for the recovery of the moneys so received and unpaid by him. (*Id.* § 10.)

*§ 9. **Shall attend grand jury.** Whenever required by the grand jury it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them any advice in any legal matter, or to issue subpoenas and other processes to enforce the attendance of witnesses. (*Id.* § 11.)

When this act takes effect. See Appendix, c. 14, *§§ 3, 4,

Compensation. See Political Code, c. 39, §§ 5, 6, and Appendix, c. 39, *§§ 5, 6.

CHAPTER XVIII.

ATTORNEYS AND COUNSELORS AT LAW.

*§ 4a. **County to employ counsel for indigent defendant.** In all criminal cases triable in the territory of Dakota, where it is satisfactorily shown to the court that the defendant has no means, and is unable to employ counsel, the court shall in all such cases, where counsel is appointed and assigned for defense, allow and direct to be paid by the county in which such trial is had, a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render: *provided, however,* that such attorney or attorneys shall not be paid a sum to exceed twenty-five dollars in any one case. (*Sess. Laws 1879, c. 7, § 1.*)

CHAPTER XIX.

JURORS.

*§ 2a. **Duty of county commissioners.** In every county in this territory organized into civil townships, wherein a district court is appointed or directed to be holden, the names of two hundred persons who are qualified to act as jurors shall be selected, in the manner hereafter provided, from which to draw the grand and petit jurors. The board of county commissioners of such counties shall, as near as may be, apportion *pro rata* the said number of names among the several townships in their respective counties, and the basis of such apportionment shall be the proper names on the several assessors' lists for the year preceding the making or filling of such list of names for jurors. (*Sess. Laws 1883, c. 72, § 1.*)

***§ 2b. Clerks of townships to post notices.** Whenever the county commissioners of any such county shall have determined the number of such names for each of the townships in the county, the county clerk of the county shall forthwith notify the township clerks of said townships of the apportionment of their respective townships, and said township clerks shall immediately thereafter cause to be posted in three public places in his township a notice in writing that the board of supervisors of the township will meet to draw the names of qualified jurors of the township to make up the grand and petit jurors' list of the county. Such notice shall state a place and hour of such meeting within the township, and designate a day not less than five nor more than ten days from the date of such notice. (*Id.* § 2.)

***§ 2c. Supervisors to select jurors—manner of.** Upon the day mentioned in section two of this act, the board of supervisors of the township shall meet at the time and place mentioned in such notice, and select from the resident tax-payers of said township twice as many names, as near as may be, as is apportioned to the township by the county commissioners, and the township clerk shall at such meetings write the name of each person so selected on a separate ticket, and also record a list of said names so written and selected in a book to be kept for that purpose. The supervisors shall then compare the names on said tickets with such recorded list of names, and satisfy themselves that said tickets are correct. The tickets shall then be folded, placed in a box or some other receptacle, and shaken up. One of the board of supervisors shall then select by lot from the tickets in said box or receptacle the proper number of names so apportioned to his township, and the township clerk shall then record, in a book to be kept for that purpose, such names in the order in which they are drawn. (*Id.* § 3.)

***§ 2d. Clerk to send list to clerk of court.** The township clerk immediately thereafter shall forward by mail to the clerk of the district court of his county a list of the names so drawn, and such clerk of the court shall make out and record, in a book to be used for that purpose, a list of the names returned by the several townships of the county; but the failure of the officers of one or more townships to perform their duty, as hereinbefore provided, shall not invalidate said list made up by the clerk of the district court. (*Id.* § 4.)

***§ 2e. Formation of county board to select jurors.** Within two days from the receipt of the order of the judge of the district court, directing a jury to be summoned, the clerk of the district court, or his deputy, in case such clerk of the court does not act, and the county clerk, county treasurer, and sheriff, or a majority of them, shall meet together at the county seat. In case the sheriff shall be disqualified by reason of being a party to any suit pending in said district court, or suspension from office, the coroner shall serve with said officers in place of the sheriff. The meeting of said officers shall be after notice in writing has been served the same day upon them, or their deputies, or by leaving a copy of said notice in their respective offices in case any such officer or deputy is absent from the county seat. Said notice must be served by the said clerk of the court, and must state therein the object to be, to draw names for jurors of the next term of the district court, and the place and time of such meeting. (*Id.* § 5.)

***§ 2f. Manner of drawing jurors.** At such meeting the clerk of the district court, or his deputy, shall write the name of each person on said juror list on a separate ticket, and the remainder of the officers at such meeting shall compare such tickets with said list, and when all of said names on said tickets are found to correspond with said list, the said tickets shall then be folded and placed in a box or some suitable receptacle and shaken. (*Id.* § 6.)

***§ 2g. Same.** One of said county officers, other than the clerk of the district court or his deputy, shall then proceed to draw enough of said tickets to equal the number of jurors directed to be summoned by the judge of the district court, and the clerk of the court or his deputy shall record such names in the order in which they are drawn in a book to be kept for that purpose. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall be liable to serve as petit jurors. (*Id.* § 7.)

***§ 2h. Duty of clerk of court.** The clerk of the court shall, on the day of the drawing as last herein provided, issue a *venire* or *venires*, as the case may be, directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the district court at the hour, day, and place designated in the order of the judge. A separate *venire* shall issue for the grand jury when such jury shall be ordered. (*Id.* § 8.)

***§ 2i. Number of names to be kept at maximum.** Such number of two hundred names shall at all times be kept full by completing the number after each term of court when a jury or juries have been drawn and summoned; and at the end of each term of the district court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn, so as to keep said number of two hundred full. And at the subsequent meeting the said board of commissioners shall proceed to apportion as hereinbefore provided for making up the whole of said list, and the same proceedings shall take place as to such names so required as are herein directed to be taken in making said full list, except that the board of supervisors of any township need not be specially called to draw any such names, but may do so at any regularly called meeting, provided that in the notice of such meeting the fact that names for a jury list are to be drawn shall be stated therein as heretofore provided. (*Id.* § 9.)

***§ 2j. Old mode to continue temporarily.** The list made under the provisions of chapter nineteen of the Political Code shall stand as the jury list of such counties until the list provided for by this act shall be made. (*Id.* § 10.)

***§ 2k.** This act shall take effect immediately. (*Id.* § 11.)

CHAPTER XXI.

COUNTIES AND COUNTY OFFICERS.

***§ 15a. When commissioners to divide county—proviso.** Whenever one-third of the legal voters of any organized county of this territory petition the county commissioners that they desire five county commissioners for said county, and that said county be divided into five commissioner's districts, it is hereby made the duty of such county commissioners to call the judge of probate and county clerk together within twenty days. The said county commissioners, judge of probate, and county clerk (provided said commissioners are not the commissioners appointed in organizing the county) are hereby constituted a commission and authorized to carry out the provisions of this act: *provided*, that [in] the counties of Yankton, Cass, Bon Homme,

Minnehaha, Walsh, Pembina, and Traill the number of county commissioners shall be, and the same is hereby, increased to five members, and said counties shall each be divided into five commissioner districts as herein provided without the necessity of a petition from the legal voters therein; and at the first meeting of the respective county commissioners of said counties after the passage of this act, or at some subsequent meeting, and as soon as practicable, they shall divide their respective counties into five commissioner districts as herein provided, and otherwise carry out and put in force the provisions of this act, so far as it relates and applies to their counties respectively. (*Sp. Laws 1883, c. 33, § 1.*)

*§ 15b. **Manner of division, etc.** Upon the meeting of the commission herein provided for they shall take and subscribe an oath to perform their duty impartially and for the best interest of such county, and elect one of their number chairman and one secretary of the commission; their proceedings shall be reduced to writing and signed by all the members and filed with the county clerk. They shall then consider the petition of such legal voters, and if satisfied that at least one-third of the legal voters of such county, as shown by the last election returns, has petitioned them, then such commission shall proceed to divide such county into five districts, and so divide it that no two of the then acting commissioners shall reside in one district; they shall then appoint a commissioner for each of the two districts that have no commissioner residing therein, who shall hold their office until the next general or annual election, and until their successors are elected and qualified, the then acting commissioners to continue to hold their respective offices until the term for which they are elected expires. The districts shall be numbered one, two, three, four, and five, and the districts in which no acting commissioners reside shall be numbered four and five, and at the first general or annual election the commissioner for district number four shall be elected for two years, and the commissioner for district number five for three years, [and when] the terms of office of the commissioners who have been elected (or appointed to fill a vacancy of an elected commissioner) expires, their successors shall be elected for the term of three years, each of whom shall be a resident of the district he is to represent, and to be voted for only by the electors of said district. (*Id. § 2.*)

*§ 15c. **Where public offices are to be kept.** It shall be unlawful for any county, township, or precinct officer in this territory to keep his office, or keep any books, papers, records, or other property belonging to said county, township, or precinct in said county, other than that in which he is required by the laws now in force to keep said office. (*Sess. Laws 1883, c. 90, § 1.*)

*§ 15d. **Penalty.** And any county, township, or precinct officer violating any of the provisions of this act is guilty of a misdemeanor. (*Id. § 2.*)

SPECIFIC POWERS OF BOARD OF COUNTY COMMISSIONERS.

§ 29. *7a. **Board of health—of whom composed.** The board of county commissioners of the several counties of this territory are hereby authorized and empowered to act as a board of health in their respective counties. (*Sess. Laws 1881, c. 21, § 1.*)

*7b. **Power to expend money.** As such board of health, the said board of county commissioners shall have power to expend such sum or sums of money from the county fund as they may deem sufficient to prevent the spread of any epidemic or contagious diseases as may prevail in or threaten their respective counties. (*Id. § 2.*)

*8. **Commissioners authorized to levy six-mill tax.** The boards of county commissioners of the territory of Dakota are hereby authorized and

empowered to levy a tax of not more than six mills on the dollar valuation for ordinary county revenue, including the support of the poor. (*Sess. Laws 1881, c. 111, § 1.*)

***9. County commissioners to ascertain amount of redemption money.** It shall be the duty of the board of county commissioners in the several counties of this territory, at each annual meeting of said board, to examine the county treasurer's "tax-sale book" and "stub receipts," and ascertain the amount of redemption money in the treasury, and compel the said treasurer to account for the same. (*Sess. Laws 1879, c. 49, § 10.*)

OF THE REGISTER OF DEEDS.

***§ 57a. Seal for register of deeds.** In every county in which the register of deeds is not *ex officio* county clerk, the register of deeds of such county shall provide himself with a seal, and make an impression of the same upon every instrument to which he attaches his signature as such. Said seal shall bear the following inscription: "Register of deeds of _____ county," as the case may be. (*Sess. Laws 1883, c. 95, § 1.*)

***§ 57b. Register of deeds to record trade-mark.** It shall be the duty of the register of deeds of any county within the territory, on the application of any person or firm domiciled within his county, in the territory of Dakota, or of any corporation created under the laws of this territory, engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water, or other beverages in packages, to record in a book suitable for the purpose a description of the names, brands, or trade-marks used by such persons or party for marking his casks, barrels, kegs, bottles, jugs, fountains, boxes, or other packages, which book shall be and remain a public record in his office. (*Sess. Laws 1881, c. 110, § 1.*)

***§ 57c. Fee for recording.** The register of deeds shall collect of any such person, firm, or corporation, making application to have any such description of name, brand, or trade-mark recorded in said register of deeds' office, a registration fee of one dollar for each and every such description of name, brand, or trade-mark, before the same be received for record and entered upon the books of the register of deeds' office. (*Id.* § 2.)

CHAPTER XXIII.

CIVIL TOWNSHIPS.

***§ 12a. 1. All officers to be chosen to be named on one ballot.** The electors of each township shall have power at the annual or general election to elect such officers for the township as are by law required to be chosen, and shall be elected and named upon the same ballot as county, district, and territorial officers at such election. (*Sess. Laws 1879, c. 59, § 7, as amended by Sess. Laws 1883, c. 113, § 1.*)

2. That section 1 of chapter 130 of the Laws of 1881 is hereby repealed. (*Sess. Laws 1883, c. 113, § 2.*)

3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. (*Id.* § 3.)

CHAPTER XXV.

TOWN-SITES.

***§ 1. Who may make entry of town-site.** Whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a town-site, and therefore not subject to private entry under the agricultural pre-emption laws, it shall be lawful and the duty, whenever requested by a majority of the occupants or owners of the lots within the limits of the town, for the corporate authorities of the town, if incorporated, and if not incorporated, then for the judge of the probate court of the county in which such town may be situated, to enter at the proper land-office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof, and those holding by deed or otherwise, according to their respective interests. (*Sess. Laws 1881, c. 135, § 1.*)

***§ 2. Moneys—how raised to pay entry fee.** If, at the time the petition is presented as provided for in the preceding section, there is not in the treasury of the town moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the probate judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in section five. (*Id.* § 2.)

***§ 3. Disposition of town property.** When the corporate authorities of any city or town, or the judge of the probate court of any county in this territory in which any city or town may be located, shall have entered at the proper land-office the land, or any part thereof, so settled and occupied as the site of such city or town, pursuant to and by virtue of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or judge of the probate court, his or their successors, to dispose of the trust so created and conferred by said act of congress in the manner hereinafter specified. (*Id.* § 3.)

***§ 4. Party making entry to transfer to claimants.** Any such corporate authorities or judge of the probate court holding the title to any such lands in trust, as declared in said act of congress, shall, subject to the provisions of this act, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share, or parcel of the same to the person, persons, associations, or corporations who shall occupy or possess, or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same, as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge of the probate court pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded. (*Id.* § 4.)

***§ 5. Expenses of entry and claims—how treated.** Immediately upon making the entry, or passage of this act, if the lands have already been entered, and during the sixty days thereafter, such corporate authorities or probate judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land-office for such entry, the costs of surveying and platting the town-site, of attorney's fees, witness fees, recording plat, and all other expenses necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give

notice to all persons having any claims for moneys advanced or services rendered, to present and file a certified statement of the same within said sixty days; such notice to be given promptly after making of the entry, or after the passage of this act, if the entry has been already made, and to be by publication for three weeks in some newspaper published in the county wherein the town-site is located, or if none be so published, then in the newspaper published nearest thereto. And any person having or making any such claim, who shall at the expiration of said sixty days have failed to file such verified statement of account, shall be thereafter barred from presenting the same or recovering thereon. Upon the receipt of such verified statements of accounts, they shall be duly filed by the said corporate authorities, or judge of the probate court, and either allowed, rejected, or allowed in part, as in the judgment of such corporate authorities or judge of the probate court may be just and right; due notice of such allowance, rejection, or allowance in part to be at once given to the person having filed the verified statement. Any person filing such verified statement, or any lot-owner feeling aggrieved at the decision of such corporate authorities or judge of the probate court making such allowance, rejection, or allowance in part of any claim so filed, may, within thirty days after the decision, appeal therefrom to the district court of the district wherein such city or town may be located. Such appeal to be taken upon notice to such corporate authorities, or judge of the probate court, in the same manner and subject to the same restrictions as appeals from the board of county commissioners. (*Id.* § 5.)

*§ 6. **Publication of notice of entry and claims awarded.** Immediately upon the expiration of sixty days after the first publication of said notice as hereinbefore provided, at the proper land-office, the corporate authorities or judge of the probate court entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town shall be situated; or in case there shall be no newspaper published in such county, then in the newspaper published nearest the said city or town; and in the latter case, where there is no newspaper published in said county, copies of said notice shall also be posted in not less than ten conspicuous places within the limits of said county. Such notice shall be published not less than once a week for six consecutive weeks, and shall contain an accurate description of the lands entered, as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry, and which will be assessed against the land constituting the town-site in executing the deeds therefor. (*Id.* § 6.)

*§ 7. Such notice provided for in section four shall direct that each and every person, association, or corporation claiming to be an occupant, or to have, possess, or be entitled to the right of possession or occupancy of such lands, or any lot, share, or parcel thereof, shall, within ninety days from the date of the first publication or posting of such notice, in person, or by his, her, or their, or its duly-authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot, lots, parcel, or parcels of land in which he, she, they, or it claim to have an interest; and the specified right, interest, or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described. Such statement to be verified by the affidavit of the party or parties signing the same. (*Id.* § 7.)

*§ 8. **Statements of claimants to be recorded.** The statement of the claimant provided for in the preceding section shall, together with the accom-

panying affidavits, be delivered to the said corporate authorities, or judge of the probate court, within the time specified in said notice, and shall be by him or them filed, and an abstract of the contents thereof, with name of claimant and date of filing, entered in a well-bound book, to be kept for such purpose, which shall be known as "The Record of Claimant's Statements;" and all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands, or any interest or estate therein, or any part or parcel thereof. (*Id.* § 8.)

*§ 9. **Where claims conflict.** Should any one or more persons, associations, or corporations claim adversely the title to any lot or lots, parcel or parcels, of land within the boundaries of such city or town, the party in possession, or, if neither party be in actual possession, then the party first filing his application, shall be *prima facie* entitled to a deed of conveyance, and the party or parties claiming adversely shall, within said ninety days after the first publication of the notice provided for in section four of this act, file with the corporate authorities, or judge of the probate court, a sworn statement as provided in section six of this act, and at the same time a notice that he, she, or it contests the statement and application for deed hitherto made, and expects at once to begin an action in the district court to determine his, her, or its right to the property; whereupon the corporate authorities, or judge of the probate court, must suspend action on such disputed lot or parcel of ground until a proper certificate be furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must, within ten days thereafter, begin action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff or plaintiffs may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an action shall be deemed begun when a complaint has been filed in the office of the clerk of the court, and a summons placed in the hands of a sheriff for service: *provided*, that personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed, and no action begun in accordance with the provisions of this section, the party aforesaid having the *prima facie* right shall be entitled to a deed of conveyance; and in case of action begun, the party recovering therein shall be entitled to a deed of conveyance, upon presentation of a certified copy of the final judgment or decree of the court in such action, with the corporate authorities, or judge of the probate court. Upon receiving the certificate aforesaid, or certified copy of judgment or decree, the same shall be filed and an abstract of the contents entered in the record of claimant's statements; and the said corporate authorities, or judge of the probate court, shall thereupon execute deeds of conveyance to the party or parties entitled to receive the same. All persons except minors and insane persons failing to file their notice of contest, and to bring their action within the time herein prescribed, shall be thereafter forever barred from setting up or asserting any claim, right, or title to such lot or lots, parcel or parcels, of land so adversely claimed. (*Id.* § 9.)

*§ 10. **Extent of ground that may be claimed.** The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract, under the provisions of this act, unless said claimant or his grantors was in the actual peaceable possession of the same prior to its entry as herein provided for, and had improved the same, and is still in the occupancy thereof, may equal but not exceed two acres in extent, provided that such ground be exclusively occupied by, or in the possession of, such claimant, and have improvements thereon of not less than two hundred dollars in value. Such

claimant shall also be entitled to a deed for each additional lot, not exceeding in area twenty-five hundred square feet, on which he may have substantial improvements of not less than one hundred dollars in value. When any claimant shall make application for a deed to more than one tract or parcel, he shall file, in addition to his own affidavit, as required by this act, the affidavits of at least two disinterested witnesses, showing the notice, character, and actual cash value of the improvements upon such additional lot or lots so claimed. (*Id.* § 10.) .

*§ 11. **Claimant to pay certain expenses.** Each person shall, upon filing an applicant's statement, as herein provided, be required to pay to the said corporate authorities or judge of the probate court his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds, and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices, as required by this act; such proportion to be determined by the relation which the value, extent, and area of such claimant's land bears to the whole amount of land claimed during the ninety days, and in addition thereto the sum of two dollars for the principal tract claimed, and fifty cents for each additional lot of two thousand five hundred square feet claimed by the same person or persons, association or corporation, as a fee for executing the trust, taking affidavits, filing and abstracting statements and affidavits, and executing and acknowledging the deed as required by this act, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals, provided for in section three of this act, the sum of one dollar shall be paid for certified copy of statement of account filed, and certificate of decision and award made, and pending such appeal, and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in the third section of this act, the corporate authorities, or judge of the probate court, must, in making and apportioning expenses, take care that the estimate be sufficient to meet the same, and any possible increase made by the appellate tribunal. Any surplus resulting from such estimate to be applied as herein provided. In case of any contest and deposit of money, as in this section provided, by both parties, the corporate authorities or judge of the probate court shall, after final judgment and decree, refund to the unsuccessful party or parties all money so advanced by such party or parties, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, certified copy of decree, etc. (*Id.* § 11.)

*§ 12. **Deeds to be given.** After the expiration of ninety days from the date of the first publication of the notice required by section four of this act, the corporate authorities or judge of the probate court shall proceed to award the lot or lots, parcel or parcels, of land as provided in this act, and for that purpose shall, as soon as practicable, and as near as practicable in the order of the time of the filing of claimant's statements, examine each and every claim, read proofs filed, and hear additional testimony, if deemed advisable, and if the claim shall be found to comply with the provisions of this act, and no adverse claim and notice of contest shall have been filed, the said corporate authorities or judge of the probate court shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots, or parcels, of land so claimed. (*Id.* § 12.)

*§ 13. **Remaining lots to be deeded to board of education.** When any lots or parcels of land within the limits of any city or town shall remain unclaimed after the expiration of the time allowed by this act for the filing of claimant's statements, it shall be the duty of the corporate authorities, or

judge of the probate court, to convey the lots or parcels of land so remaining unclaimed by good and sufficient deed to the board of education of such city or town, if there be such body qualified to take the title to real property, to be taken and disposed of by such board of education for school purposes, and for the exclusive use and benefit of the school-district in which such city or town may be situated, under such directions and limitations as are provided by this act. (*Sess. Laws 1881, c. 135, § 13, as amended, Sess. Laws 1883, c. 114, § 1.*)

*§ 14. **Who to act in absence of probate judge.** If there be no such board of education legally authorized to take the title to real property, then the corporate authorities, or judge of the probate court, shall sell and dispose of the said unclaimed lots or parcels of land so remaining for school purposes, and for the exclusive use and benefit of the school-district in which said city or town may be situated, under the directions, limitations, and provisions contained in this act. (*Id. as amended, Sess. Laws 1883, c. 114, § 2*)

*§ 15. **Appraisal.** The board of education, corporate authorities, or judge of the probate court aforesaid, shall appoint three competent and suitable freeholders of such city or town a board of appraisers, whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land aforesaid, and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisalment they shall make and return a full and complete report of their proceedings and appraisalment to the board of education, corporate authorities, or judge of the probate court, which said report shall contain a full schedule of each and every lot or parcel of land remaining unclaimed, giving an exact description of said lots by their numbers and the number of the block, and all parcels of land not so numbered shall be described by metes and boundaries, and upon each lot or parcel of land separately, they shall designate the valuation thereof as fixed by their appraisalment. Said appraisalment and report shall be subscribed and sworn to by at least two of said appraisers. (*Id. as amended, Sess. Laws 1883, c. 114, § 3.*)

*§ 16. **Public sale.** The board of education, corporate authorities, or judge of the probate court, shall, within thirty days after the receipt of the aforesaid report of said board of appraisers, give public notice that all such unclaimed lots or parcels of land, or so much thereof as may be considered for the best interest of the school-district, will be sold at public auction to the highest bidder for cash; said notice to be given by publication in not less than three newspapers of general circulation in the territory, and for a period of not less than thirty days immediately prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the board of appraisers. (*Id. as amended, Sess. Laws 1883, c. 114, § 4.*)

*§ 17. **Bids—private sale.** At the time and place appointed in said notice the board of education, corporate authorities, or judge of the probate court, shall offer for sale at public auction, subject to competitive bids, all the lots and parcels of land, or so much thereof as may be considered for the best interest of the school-district, returned by the report of said board of appraisers as unclaimed:

Provided, that no bid shall be received, or lot or parcel of land sold, for a less sum than the appraised valuation, and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the school-district, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids equal to the appraised valuation thereof, may thereafter be sold at private sale by said board of education, corporate authorities, or judge of probate court, for a sum of money not less than the appraised

valuation thereof, and not otherwise. (*Id. as amended, Sess. Laws 1883, c. 114, § 5.*)

*§ 18. **Purchaser to pay for deed.** Any purchaser at such sale, in addition to the amount of purchase money paid for any lot, lots, or parcel of land, shall pay to the board of education, corporate authorities, or judge of probate court, the sum of two dollars as a fee for making, executing, and acknowledging a deed of conveyance therefor; and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges of conducting sale, giving notice, appointing appraisers, etc. (*Id. as amended, Sess. Laws 1883, c. 114, § 6.*)

*§ 19. **Proceeds, how applied.** The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing, and a *per diem* of not more than three dollars per day to each member of the board of appraisers for the days actually and necessarily employed by them in making such appraisal and report as aforesaid, and other expenses actually and necessarily incurred in the proper conduct and management of such sale, shall be immediately turned over at the close of said sale by the board of education, corporate authorities, or judge of the probate court, to the treasurer of the school-district, and by said treasurer placed to the credit of the school-house fund of said school-district, only to be disbursed and applied in the payment of outstanding bonds, warrants, or other indebtedness against said school-district, contracted or created in the erection or construction of school-houses, procuring grounds or appurtenances therewith, if any such bonds, warrants, or other indebtedness exists, otherwise to be applied and placed to the credit of the general school-fund of the school-district. (*Id. as amended, Sess. Laws 1883, c. 114, § 7.*)

*§ 20. **Disposition of surplus.** In case there should be found any surplus on hand, over and above receipts for fees and awards for expenses arising from the conveyances of lots, as provided in section ten of the act of which this act is amendatory, then such surplus shall, so soon as ascertained by the corporate authorities, or judge of the probate court, be accounted for and turned over to the treasurer of the school-district wherein such city or town may be situated, to be by such school-district treasurer placed to the credit of the school-house fund, then to be disbursed and applied as herein provided for the disbursement of proceeds derived from the sale of unclaimed lots or parcels of lands. (*Id. as amended, Sess. Laws 1883, c. 114, § 8.*)

*§ 21. **When term of office of party making entry expires.** Whenever the term of office of any corporate authorities or judge of the probate court having made entry of a town-site shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with full report of the condition of the trust, and receipts and disbursements thereunder, and thereafter the said trust shall be executed in every particular by such successor or successors. Any willful violations of the provisions of this act by the corporate authorities or judge of the probate court shall be held and considered a misdemeanor; any such corporate authorities or judge of the probate court willfully making a deed to any party not entitled to receive the same shall be guilty of a misdemeanor; and any such corporate authorities or judge of the probate court willfully misappropriating funds received by them in the execution of this trust shall be held guilty of embezzlement. (*Sess. Laws 1881, c. 135, § 14.*)

*§ 22. Chapter twenty-five of the Political Code, entitled "Town-sites," is hereby repealed. (*Id. § 15.*)

CHAPTER XXVIII.

REVENUE.

§ 3. *21. **Taxation of telegraph companies.** The owners of any telegraph line constructed and in operation, or that may hereafter be constructed and operated, within the limits of this territory, excepting only lines owned by the United States government, shall pay to the territory an annual tax of thirty cents per mile for every mile of route occupied, in lieu of all other taxes, which shall be paid in January of every year to the territorial treasurer. (*Sess. Laws 1881, c. 132, § 1.*)

*22. **Tax a lien—line may be sold.** This territory shall have a lien upon any line constructed and in use as aforesaid, and all its appurtenances, for all taxes which may accrue to the territory by virtue of the foregoing section; and in case the tax, in whole or in part, shall not be paid by the first day of February of every year, it shall be the duty of the territorial treasurer to advertise such line for sale for the amount of such tax remaining unpaid, in some newspaper published at the seat of government, by giving three weeks' previous notice, and to sell the same accordingly for the amount of tax and interest and charges of sale, provided the same shall not be paid before the time of sale, and the surplus money, if any, shall be paid to the owner or owners of said line, after deducting the expenses of advertising and selling the same. (*Id.* § 2.)

COLLECTION OF TAXES ON RAILROAD PROPERTY.

*§ 19a. **Percentage of gross earnings to be paid in lieu of other taxes.** In lieu of any and all other taxes upon any railroads, except railroads operated by horse-power, within this territory, or upon the equipment, appurtenances, or appendages thereof, or upon any other property situated in this territory, belonging to the corporation owning or operating such railroads, or upon the capital stock or business transaction of such railroad company, there shall hereafter be paid into the treasury of this territory a percentage of all the gross earnings of the corporation owning or operating such railroad, arising from the operation of such railroad as shall be situated within this territory, as hereinafter stated; that is to say: Every such railroad corporation or person operating a railroad in this territory shall pay to said treasurer each year, for the first five years after said railroad shall be or shall have been operated in whole or in part, two per centum of such gross earnings; and for and in each and every year after the expiration of the said five years, three per centum of the said gross earnings; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessments whatever upon the property aforesaid. The said payments shall be made, one-half on or before the fifteenth day of February, and one-half on or before the fifteenth day of August, in each year, and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company; an abstract whereof shall be furnished by said company to the treasurer of this territory, on or before the first day of February in each year; the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and, for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the governor of this territory, or any other person appointed by law, to examine under oath the officers and employes of said company or other persons; and if any person so examined by the governor, or other au-

thorized person, shall knowingly or willfully swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for the purpose of securing to the territory the payment of the aforesaid per centums, it is hereby declared that the territory shall have a lien upon the railroad of said company, and upon all property, estate, and effects of said company whatsoever, personal, real, or mixed. And the lien hereby secured to the territory shall have and take precedence of all demands, decrees, and judgments against said company. (*Sess. Laws 1883, c. 99, § 1.*)

***§ 19b. Where company shall fail to make return.** If any railroad company in this territory shall fail to make return of its gross earnings, as aforesaid, or of any part thereof, at the time and manner provided by law, and such default shall continue during the period of thirty days, such company shall be subject to a penalty in an amount equal to twenty-five per cent. of the tax imposed upon such company by this act. And the treasurer of the territory shall forthwith ascertain the amount of such tax justly due from such company, as nearly as may be, from such evidence as may be available, and shall thereupon collect such tax, as so ascertained, together with the said penalty thereon. The amount of tax ascertained by the territorial treasurer as in this section provided, shall, together with the said penalty thereon, be by him entered in the books of his office; and such entry when so made shall stand in the place of the report required by law to be made by such company; and shall, in all courts within this territory, be evidence of the amount of such tax and penalty, and of the other facts stated therein in pursuance of this act. (*Id.* § 2.)

***§ 19c. Neglect to pay taxes.** In case any railroad company shall fail or neglect to pay the taxes reported by it to be due, in pursuance of this act, for the period of thirty days after the same shall have become due by the terms thereof, in such case there shall be added to the amount of such tax ten per centum thereof, as a penalty for such failure or neglect to pay. (*Id.* § 3.)

***§ 19d. Territorial treasurer to distrain.** At any time after the expiration of the period of thirty days after any tax has become due and payable under the provisions of this act, the territorial treasurer, or his deputy, shall distrain sufficient goods, chattels, or other movable property, if found within this territory, to pay the taxes or per centum due from such corporation, together with the penalty thereon, herein provided; and shall immediately advertise the sale of the same in at least three newspapers published within this territory, stating the time when and the place where such property shall be sold. Such sales shall take place at some point on the railroad of such delinquent company, and at least four weeks' notice of the time and place of such sale shall be given. Such delinquent company, its successors or assigns, may pay any such taxes and penalty at any time before the sale of property distrained as herein provided; and thereupon further proceedings in connection with such distress shall cease, and the property distrained be surrendered to the owner thereof. (*Id.* § 4.)

***§ 19e. Lands subject to taxation.** The lands of any railroad company shall become subject to taxation in the same manner as other similar property, as soon as the same are sold, leased, or contracted to be sold or leased; and on or before the first day of April of each year, each railroad company, having lands within this territory, shall return to the county clerk of each county full and complete lists, verified by the affidavits of some officer of the company having knowledge of the facts, of all lands of such company situated in such county, sold or contracted to be sold or leased during the year ending the last day of December preceding, and the list furnished on or [or] before the first day of April, A. D. 1883, in compliance with the terms of this section, shall include a complete list of all lands sold or leased, or con-

tracted to be sold or leased, prior to the last day of December, A. D. 1882. (*Id.* § 5.)

*§ 19^f. **How tax apportioned.** The moneys received and collected by the territorial treasurer in pursuance of *the* [this] act, shall be disposed of by him as follows: One-third thereof shall be retained in the territorial treasury for the use of the territory, and the remainder shall be apportioned among the several counties into or through which railroads *respectfully* [respectively] run in proportion to the number of miles of main track situated in such counties respectively. (*Id.* § 6.)

JOINT RESOLUTION PROVIDING FOR THE APPOINTMENT OF A TAX COMMISSION.

*§ 32a. *Be it resolved by the Council and House of Representatives of the Legislative Assembly of the Territory of Dakota:* That three commissioners be appointed by the governor, and confirmed by the legislative council, whose duty it shall be to carefully examine into all sources of revenue, and ascertain and report whether or not all classes of property are equally assessed and taxed under the present law.

To ascertain and report whether the various corporations in the territory, whose capital stock is owned outside of the territory, are paying their just shares of the public burdens.

To ascertain and report what new sources of revenues may justly be secured for territorial, county, municipal, or educational purposes.

Resolved, that said commission be authorized to report to the governor, to be by him transmitted to the secretary of the interior, or any department of the United States government, any evasion of the United States laws whereby the revenues due to the territory are unjustly decreased; also that said commission report, to the present or next legislative session, bills with detailed statements printed in pamphlet form for equalizing taxation throughout the territory.

Resolved, that said tax commission be authorized to employ a secretary, who can write short-hand; also to summon and compel the attendance of witnesses, with such books and papers as may be required for a thorough investigation of the present or proposed modes of taxation.

Resolved, that each commissioner be allowed and paid out of any money in the treasury, not otherwise appropriated, six dollars for each day actually employed in conducting the aforesaid investigation, and making reports, together with the actual expenses incurred while traveling or away from his usual place of abode, to be made up monthly and certified under oath to the territorial auditor. The pay of the secretary, and other expenses of the commission, to be certified by the commission and paid out of the treasury in like manner. (*Sess. Laws 1883, c. 108.*)

Approved March 9, 1883.

*§ 57a. **County treasurer to make and file list of uncollectible taxes.** If the county treasurer is unable, for want of goods or chattels whereon to levy, to collect, by distress or otherwise, the taxes, or any part thereof, which may have been assessed upon the personal property of any person or corporation, or any executor or administrator, guardian, receiver, agent, or factor, such treasurer shall file with the county clerk, on the first Monday of July following, a list of such taxes, with an affidavit of himself, or deputy treasurer intrusted with the collection of such taxes, stating that he had made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same, and such other facts as he shall deem of importance to the county commissioners. The county clerk shall present said list to the county commissioners at their first meeting then or thereafter in session, and the said board shall examine such taxes so return-

able, and if they are satisfied such taxes or any part thereof cannot be collected, then they shall instruct the county treasurer to place the same on a list of taxes that cannot be collected, in a book provided for that purpose, and said treasurer shall thereupon be released from further liability for a failure to collect such tax or taxes; but if said board are satisfied that said taxes, or any part thereof, can be collected, they shall order the county treasurer to again proceed to collect the same, and it shall be his duty to again proceed to collect said taxes in the manner provided by law. (*Sess. Laws 1881, c. 120, § 1.*)

*§ 57b. **Penalty for failing to collect certain taxes, etc.** If any county treasurer shall neglect or refuse to collect any tax assessed on personal property when the same is collectible, or to file the delinquent list and affidavit as herein set forth and provided, he shall be held liable in his next settlement with the county commissioners for the whole amount of such taxes uncollected, and the same shall be deducted from his salary or fees and applied to the several funds for which they were levied. (*Id.* § 2.)

*§ 57c. **Mileage.** County treasurers shall be allowed for making demand for such taxes where no levy is made on property, ten cents per mile for each mile necessarily and actually traveled, and when levy is made the fees now allowed by law, which fees and mileage shall be paid to the treasurer of that county by the person, corporation, executor, administrator, guardian, receiver, agent, or factor from whom such tax or taxes are due. (*Id.* § 3.)

*§ 57d. **Amount to be collected by treasurer.** The county treasurer shall charge and collect, in addition to the taxes and interest and penalty, the sum of twenty cents on each tract of real property and ten cents on each town lot advertised for sale, which sum shall be paid into the county treasury and the county shall pay the costs of publication, but in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising. (*Sess. Laws 1883, c. 52, § 1.*)

*§ 91a. **Ten per centum interest on warrants legalized.** The payment of interest at the rate of ten per cent. per annum is hereby legalized upon all warrants heretofore paid by the territorial treasurer; and it shall be lawful for the territorial treasurer to pay the same rate upon all outstanding territorial warrants that have been presented for payment and registration. Warrants hereafter issued shall bear the same rate of interest provided in this section, after presentation at territorial treasurer's office and indorsement by that officer, "not paid for want of funds," as provided by law. (*Sess. Laws 1879, c. 58, § 1.*)

*§ 91b. **Treasurer to issue funding warrants at eight per cent.** The territorial treasurer, with the advice and consent of the auditor and governor, is hereby authorized and directed to pay all territorial warrants, legally issued, that may have been or that may hereafter be presented to him for payment: *provided*, the money to pay the same can be obtained at a rate of interest not greater than eight per cent.; and the auditor is hereby authorized and directed to issue funding warrants in lieu of the warrants so paid, and the treasurer is hereby authorized and directed to apply all territorial funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants. (*Id.* § 2.)

*§ 91c. **Object of this act.** The object and intent of this act shall be so construed as to protect the public credit, to secure the funding of all floating warrants at the lowest rate of interest possible to be provided for, and to prevent the sale of any territorial warrants hereafter issued at a sum less than their par value. (*Id.* § 3.)

*§ 91d. **Act—how construed.** This act shall not be construed so as to authorize in any manner the increase of the public debt. (*Id.* § 4.)

*§ 91a. **Conflicting acts repealed.** All acts and parts of acts in conflict with the provisions of this act are hereby so modified and amended as to be made to conform to this act. (*Id.* c. 5.)

CHAPTER XXIX.

HIGHWAYS, BRIDGES, FERRIES, AND ROAD SUPERVISORS.

*§ 4a. **Where roads located without viewers.** Public roads may be established without the appointment of viewers, provided the written consent of all the owners of the land to be used for that purpose be first filed in the county clerk's office, and if it is shown to the satisfaction of the board of county commissioners that the proposed road is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a public road. (*Sess. Laws 1883, c. 67, § 1.*)

*§ 4b. **Who to pay expenses.** If a survey of the establishment of the road named in the preceding section is necessary, the board of county commissioners, before ordering such survey, shall require the parties asking for the establishment of such highway to pay the expenses of such survey. (*Id.* § 2.)

TIME AND MANNER OF MAKING FIRE-GUARDS.

*§ 47a. **Exempting certain land from taxation.** For the purpose of securing protection against prairie fires to homesteads, pre-emptions, timber claimants, and all persons owning or having in charge any tract of land consisting of one hundred and sixty acres, more or less, who shall break or plow a fire-guard thirty-three feet in width, encompassing entire any such tract as described in this section, that the amount of land contained in such fire-guard shall be exempt from taxation: *provided*, it shall be kept free from grass, weeds, and all other combustible matter, from September fifteenth to May tenth in each year, and shall remain exempt as long as the provisions of this section are complied with. (*Sess. Laws 1879, c. 22, § 1.*)

*§ 47b. **Where person has more than quarter section and fractional parts.** Any person claiming or owning any tract of land consisting of more than a quarter section, lying in a body, shall not encompass less than that amount with a fire-guard, as described in section one of this act, unless they have a fractional part or parts thereof not adjoining each other, in which case they may encompass them severally with fire-guards, and be entitled to the benefits of this act. (*Id.* § 2.)

*§ 47c. **Duty of road overseer to make fire-guards.** Where persons have failed to make or cause to have made fire-guards in compliance with sections one and two of this act, it shall be the duty of the road overseer in said district to make or cause to have made along the line of all public roads adjoining such lands a fire-guard one rod in width on each side of such road, in the manner prescribed in section one of this act, and said overseer shall have power to warn out persons liable for road and poll-tax to perform such service as is prescribed by law, and persons performing such service shall be allowed the same rates as for road work. It shall also be the duty of the road overseer to report to the town or county assessor, on the first Monday in De-

ember in each year, the numbers of the land, and, if known, the names of the persons owning or claiming the same, where fire-guards have been made as specified in this section. (*Id.* § 3.)

*§ 47d. **This act shall not conflict with the act of 1877.** Nothing in this act shall be so construed to deprive of benefit any persons who have or may comply with sections forty-six and forty-seven of the Political Code of 1877, and that such parties shall construct fire-guards as specified in section three of this act, or by mowing and burning prior to September fifteen, in each [year,] and such parties shall be liable for all damage done by such fire. (*Id.* § 4.)

CHAPTER XXXI.

MINES AND MINING.

*§ 21. **Owners of mines to have right of way.** The proprietor, owner, or owners of mining claims, whether patented under the laws of the United States or held under the local laws and customs of this territory, shall have a right of way for ingress for the necessary purpose over and across the land or mining claim, patented or otherwise, of others as hereinafter provided. (*Sess. Laws 1881, c. 97, § 1.*)

*§ 22. **Same.** Whenever any such mine or mining claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or tunnel thereto, which road, ditch, cut, or tunnel shall necessarily pass over, under, through, or across any lands or mining claims owned or occupied by others, either under a patent from the United States or otherwise, then shall such first-mentioned owner or owners be entitled to a right of way for said road, ditch, flume, shaft, or tunnel, over, under, through, and across such other lands or mining claims, upon compliance with the provisions of this act. (*Id.* § 2.)

*§ 23. **Proceedings to obtain right of way.** Whenever the owner or owners of any mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes in the foregoing section, and such right of way shall not have been acquired by agreement between him or them, and the claim over, under, across, and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the several counties and subdivisions of the territory of Dakota, in which such right of way or some part thereof sought to be enforced is situated, a petition praying that such right of way be awarded to him or them. Such petition shall be verified, and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims or lands to be affected by such right or privilege, with the names of the occupants or owners thereof; it may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought. (*Id.* § 3.)

*§ 24. **Proceedings in court.** Upon receipt of such petition and filing thereof with the clerk of such court, the judge shall direct a citation to issue, under the seal of such court, to the owners named in the petition, of mining claims and lands to be affected by the proceedings, directing them and each

of them to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for. Such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law. (*Id.* § 4.)

*§ 25. **Judge shall appoint commissioners.** Upon the return-day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties; and if upon such hearing he is satisfied that the claims of the petitioner should be worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order. (*Id.* § 5.)

*§ 26. **Assessment of damage by commissioners.** The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damage resulting from such right or privilege prayed for, and report the amount to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person. (*Id.* § 6.)

*§ 27. **Judge may set aside report, etc.** For good cause shown the judge may set aside the report of such commissioners and appoint three other commissioners, whose duties shall be the same as above mentioned. (*Id.* § 7.)

*§ 28. **Petitioner entitled to right of way upon tender of payment.** Upon the payment of the sum assessed as damages as aforesaid to the persons to whom it shall be awarded, or a tender thereof to them, then the person petitioning as aforesaid shall be entitled to the right of way prayed for in their or his petition, and may immediately proceed to occupy the same, and to erect thereon such work and structures, and make therein such excavations, as may be necessary to the use and enjoyment of the right of way so awarded. (*Id.* § 8.)

*§ 29. **Appeals.** Appeals from the assessment of the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after filing the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summons are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made, a bond with sureties, to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause. (*Id.* § 9.)

*§ 30. **Trial of appeal.** Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or by a jury as other cases in court. (*Id.* § 10.)

*§ 31. **Prosecution of appeal not to hinder work.** The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section eight of this act: *provided*, that the appellee shall file with the clerk of the court in which the appeal is pending, a bond, with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action, not exceeding the amount of such bond. (*Id.* § 11.)

*§ 32. **When appellee to pay costs.** If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs. (*Id.* § 12.)

*§ 33. **Costs and expenses, by whom paid.** The costs and expenses under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *provided, however*, that if the applicant shall, before the commencement of such proceeding, have tendered to the parties owning or occupying such lands or mining claims a sum equal to or more than the amount of damages assessed by the commissioners, then all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claims of the applicants. (*Id.* § 13.)

CHAPTER XXXIV.

DOMESTIC ANIMALS.

*§ 22. **Counties exempt.** The counties of Lawrence, Pennington, Custer, Forsyth, and Mandan [be, and the same] are hereby, exempted from the provisions of sections three to twenty, both inclusive, of chapter thirty-four of the Revised Codes of Dakota territory, entitled "Domestic Animals," and of all acts amendatory thereof, in so far as to animals bearing recorded brands or marks, and the same are hereby declared to be of no force and effect in said counties, being locally inapplicable. (*Sess. Laws 1881, c. 58, § 1.*)

*§ 23. **Counties exempt.** The counties of Lawrence, Pennington, Custer, Mandan, and Forsyth [be, and the same] are hereby, exempted from the provisions and effects of chapter thirty-eight of the Code of Civil Procedure of Dakota territory, known as the "herd law," and all acts amendatory thereof, and the same are hereby declared to be of no force and effect in said counties, being locally inapplicable. (*Sess. Laws 1881, c. 59, § 1.*)

*§ 24. **Stock grower and drover defined.** Every person who shall keep neat cattle, horses, mules, sheep, swine, or goats for their growth or increase within the territory, shall be deemed a stock-grower. Any person who shall drive or bring live-stock into or through this territory shall be deemed a stock-drover. (*Sess. Laws 1881, c. 60, § 1.*)

*§ 25. **Penalty for driving off another's stock.** Any stock-drover, or his employe, who shall drive off any neat cattle, horses, asses, swine, or sheep belonging to another, intentionally or through neglect, shall, on conviction thereof by any court of competent jurisdiction, be fined in any sum not more than one hundred dollars for each and every head of cattle, horses, mules, swine, or sheep so driven off. (*Id.* § 2.)

*§ 26. **Sufficient description in law.** In any indictment or complaint under this act the description of any kind or class of live-stock shall be deemed sufficient, if described as live-stock, and, for the purpose of this act, the proof of brand shall be deemed to be *prima facie* evidence of ownership of such stock. (*Id.* § 3.)

*§ 27. **Certain animals prohibited from running at large—proviso.** No stallion over the age of eighteen months, nor any Mexican, Texan,

or Cherokee bull over the age of ten months, nor any Mexican ram over the age of eight months, shall be permitted to run at large in the territory of Dakota. The owner or person in charge of such animal or animals that are prohibited from running at large by this section, who shall permit such animal or animals to run at large, may be fined for each offense not less than ten dollars nor more than fifty dollars, and it shall be lawful for any person to castrate, or cause to be castrated, any such animal found running at large: *Provided*, that if any person shall castrate any stallion, bull, or ram, and it shall, on proper evidence before any competent court, be proved to the satisfaction of said court that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable for damages to the amount of the value of said animal so castrated, and the costs of suit: *Provided*, that for the purposes of this act, that any bull possessing not more than one-half Texan, Mexican, or Cherokee blood shall not be deemed a Texan, Mexican, or Cherokee bull, as the case may be, and any ram possessing not more than one-half Mexican blood shall not be deemed a Mexican ram. (*Id.* § 4.)

*§ 28. **Concerning driving stock and trespassing.** Any person owning or having charge of any drove of cattle, horses, swine, or sheep, numbering one head or more than that number in any such drove of cattle, horses, swine, or sheep, who shall drive the same into or through any county of Dakota of which the owner is not a resident or land-owner, or stock-grower, and when the land in said county is already occupied by settlers on ranches, it shall be the duty of said owner or person in charge of said horses, cattle, swine, or sheep to prevent the same from mixing with the cattle, horses, swine, or sheep belonging to actual settlers, and also to prevent said drove of cattle from trespassing on such land as may be the property of the actual settler, or may be held by him under a homestead, pre-emption, timber culture, or leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or owners or persons in charge of any such drove of cattle, horses, swine, or sheep shall willfully, carelessly, or negligently injure any resident within the territory, by driving said drove of cattle, horses, swine, or sheep from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor, and shall be punished by a fine of not less than five dollars and not more than twenty-five dollars, at the discretion of the court, and render the owner or owners or persons in charge of the drove of cattle, horses, swine, or sheep liable for such damages as may be done to the property of said settler. (*Id.* § 5.)

*§ 29. **Penalty for wrongful driving of stock.** When the stock of any person shall be driven off its range within Dakota, against his will, by the owners of any drove, and the same shall be found among such drove, every person engaged as drover of said drove shall be liable for damages to the party injured to the amount of the full value of the animal, for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs. (*Id.* § 6.)

*§ 30. **Duty of drover where stock of resident mixes with drove.** When the stock of any resident of the territory of Dakota shall mix with any drove of any animals, it shall be the duty of any drover or drovers or persons in charge of such drove to cut out and separate such stock from said droves immediately. Every person, either owner or drover, or otherwise connected with said drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one hundred dollars, upon conviction in any court of competent jurisdiction. (*Id.* § 7.)

***§ 31. Concerning skinning dead animals.** It shall be unlawful for any person, other than the owner, or his agent or employe, to skin or remove from the carcass the skin, hide, or pelt of any neat cattle, swine, or sheep found dead, except when such stock is killed by railroad trains, when the employes of such railroads may remove the hides from stock so killed. (*Id.* § 8.)

***§ 32. Owner may adopt brand.** Any person having cattle, hogs, sheep, horses, mules, or asses shall have the right to adopt a brand or mark, for the use of which he shall have the exclusive right in the county in which ear-mark or brand is recorded. (*Sess. Laws 1881, c. 61, § 1.*)

***§ 33. County clerk shall procure brand-book.** The county clerk of each county shall, as soon as practicable after the passage of this act, procure a suitable book or books in which all marks and brands shall be recorded, and the county clerk shall be allowed a fee of one dollar for recording such brand and mark, to be paid by the party filing the description of brand or mark for record. (*Id.* § 2.)

***§ 34. Same mark or brand not to be recorded to more than one person.** No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person. (*Id.* § 3.)

***§ 35. Stock-owner shall make description of brand.** Any person desiring to use any brand or ear-mark shall make and sign a certificate, setting forth a *fac simile* and description of the brand and ear-mark which he desires to use, and shall file the same for record in the office of the county clerk of said county in which he resides. And any person so desiring may, in the manner and with like effect as herein provided, record his brand or marks in any county in this territory into which his stock is liable to stray: *provided*, that such mark or brand has not been theretofore recorded in such county by some other person. (*Id.* § 4.)

***§ 36. Proceedings where brands conflict—committee.** The authority of deciding whether a brand or mark offered for record does or does not conflict with any previously recorded brand or mark shall be vested in a committee of three, consisting of the county clerk and two respectable stock-owners of the county. The two stock-owners shall be appointed by the county commissioners; they shall be men of good judgment and experience in brands, and, when practicable, shall be chosen from those largely interested in cattle. Vacancies occurring in the membership, other than the county clerk, shall be filled by the county commissioners. All brands offered for record shall be submitted before acceptance to this committee. The objection of any two shall reject a brand. It shall be the duty of the county clerk to file all brands offered for record pending the examination, which he shall cause to be made as promptly as possible; and, if the brand is accepted, the ownership shall date from the date of filing. (*Id.* § 5.)

***§ 37. Brand committee to be appointed by commissioners—county clerk's duty—present brands to be inspected.** It shall be the duty of the county commissioners, immediately after the passage of this act, to make the appointment above specified, one of whom shall serve till the first day of January following, another the first day of January the next succeeding year; the county commissioners appointing a member to serve for two years at their first meeting in the month of January in each year. After this shall have been done, the county clerk shall at once call together the committee; they shall examine the present record of brands, and in any case where, in the judgment of two of them, a brand is found which conflicts with one previously recorded, or which might, in its use, endanger the property of the party owning the brand earliest of record, it shall be the duty of the county

clerk to notify the party owning said brand last of record that the further use of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands, and a joint statement be presented to the recorder of brands by such brand-owners. The said notice shall be given by letter when possible, and also and in all cases by publication for one month in two newspapers of general circulation in the county, the expense of which shall be paid on a proper voucher by the county commissioners; both forms of notice shall be given immediately after said examination and rejection. It is expressly provided that this enactment shall not in any way affect or invalidate the ownership of animals which were branded with said brand then registered previous to the examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand. The date of the last publication shall be considered to be the date of rejection. (*Id.* § 6.)

***§ 38. Duty of drover who drives cattle into any county for grazing purposes.** It shall be the duty of any person who, after the passage of this act, brings into any county of this territory and turns loose for grazing purposes any herd brand, or individual animals already branded, to lay before the above committee a statement of the brands of said animals; and if, in the judgment of any two of them, said brands conflict with any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure, which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this territory, whose brands are considered by this committee to infringe on previously recorded ones. (*Id.* § 7.)

***§ 39. Where brands conflict—directions to examining committee.** In deciding as to the conflict of brands, the committee will reject any one that, being the same as one previously recorded, has in addition any of the following, whether placed across, above, below, at either side, or encircling the main brand, viz., a straight bar, a quarter, half, or entire circle, a quarter, half, or entire diamond, either upright or inverted, the same not constituting a true brand, and rendering the owner of the same brand liable to damages by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The committee shall reject any brand formed by repetition of any letter, number, or figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number, or figure, and to repetition of it, being reaffirmed. They shall also reject all brands known as solid brands, and all ear-marks which shall remove to exceed one-half of the ear. A variation in the size of a letter, number, or figure shall not constitute a new brand, and shall be rejected. A combination of letters, numbers, or figures may be permitted, though the same letters, numbers, or figures may have been recorded, single or together, if, in the judgment of the whole committee, said combination is so different from any previous record as to constitute a new brand, with no danger of infringement; but in this case the objection of one member shall reject. (*Id.* § 8.)

***§ 40. Brand to be prima facie evidence of ownership—proviso.** In all suits in law or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on any animal shall be *prima facie* evidence of the ownership of the person whose brand it may be: *provided*, that such brand has been duly recorded as provided by law. Proof of the right of any

person to use such brand shall be made by a copy of the record of the same, certified by the county clerk of that county, or of any county in which the same is recorded, under the hand and seal of office of such clerk. (*Id.* § 9.)

*§ 41. **When county clerk guilty of misdemeanor—penalty.** If any county clerk shall record the same mark or brand to more than one person he shall be deemed guilty of a misdemeanor, and, upon conviction in any court of competent jurisdiction, shall be punished by a fine of not exceeding one hundred dollars, which shall go to the county in which such record shall be made. (*Id.* § 10.)

*§ 42. **Running brand prohibited.** It shall be unlawful for any person or persons, in branding any neat cattle, horses, mules, asses, sheep, or goats, to use what is known among stock-growers as a running brand. (*Id.* § 11.)

*§ 43. **Penalty for refusal to obey this act.** Any person or persons who shall violate or fail to obey the provisions of this act, or shall continue the use of any brand or mark after the same has been rejected by said committee, or shall continue to use any brand or mark after the said committee shall have decided that the same conflicts with a previously recorded brand or mark, shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (*Id.* § 12.)

*§ 44. **Penalty for interfering with brands on stock.** Any person or persons who shall, with intent to defraud, brand or misbrand, mark or mis-mark any neat cattle, horse, sheep, goat, ass, or mule, not his own; any person who shall intentionally brand over a previous brand, or in any manner alter, deface, or obliterate a previous brand, or shall cut out or obliterate a previous mark or brand, on any neat cattle, horse, sheep, goat, ass, or mule, shall, upon conviction in any court of competent jurisdiction, be punished by imprisonment in the territorial prison not exceeding ten years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars. (*Sess. Laws 1881, c. 62, § 1.*)

*§ 45. **Penalty for maliciously killing neat cattle.** If any person or persons shall willfully and maliciously kill or destroy any neat cattle, horse, mule, ass, or sheep of any age or value, the property of another or others, or shall willfully or maliciously injure any such animal or animals, the property of another or others, he or they shall be punished by imprisonment in the territorial prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars. (*Id.* § 2.)

*§ 46. **Bounty for killing wolves.** The county commissioners of each county in this territory may, in their discretion, offer a bounty not to exceed the sum of two dollars for each and every wolf killed within the limits of their county. (*Sess. Laws 1881, c. 63, § 1.*)

*§ 47. **Claimant of bounty to make affidavit and produce scalp.** Before payment of said bounty the applicant therefor must subscribe and make oath before the county clerk of the county in which the wolf was killed, setting forth that the wolf was killed within said county, giving the date thereof and by whom, and that the scalp which is produced is the scalp of such wolf, and that no allowance or bounty has been received or paid for the killing of such wolf: *provided*, no claim shall be allowed unless the applicant ex-

hibits and furnishes to such county clerk, at the time of making such affidavit, the scalp of the wolf killed, which shall embrace both ears. (*Id.* § 2.)

*§ 48. **County clerk to retain affidavit—destruction of scalp.** The county clerk shall retain said affidavit until the next regular meeting of the board of county commissioners, and the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the party killing said wolf; the county clerk is further required to destroy such scalp by burning the same. (*Id.* § 3.)

*§ 49. **Commissioners to furnish blanks.** The county commissioners are hereby authorized to furnish all blanks and make all needful regulations for the carrying out of this act. (*Id.* § 4.)

*§ 50. **Clerk's fee.** The county clerk shall be entitled to a fee of twenty-five cents for each affidavit, to be paid by the county. (*Id.* § 5.)

*§ 51. **When lawful to kill dog.** It shall be lawful for any person to kill any dog off of the premises of the owner of such dog found chasing or worrying sheep. (*Id.* § 6.)

*§ 52. **Owner of dog liable for damages.** Any person keeping, owning, or harboring a dog, after receiving notice that such dog is addicted to chasing, worrying, or killing sheep, and who refuses or neglects to kill such dog, shall be liable for all damages, after receiving such notice, committed by such dog upon any sheep, to the owner of such sheep, and shall not be entitled to any benefit from the laws exempting property from execution, but all property shall be subject to execution on judgment for such damages and costs. (*Id.* § 7.)

*§ 53. **Texas and Cherokee cattle—importation—when unlawful.** That it shall be unlawful for any person or persons, railroad company or other corporation, or any association of persons, to bring into this territory any Texas or Cherokee cattle, except between the first day of November of each year and first day of February following: *provided*, that the right to bring into this territory any such cattle shall in no case be any defense for any injury sustained by any one by reason of the bringing of such cattle into this territory. (*Sess. Laws 1883, c. 111, § 1.*)

*§ 54. **Unlawful to have in possession.** That it shall be unlawful for any person or persons, railroad company, or other corporation or association of persons whatever within this territory, to own or have in possession or control any Texas or Cherokee cattle at any time which may have been brought into this territory at any time except between the first day of November of each year and the first day of February following. (*Id.* § 2.)

*§ 55. **Penalty for violation.** That any person or persons who shall bring into this territory, or cause to be brought therein, any Texas or Cherokee cattle, except at the time permitted in section one, or who shall own, possess, or control any such cattle, except as allowed in section two, shall be guilty of a misdemeanor, and *in* shall be liable to indictment and conviction, fine and imprisonment, and shall be fined upon conviction in any sum not exceeding ten thousand dollars, nor less than two hundred dollars, and in addition to such fine may be imprisoned in the discretion of the court. Any such person may in the first instance be brought before any justice of the peace and be held to bail to appear before the district court in the county or subdivision where such justice of the peace shall reside to answer to any charge as may be preferred against him; and any railroad conductor or servant, agent or officer, of any railroad who shall bring any such cattle into this territory upon any railroad of vessel connecting with such railroad, or carry any such cattle upon any railroad or vessel connecting therewith from one point to another within this ter-

ritory, shall be deemed to have possession of such cattle within the meaning of this section. (*Id.* § 3.)

*§ 56. **Disposition of fines.** That any and all fines which may be collected under section 3 shall be paid into the county treasury, and be subject to the order of the board of county commissioners for the purpose of being divided *pro rata* among the persons who may have suffered loss or damage on account of any such cattle being brought into or being within this territory, upon proof of loss or injury, in such manner as said board shall direct; but if no proof of such loss or injury shall be made to such board of county commissioners within one year after the collection of any such fine, then it shall be the duty of such board to order the said county treasurer to credit such fine or fines to the common-school fund of the county, to be used in payment of teachers of common schools. (*Id.* § 4.)

*§ 57. **Who liable for damage.** That whenever in any case any damage or loss shall or may be occasioned to any person or persons resulting in any manner from any such Texan or Cherokee cattle having been brought into this territory at any time by any person or persons, railroad company, or any other corporation or association of persons, then such person so bringing into, or owning, possessing, or controlling such cattle in this territory shall be liable jointly or severally to any person or persons who may suffer loss or damage by reason of such bringing or conveying into, possessing, owning, or controlling within the territory any such cattle; and that [in] any action for the recovery of damages or compensation for any loss or damage which may be sustained by any person or persons from any such cattle, it shall be sufficient for the plaintiff or plaintiffs to show that the injury of which he or they may complain arose from any such Texas or Cherokee cattle which may have been owned or had in possession, or brought into the territory at any time within the year by any such defendant, or that such cattle so brought in, owned, or possessed had been where such loss or damage had been sustained. And it shall not be necessary for the plaintiff to show that the injury of which he may complain accrued while any such Texas or Cherokee cattle were in the possession or ownership or control of any such defendant or defendants, it being the intention of this section to make all persons or corporations liable to injured persons in the first instance for any injury which may arise from disease spreading or communicating from such Texas or Cherokee cattle so brought into or owned, possessed, or controlled by them in this territory. (*Id.* § 5.)

*§ 58. **No defense.** That the right to bring into this territory Texas or Cherokee cattle between the first day of November of each year and the first day of February following, shall in no case be any defense for any loss or damage that may accrue from such cattle to any person; nor shall any right to own, possess, or control any such cattle in any case be any defense for any injury or loss which may arise to any person by reason of such right to own, possess, or control such cattle. (*Id.* § 6.)

*§ 59. **Proof to entitle plaintiff to recover.** That in all actions or prosecutions for any loss or injury which may arise or accrue to any person or persons by reason of any injury or loss done or caused to be done to any native or domestic cattle, from or by any such Texas or Cherokee cattle, the proof of the loss of any native or domestic cattle, or any damage thereto, and the amount of such loss or damage, any proof that any such defendant or defendants brought into this territory, or owned, possessed, or controlled in this territory at any time any such Texas or Cherokee cattle, which may have caused such injury or loss, shall, *prima facie*, entitle the plaintiff or plaintiffs to recover. And it shall be competent for any jury to render a verdict, and any court or justice of the peace to render a judgment, in any such case, upon

the opinion of witnesses as to whether or not any such Texas or Cherokee cattle caused the injury complained of in such action. (*Id.* § 7.)

*§ 60. **Proceedings when cattle are spreading disease.** That in case any such Texas or Cherokee cattle shall be found spreading or communicating any disease among the native domestic cattle of this territory, it shall be the duty of any judge of the district court, or justice of the peace, upon oath of any householder setting forth that such Texas or Cherokee cattle are spreading or communicating disease among native or domestic cattle within this territory, and the name of the owner or party in whose possession or control such Texas or Cherokee cattle may be, to forthwith issue a warrant to any sheriff or constable of the county or township, commanding him forthwith to arrest and imprison in some safe place such cattle so spreading or communicating disease, and to summon the owner thereof, or the person or persons found in the possession of such Texas or Cherokee cattle, to appear forthwith before such judge or justice of the peace, and show cause why such Texas or Cherokee cattle shall not be impounded until the first day of November following, and after allowing the prosecuting witness and any such defendant named in such warrant reasonable time to be heard, the said judge or justice of the peace shall proceed to hear and determine whether such Texas or Cherokee cattle have so spread or communicated disease; it shall be the duty of such judge or justice of the peace to order the officer in charge of such Texas or Cherokee cattle to impound them, and *and* keep them to themselves until after the first day of November following, when it shall be the duty of the officer in charge of such cattle so impounded to present to the owner, or person entitled to the possession of such cattle, a sworn statement of the costs of taking and keeping and impounding such cattle, including the cost of building the pound and providing materials for the same in case the board of county commissioners or township supervisors where such cattle were impounded had ordered the pound to be built for the purpose of impounding such cattle, and demand payment of the same, together with the costs of such trial aforesaid; and upon payment of the same he shall deliver such cattle to the owner or person entitled to the possession thereof. (*Id.* § 8.)

*§ 61. **Definition of Texas cattle.** That Texas or Cherokee cattle, as mentioned in this act, shall be taken to mean a class or kind of cattle without reference to where they may have come from: *provided*, that that portion of this territory west of the Missouri river is exempted from the provisions of this act; but the right to bring into, own, possess, or control such cattle in such exempted territory, shall give no right to send, convey, or cause to be sent or conveyed, such cattle into that part of the territory subject to the provisions of this act, or own or possess the same therein, except that such cattle may be shipped or conveyed by themselves across said river to an inclosure upon the left bank thereof, upon the line of any railroad crossing this territory, and may be conveyed from such inclosure across and without this territory by continuous passage in cars upon said railroad. (*Id.* § 9.)

*§ 62. **Purpose of this act.** The object of this act is hereby declared to be for the purpose of preventing the spread of pestilence and disease among *native and domestic* native and domestic cattle of this territory east and north of the Missouri river, which arises and is communicated from that class of cattle described in this act as Texas and Cherokee cattle, and to protect the native and domestic cattle of this territory from destruction from the poison, disease, or sickness which it is believed is communicated from such Texas or Cherokee cattle. (*Id.* § 10.)

*§ 63. **Hides of slaughtered animals to be preserved.** Any person who shall slaughter any neat cattle for any purpose in this territory, shall keep the hides of such cattle at his or their place, where such cattle were

slaughtered, for a period of not less than ten days, and such hides shall at all times be subject to inspection by stock-growers, and their agents and employes. (*Sess. Laws 1883, c. 66, § 1.*)

CHAPTER XXXV.

INTOXICATING LIQUORS.

*§ 7a. **Certain county commissioners may grant license.** The county commissioners of any organized county may grant license to sell intoxicating liquors to any person or persons residing in any unorganized counties or territory which is or may be attached for judicial purposes to said organized county, upon such applicants complying with the law, the same as if residents of such organized county; the law as to the sale of intoxicating liquors shall apply in every respect the same as it would if the applicant resided in such organized county. (*Sess. Laws 1883, c. 81, § 1.*)

*§ 7b. **Applications, etc.** All applications for a license to sell intoxicating liquors shall be made to the board of county commissioners and may be granted by said board, and no license shall run for a longer period than one year without renewal, and not for a longer period than the first Monday of January next ensuing the date of its issue. (*Id. § 2.*)

CHAPTER XXXVII.

WEIGHTS.

***§ 4. Legal standard for measuring wheat.** There is hereby created a lawful standard for determining the grade of wheat in this territory, which shall be the legal half-bushel measure, and measured bushel by the same, when weighed, shall fix the grade of wheat in the number of pounds constituting the general grade of wheat as may be from time to time fixed or established by the board of grain inspectors of this territory as hereinafter provided, and the several grades of wheat fixed and established under the provisions of this act shall be a legal tender in payment or in fulfilling any contract stipulating to pay or deliver a like grade of wheat in this territory. (*Sess. Laws 1883, c. 81, § 1.*)

***§ 5. Penalty for false measurement.** Any person, association, or corporation, or any representative thereof, who shall knowingly cheat or falsely weigh any wheat or other agricultural product, or in the weight of the grade of wheat as prescribed and in force under the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof before any court of competent jurisdiction, shall be punished by fine not less than fifty dollars nor more than one hundred dollars for each offense, and the costs of prosecution, or by imprisonment in the county jail not less than thirty days nor more than sixty days, or both. (*Id. § 2.*)

***§ 6. Duty of the board of inspectors.** It shall be the duty of the board of grain inspectors of the territory to designate what shall be the means of filling the measure to be used, under the provisions of this act, in testing the grade of wheat, and to prescribe such methods as shall secure uniformity in determining the grades of wheat, and they shall require that all measures used and means of weighing employed in grading wheat to be sealed and stamped by them, or by the lawful sealer of weights and measures. Said board of grain inspectors shall fix and designate the several grades of wheat to be in force each year after their annual meeting, and cause to be published a circular for the use of grain dealers in the territory, defining the rules and regulations to be observed in the grades of wheat, and testing the same, and naming such methods and devices therein to be used in the manner of filling the half-bushel. (*Id. § 3.*)

***§ 7. District attorney to prosecute.** It shall be the duty of the district attorney in each and every county in this territory, whenever it shall come to his knowledge by the affidavit of the party complaining, or otherwise, or any other attorney as the complaining party, that any person, association, or corporation has violated, in said county, any of the provisions of this act, to commence proceedings within ten days after receiving such affidavit or other information against the party so offending, in the name of the territory of Dakota, and all the costs of such prosecution shall be paid out of the funds of said territory. That if for any reason the district attorney cannot immediately attend to any case brought before him as provided for in this section, the complaining party may employ any other attorney to prosecute the case: *provided, however,* that the complainant bear all the expense of the prosecution. (*Id. § 4.*)

***§ 8. Fines, how disposed of.** All fines recovered under this act shall be paid into the territorial treasury, and applied to the general fund of the territory. (*Id. § 5.*)

*§ 9. **Governor to appoint board.** It is hereby made the duty of the governor, by and with the advice of the territorial council, to appoint three men in this territory, who are well skilled in agriculture, and who are not directly or indirectly interested in the business of buying and selling wheat; and it shall be the duty of said persons so appointed to have and exercise the powers conferred upon said board of grain inspectors, and to carry out the provisions of this act as herein prescribed, for the term of two years, and until their successors are appointed and qualified. (*Id.* § 6.)

*§ 10. **Compensation of board.** The board of grain inspectors shall each receive the sum of five dollars per day for the time actually employed in the discharge of said duties, and mileage of five cents per mile for the distance actually traveled in the discharge of said duties: *provided*, that no more than sixty days in any one year shall be allowed said commissioners for the transaction of their duties under this act. (*Id.* § 7.)

*§ 11. **Inspectors' accounts.** It is hereby made the duty of each member of said board of inspectors to render their sworn accounts for services and mileage to the chairman of said board of inspectors, on or before the fifteenth day of each month, for services performed by them during the preceding month, and it shall be the duty of said chairman to examine, and if found correct to approve, said accounts, and forward the same, together with his own sworn accounts, to the territorial auditor, to be audited by him. (*Id.* § 8.)

*§ 12. **Power of inspectors.** The said board of grain inspectors shall have the power, at any time they deem necessary, to inspect any elevators, grain-houses, or warehouses, and in case of refusal of warehousemen or agents of elevators to allow said inspectors to inspect their said elevators, grain-houses, or warehouses, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding five hundred dollars, and by imprisonment in the county jail not more than ninety days or less than sixty days, or both such fine and imprisonment. (*Id.* § 9.)

*§ 13. **Grain in elevators taxable.** All elevators, warehouses, or grain-houses, and all machinery and fixtures therein, together with all grain in store and not in transit, situated upon the line or right of way of any railroad corporation of this territory, shall be taken and deemed, for all purposes of assessment and taxation, personal property, and the same shall be assessed as provided by law for the assessment of personal property. (*Id.* § 10.)

CHAPTER XXXIX.

COMPENSATION OF PUBLIC OFFICERS.

TERRITORIAL AUDITOR.

*§ 2a. **Salary.** From January 1, 1881, the salary of the territorial auditor shall be one thousand dollars per annum, payable quarterly. (*Sess. Laws 1881, c. 19, § 1.*)

DISTRICT ATTORNEY.

§ 5. The salary of each district attorney shall be ten hundred dollars per annum, which shall be payable quarterly from the territorial treasury; and he shall receive in addition thereto the following fees, to be audited and paid like other claims against the counties:

For each jury trial in cases of misdemeanor, ten dollars.

For each jury trial in cases of felony, twenty-five dollars.

For each judgment for costs only, five dollars.

For all fines and forfeitures actually collected by him, ten per cent. upon all sums less than one hundred dollars, and five per cent. upon all sums above that amount. (*As amended, Sess. Laws 1879, c. 18, § 1.*)

§ 6. **In case of conviction, fees taxed against defendant.** In all cases of conviction the fees contemplated in the preceding sections shall be taxed against the defendant, and, when collected, paid into the county treasury. (*As amended, Id. § 1.*)

From what date sections 5 and 6 are repealed, see Appendix, c. 14, *§§ 3 and 4.

SHERIFF.

*§ 10a. **Officer to indorse statement of fee.** When any sheriff or other officer shall serve any summons, subpoena, bench warrant, *venire*, or other process in any action to which this territory or any county is a party, such officer shall be required to indorse upon said writ or process, or upon a paper attached thereto, at the time he makes his return of service thereon, a statement of his fees for such service, the number of miles traveled, and the amount of his mileage, and in case he shall fail to make his return with such statement, and file the same with the clerk of the court from which such process issued before judgment shall be pronounced in the action to which such process relates, he shall receive no fees for such service, and the county commissioners of the county where such service is performed are hereby prohibited from allowing the same. (*Sess. Laws 1883, c. 54, § 1.*)

SECRETARY OF TERRITORY.

*§ 36. **Fees of secretary of territory in certain cases.** The secretary of the territory shall be allowed to charge and receive fees for services rendered by him as follows:

For examination of articles of incorporation and issuing certificate of corporate existence or patent upon the same, five dollars.

For recording all papers required by law to be recorded in his office, ten cents per hundred words.

For making transcripts of records or papers in his office, ten cents per hundred words.

For his official certificate and impression of the great seal, one dollar.

For issuing commissions, appointing notaries public, commissioners of deeds, and other officers, and making the proper record of the same, two dollars each: *provided*, that no charge shall be made for commissions issued appointing the county commissioners of counties about to be organized. (*Sess. Laws 1879, c. 19, § 1.*)

EXTRA COMPENSATION TO THE JUDGE OF THE FIRST JUDICIAL DISTRICT OF THE TERRITORY OF DAKOTA.

*§ 37. **Additional compensation.** The judge of the first judicial district of the territory of Dakota, as said district is now organized, shall be entitled to and shall be paid an annual additional compensation of two thousand four hundred dollars, as hereinafter provided, commencing from the first day of January, A. D. 1881. (*Sess. Laws 1881, c. 85, § 1.*)

*§ 38. **How paid.** Such additional compensation shall be paid by the organized counties of said judicial district, upon the first days of April, July, October, and January of each and every year, in cash, out of the general fund in the treasuries of said counties, and said payments shall be made by said

counties upon the basis of the assessed valuation of taxable property in said counties, respectively. (*Id.* § 2.)

*§ 39. **Certain counties to pay its proportion, etc.** Immediately upon the passage of this act, the county treasurers of the counties of Pennington and Custer shall certify to the county treasurer of the county of Lawrence a statement of the assessed valuation of the taxable property in each of said counties, respectively, as shown by the last assessment roll of said counties, whereupon the county treasurer of the said county of Lawrence shall add to the same the assessed valuation of the property in said county of Lawrence, as shown by the last assessment roll of said county, and shall determine what amount of the additional compensation herein provided for shall be paid by each of the said counties of said district, upon the basis of the same being divided *pro rata* between said counties, upon the basis which the assessed valuation in said counties bears to the total amount to be paid, and shall thereupon certify to the county treasurer of each of the counties embraced in the provisions of this act, the amount of said additional compensation which is payable by each of said counties. (*Id.* § 3.)

*§ 40. **Duty of the several county treasurers.** It is hereby made the duty of the county treasurer of each of the organized counties of said first judicial district, annually and within thirty days after the board of equalization shall have acted upon the assessment roll of said counties, respectively, to certify to the county treasurer of the county of Lawrence a statement of the assessed valuation of the property in each of [said] counties, and thereupon said treasurer of said Lawrence county shall make and certify to the county treasurer of each organized county of said judicial district the proportion of the extra compensation herein provided for, payable by each of said counties, and, after each such apportionment, the said extra compensation shall be paid upon the basis of the same, commencing from the first day of January in each year thereafter. (*Id.* § 4.)

*§ 41. **Where treasurers fail to furnish certificate.** If any of the treasurers of the said counties shall fail to furnish such statement of the assessed valuation as aforesaid, then the said treasurer of Lawrence county shall fix the amount justly payable, by any county so failing, from the best information in his possession. (*Id.* § 5.)

*§ 42. **Act to be in force during incumbency of present judge.** This act shall be and continue in force so long, and only so long, as the present incumbent shall remain the judge of said first judicial district. (*Id.* § 6.)

CHAPTER XL.

PUBLIC EDUCATION.

ASSISTANT SUPERINTENDENT OF PUBLIC INSTRUCTION.

*§ 158. **How appointed—duties, salary, etc.** The governor is authorized and it is made his duty to nominate, and by and with the advice and consent of the legislative council to appoint, a well-qualified and suitable person to be assistant superintendent of public instruction, who shall hold his office for the term of two years, under the same conditions as provided for the territorial superintendent, and who shall qualify in the same manner required for that

officer. He shall, under and in harmony with the superintendent of public instruction, constantly labor and faithfully assist in promoting the interests of public common schools. He shall more particularly devote his time and labor to the interest of education in the north half of the territory, where he shall hold institutes, advise and assist county superintendents and other officers, endeavor to secure uniform and faithful administration of the law, the making of reports as required, and the responsible accounting of all officers who hold or handle school funds, and shall co-operate with the territorial superintendent in all his duties. He shall be paid a salary of ten hundred dollars each year, and be allowed two hundred dollars each year for traveling expenses, and one hundred dollars each year for necessary postage, books, and stationery for his use, which said sums are hereby appropriated out of the territorial treasury for these purposes, and shall be paid to such assistant superintendent in the same manner and under the same conditions as hereinbefore required for similar payments to the superintendent of public instruction. (*Sess. Laws 1883, c. 46, § 1.*)

SCHOOL-HOUSE BONDS.

*§ 159. **School township may issue bonds.** Every organized school township is hereby authorized and empowered to issue its bonds in the name of the school township corporation, and to sell and dispose of the same, and to apply the proceeds thereof exclusively to building and furnishing school-houses for the public schools of such township, and to no other purpose. Said bonds shall be in denominations of one hundred dollars and five hundred dollars, redeemable after eight years and payable at the end of fifteen years from the date of their issue, and bearing interest at a rate not exceeding seven per centum per annum, payable semi-annually, with coupons attached for each interest payment. The bond and each coupon shall be signed by the clerk of the school township and countersigned by the director; shall be upon good bond paper, and shall distinctly state at the close of the bond proper that it is issued for school purposes only, and upon the margin shall have printed: "Issued in accordance with the provisions of the act of the legislative assembly of Dakota territory, approved ———, 1883;" inserting the date of the approval of this act. (*Sess. Laws 1883, c. 45, § 1.*)

Approved March 9, 1883.

*§ 160. **Sale of bonds.** Such bonds shall be sold at not less than par, but the school township is authorized to pay an amount not exceeding two per centum of their face value for the purpose of meeting all the expenses of the preparation and sale of the bonds, and the transmission and receipt of the money derived from their sale. This money may be paid from the proceeds of the bonds or out of any money in the school township treasury, and must be paid upon a warrant and the payment duly entered in the accounts. All money received from the sale of the bonds shall be paid to the treasurer of the school township, and shall be by him paid out only upon proper warrants signed by the clerk and countersigned by the director, and for purchasing or erecting and furnishing public school-houses for the school township. (*Id.* § 2.)

*§ 161. **Bond tax.** The township school board shall levy each year upon the taxable property of the school township a sufficient tax to pay the semi-annual interest when it becomes due, and, after seven years, a sufficient tax to provide a sinking fund for the payment of the principal of the bonds when due. If necessary these taxes may be, for three years after the organization of the township for school purposes, in addition to the tax authorized to be levied by the board for school purposes; but after that period all school taxes included shall not exceed three per cent. upon the taxable property of the township in any one year, except taxes for final judgments against the school

township, for which not more than two per cent. additional may be levied in any one year. (*Id.* § 3.)

*§ 162. **Redemption of bonds.** When the said bonds become redeemable, and the school township has money in the sinking fund, or other money which may properly be applied to that purpose, because not otherwise appropriated, the township treasurer shall apply all such money to the redemption of the bonds, and the order of their redemption shall be determined by the treasurer by lot. Notice of such redemption shall be given by the financial agency at which the bonds are made payable, which may be anywhere in the United States, by one publication in a paper to be selected by it, and if payable at the township and by the treasurer, notice may be given by one publication in a newspaper of general circulation in, and published within, the county; and in either case the interest shall cease at the end of two weeks from the date of such publication. When redeemed, the bonds shall be canceled by the treasurer and clerk, or in his absence or failure the director, who shall certify the same across their face, and enter it in the clerk's record-book of proceedings, describing the bonds severally. (*Id.* § 4.)

*§ 163. **Treasurer's bond.** Whenever the amount of money to come into his hands as proceeds from the sale of bonds shall, with all other township school funds in his hands, surpass the amount limited by law, relating to treasurers of school townships, the clerk and director, or the county superintendent, shall require a new or additional bond, as therein required, before the money shall be paid into his hands. (*Id.* § 5.)

*§ 164. **Special election.** Before any such bonds may be issued, the question of issuing them shall be submitted to a vote of the qualified electors of the school township. Such election may be held at any time, upon notices thereof signed by the clerk of the school township. Said notices shall be posted in not less than six of the most public places in the township not less than twenty days before the day of election. They shall, besides the date, object, and place or poll of the election, state the precise amount of bonds proposed to be issued, and the number, and, as near as may be, the location of the school-houses proposed to be erected from the proceeds of the bonds. The election shall be held as required by law for other elections in school townships. The ballots shall have written or printed thereon the words, "For school-house bonds," or "Against school-house bonds." If a majority of the votes cast be for school-house bonds, the bonds shall then be issued in accordance with this act, otherwise not. The judges and clerks of election shall make, and immediately transmit to the county clerk, a return of the election, duly stated and signed by them. (*Id.* § 6.)

*§ 165. **Register and indorsement of bonds.** Before the bonds are sold or disposed of they shall be presented to the county clerk. He shall carefully examine the return of the election on file in his office, and shall satisfy himself, by the evidence that may be furnished by the officers of the school township, that such election and return are in accordance with the provisions of the notices for the election and of this law; and if satisfied that the bonds have been so lawfully voted, he shall, in a book kept for that purpose, preserve a registry of each bond, showing in separate columns and entries the name of the school township issuing the bond, the number of the bond, the denomination thereof, the date of issue, and other facts, and upon each bond shall indorse the following certificate: "I hereby certify that the within bond for ——— hundred dollars, of ——— school township, ——— county, Dakota territory, is issued in accordance with law, and by authority of a majority of the legal voters of said township, voting at an election duly held ———, 188—, for that purpose, and is duly registered in this office." The blanks shall be filled according to the fact, and the certificate officially signed by the county

clerk, and attested by the seal of the county. The validity or obligation of any such school bond so registered and certified, shall not be questioned in any court or tribunal, but every such bond shall be and remain valid and binding. (*Id.* § 7.)

*§ 166. **When county clerk to levy town school tax.** If the coupon of any such bond, or the bond proper, shall not be paid when due by the school township, and for a period of six months thereafter, the holder thereof may present the same to the county clerk of the proper county, with affidavit of some person to the fact of such non-payment after presentation, and the county clerk shall make a record of the fact and of the amount so due; and if the proper tax be not already levied by the school board of the township, the county clerk shall levy and extend upon the tax-lists, against all the taxable property of the township, a rate sufficient to produce an amount necessary to meet the said payments, which said tax shall be collected as other school taxes are collected. Such tax shall not exceed two per cent. in any year, and may be in addition to all other taxes authorized. From the first money which comes into his hands from this tax the county treasurer shall pay the coupons, and then the bonds so defaulted, and the coupons and bonds so paid and received by the county treasurer shall be delivered to the treasurer of the proper school township, and receipted for the same as money. Such tax shall be levied from year to year by the county clerk, and extended upon the tax-lists, and collected and used by the treasurer in redemption of the coupons and bonds until they are fully redeemed and paid, unless they are meanwhile withdrawn from such protest by the holder. (*Id.* § 8.)

*§ 167. **Redemption of old bonds.** Any school township may issue its bonds as herein provided in exchange at par both for and in redemption of school-district bonds issued before its organization, and for which it becomes responsible. This exchange may be made by the school board of the township without submitting the question to a vote, if they are previously advised in writing by the attorney for the county that such school-district bonds are valid and binding upon the township. Such legal opinion must be filed with the county clerk. Such redemption bonds must be registered and certified by the county clerk, who, instead of certifying that they are issued by authority of the voters, shall state that they are issued in accordance with law in redemption of lawful school-district bonds. (*Id.* § 9.)

*§ 168. **Limit of amount of bonds.** No school township shall issue such school bonds to an amount greater than fifteen hundred dollars for each separate school-house necessary and required for the schools of the township, and twenty-five hundred dollars for each two-room graded school which the school board is by law authorized to erect. For regular graded school-houses, each school township may issue bonds to the amount of five thousand dollars; and where two or more school townships join in erecting a graded school building and establishing a graded school, each township of those so joining may issue bonds to the amount of three thousand dollars, and no more, for such purpose. All such propositions must be submitted specifically to a vote of the township, but the question of issuing bonds for the erection of two or more separate, ordinary school-houses, and furnishing the same, may be submitted at the same time and voted upon as one question. The question of issuing bonds for graded schools may be submitted at the same or different elections, but must be separate, and so stated as to permit a separate vote upon every such proposition. (*Id.* § 10.)

*§ 169. **Power of township to act for former district.** Whenever by special act a school-district is authorized to issue bonds in any special amount, or in any amount not exceeding a certain sum named, and such school-district, so by number or description authorized, is afterwards included within a school

township, such school township is authorized to issue, sell, and dispose of such bonds to the same amount, and to use and expend the proceeds thereof, to erect and furnish school-houses within the former boundaries of such district. But the vote upon such bonds, if required by the special act, shall be as required in this act, and the bonds shall have the terms, the rate of interest, and all the conditions required by this act. (*Id.* § 11.)

*§ 170. **Lien.** Bonds issued under this act shall be a lien upon the taxable property of the school township issuing them; and if other provisions of law fail or seriously delay the payment of interest or principal by the neglect or refusal of officers to perform their duty, the district court for the county may, upon application of the holder of such bonds or their coupons, in payment of which default has been made, and notice to the school township, cause such taxes to be levied as will meet the obligations, and when collected to apply them to the payment of such coupons and bonds. (*Id.* § 12.)

*§ 171. **Actions against school township.** In every action or proceeding against a school township, or in which a school township is a party in any manner, it shall be sufficient to serve all process, orders, and notices, or other writs or papers, upon the director, or, if he cannot be conveniently found, upon either of the other officers of the school township. When the director or other officer is so served or notified, he must promptly inform the other officers of the school township, and the school board of the township shall give direction concerning the action or proceeding. (*Id.* § 13.)

CHAPTER XLI.

PROTECTION OF GAME.

*§ 7. **Certain practice declared unlawful.** It shall be unlawful for any person or persons to kill and leave lying on the prairies any part or parts of buffalo, elk, deer, antelope, or mountain sheep, in the territory of Dakota. (*Sess. Laws 1881, c. 82, § 1.*)

*§ 8. **Penalty.** Any person or persons who shall violate any of the provisions set forth in section 1 of this act, shall be considered guilty of a misdemeanor, and upon conviction thereof shall be fined the sum of not less than twenty-five dollars nor more than fifty dollars for each and every animal so killed; said fine may be collected in any court of competent jurisdiction within the territory. (*Id.* § 2.)

*§ 9. **Unlawful to kill quail for five years—proviso.** It shall be unlawful for any person or persons to kill, trap, or destroy, by any manner whatever, any quail in the territory of Dakota for the period of five years: *provided*, that the counties of Union, Clay, and Yankton be, and the same are hereby, exempted from the provisions and effects of this chapter. (*Sess. Laws 1883, c. 64, § 1.*)

*§ 10. **Penalty.** Any person or persons who shall violate section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined the sum of twenty-five dollars for each such quail so killed, trapped, or destroyed, together with costs of prosecution. (*Id.* § 2.)

*§ 11. **Reward to informer.** Any person who shall give information which shall lead to the conviction of any person or persons guilty of violating

any of the provisions of this law, in any of the counties of this territory, excepting such counties as are exempted from the operations of this law as provided by section two, shall receive as compensation for such service one-half of any sum of money which may be collected as fine for such offense. (*Id.* § 3.)

*§ 12. **Unlawful to kill certain animals.** It shall be unlawful for any person or persons to kill, insnare, or trap, in any form or manner, or by any device whatever, or for any purpose, any buffalo, elk, deer, antelope, or mountain sheep between the first day of January and the first day of September of each and every year. (*Sess. Laws 1883, c. 63, § 1.*)

*§ 13. **Penalty.** Any person or persons who shall violate any of the provisions of section 1 of this act shall be considered guilty of a misdemeanor, and upon conviction thereof shall be fined for each elk so killed, or found in his, her, or their possession, the sum of ten dollars; and for each deer, antelope, or mountain sheep so killed or found in his, her, or their possession, the sum of one hundred dollars. (*Id.* § 2.)

*§ 14. **Unlawful to kill prairie chicken.** It shall be unlawful for any person or persons to kill, insnare, or trap, in any form or manner, or by any device whatever, any prairie chicken or grouse, between the first day of January and the fifteenth day of August in each and every year. (*Id.* § 3.)

*§ 15. **Penalty.** Any person or persons who shall violate any of the foregoing sections of this act, or any corporation, company, or employe thereof who shall have in his, her, or their possession any game mentioned in this act, as provided in the foregoing section, shall, upon conviction thereof, be fined the sum of two dollars for each and every prairie chicken or grouse so found in his, her, or their possession, and the costs of prosecution, including attorney's fee of five dollars. (*Id.* § 4.)

*§ 16. **Reward for informer.** Any person or persons giving information of the killing, insnaring, or trapping, or having in his, her, or their possession, any prairie chicken or grouse, shall, upon conviction of any person or persons thereon, receive for said information, from the officer before whom said party or parties are tried, one-half of the fine imposed and collected. (*Id.* § 5.)

*§ 17. **Jurisdiction of justices.** Justices of the peace shall have full jurisdiction to try all cases arising out of the violation of the game law of the territory of Dakota. (*Id.* § 6.)

*§ 18. **Duty of officers to cause arrest.** It shall be the duty of every constable or sheriff, or their deputies, when notified that any person or persons have violated any of the provisions of this act, to cause the arrest of such person or persons reported as having violated said law, and to bring them before the nearest justice for trial. (*Id.* § 7.)

*§ 19. **Capturing fish, except with hook and line, prohibited.** It shall be unlawful for any person to take, catch, kill, or destroy any fish whatsoever, except by angling with hook and line, in any of the lakes or streams, or inlets or outlets of said streams, or any waters of the territory of Dakota, except the Missouri and Red rivers. (*Sess. Laws 1883, c. 59, § 1.*)

*§ 20. **Certain varieties protected during certain months.** It shall be unlawful for any person to take, catch, kill, or destroy, by any device whatsoever, any pike, pickerel, perch, bass, or muscalonge, except for the purposes of propagating or breeding, in any of the waters of the territory of Dakota, except the Missouri and Red rivers, between the first day of February and the first day of May in any year, or expose the same for sale during this period. (*Id.* § 2.)

*§ 21. **Penalty.** Any person who shall violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than five nor more than twenty-five dollars for the first offense, or less than ten or more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, in the discretion of the court, for any subsequent offense. (*Id.* § 3.)

*§ 22. **Appointment of fish commissioner.** It shall be the duty of the governor of Dakota territory to appoint and commission one person, who shall be a resident of the territory, as a commissioner of fish and fisheries on the part of Dakota territory. (*Sess. Laws 1883, c. 60, § 1.*)

*§ 23. **Duty of commissioner.** It shall be the duty of such commissioner, when appointed, to receive and place in the waters of the territory, or such thereof as he may think suitable therefor, any spawn or food fish that the United States commissioner of fish and fisheries may donate, or that may be donated by other parties, for the purpose of stocking such waters with food fishes. (*Id.* § 2.)

*§ 24. **Compensation of commissioner.** The said commissioner shall receive no salary, but shall be allowed and paid, on proper vouchers approved by the territorial auditor, such amounts as he shall have actually paid in transporting any fish or spawn so donated, and his necessary traveling expenses in placing such fish or spawn in the public waters of Dakota: *provided*, that such expenses shall not exceed the sum of three hundred dollars per year. (*Id.* § 3.)

*§ 25. **Appropriation.** There is hereby appropriated out of the territorial treasury the sum of three hundred dollars to carry out the provisions of this act, or so much thereof as may be necessary. (*Id.* § 4.)

*§ 26. **Penalty for removing fish.** Any person taking from any of the public waters of Dakota, except for breeding purposes, any fish or spawn which may have been placed therein for breeding purposes, or for the purpose of stocking such waters with food fishes, until public notice shall have been given by the territorial commissioner of fish and fisheries that the same are open to the public for food purposes, shall be guilty of a misdemeanor, and upon conviction thereof be fined not to exceed one hundred dollars, together with costs of prosecution. (*Id.* § 5.)

CHAPTER XLIII.

JOINT RESOLUTION AUTHORIZING THE PRINTING OF THE BIENNIAL REPORTS OF THE TERRITORIAL AUDITOR AND TREASURER, AND MAKING AN APPROPRIATION TO PAY FOR THE SAME.

*§ 5. The chief clerk of the house of representatives is hereby authorized, and it is made his duty, to forthwith furnish to the public printers copies of the biennial reports of the territorial treasurer and auditor, and direct the printing of four hundred copies of said reports, to be bound in one pamphlet, and that the public printer be required to deliver to the messengers of the council and house of representatives a sufficient number of said reports to furnish each member of the council and house of representatives ten copies, and that the remaining

copies be delivered in equal numbers to the territorial auditor and treasurer. And that, for the purpose of paying the expense of said printing, there is hereby appropriated out of the territorial treasury, from any funds not otherwise appropriated, the sum of three hundred and ten dollars, or so much thereof as may be necessary; and the auditor of the territory is hereby directed to audit and allow the amount, or so much as may be necessary, upon a duly-certified voucher being filed with him by said public printers. (*Sess. Laws 1883, c. 97.*)

Approved February 13, 1883.

CHAPTER LI.

INSANE.

***§ 1. Dakota Hospital for Insane—where located.** The Dakota hospital for the insane, until otherwise provided by law, is hereby established on the south-east quarter of section number thirty-six, in township number ninety-four, north of range number fifty-six west, in the county of Yankton, near the city of Yankton, and shall be under the charge of a board of trustees, to consist of three residents of this territory. (*Sess. Laws 1879, c. 23, § 1.*)

***§ 2. Appointment of trustees.** The governor, by and with the consent of the council, shall appoint five persons, residents of this territory, at least three of whom shall be residents of Yankton county, to be called and known as the board of trustees of the Dakota hospital for the insane, three of whom shall hold their office for two years, and two for four years, and until their successors are appointed and qualified, except to fill vacancies, which shall only extend to the end of the next session of the legislature. In case of any vacancy occasioned by the removal from the territory by such trustee, or death, resignation, or non-acceptance of the office, the governor shall immediately fill such vacancy, and unless the person so appointed shall accept the office within twenty days, the governor shall immediately thereafter appoint some other person, and each of said members of the said board, shall, before entering upon the duties of his office, take and subscribe the oath of office required by law, which oath shall be filed with the governor of the territory. (*Id. § 2, as amended, Sess. Laws 1881, c. 83, § 1.*)

***§ 3. Oath of trustees.** The trustees so appointed, before entering upon their duties, shall take and subscribe an oath to support, protect, and defend the constitution of the United States, and the act organizing the territory of Dakota, and to faithfully, honestly, and impartially discharge the duties of trustee of the Dakota hospital for the insane, which oath shall be filed with the secretary of the territory. (*Sess. Laws 1879, c. 23, § 3.*)

***§ 4. Compensation of trustees.** The trustees shall be paid at the rate of three dollars per day for the time necessarily incurred in the discharge of their official duties, and five cents per mile going and returning, necessarily traveled, in the discharge of said duties. Upon the presentation of the proper vouchers, containing an itemized statement of the sum due each trustee for services rendered, and for mileage, duly signed by the president of the board of trustees and countersigned by the secretary of said board, the territorial auditor shall draw his warrant upon the territorial treasurer therefor, to be

paid out of the territorial treasury. (*Id.* § 4, *as amended*, *Sess. Laws* 1881, c. 83, § 2.)

***§ 5. Officers of the board and duties.** The trustees shall elect a president and secretary from their own number, whose term of office shall be for one year, or until said board shall elect their successors. They shall make a record of their proceedings at all meetings in a book kept for that purpose; and at their annual meetings next preceding the regular sessions of the legislature, they shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied by a full and accurate report of the superintendent, which shall show the annual cost *per capita* of the inmates and the per cent. of discharges and recoveries, and a detailed account of all moneys received and paid out by the steward, and shall have not less than five hundred copies of said reports printed. (*Id.* § 5, *as amended*, *Sess. Laws*, 1881, c. 83, § 3.)

***§ 6. Fiscal year and annual meetings.** The fiscal year of the hospital shall close on the thirtieth day of November each year, and the annual meetings of the board of trustees shall be on the first Wednesday of December thereafter at the hospital. Special meetings for the appointment or removal of resident officers, or for the transaction of general business, may be held in any convenient place, upon the written request of the president or any three members of the board. Threemembers of the board shall constitute a quorum for the transaction of business. (*Id.* § 6, *as amended*, *Sess. Laws* 1881, c. 83, § 4.)

***§ 7. Trustees to appoint officers, adopt rules, and fix salaries.** The board of trustees shall have the general control and management of the hospital; shall make all by-laws, rules, and regulations necessary for the government of the same, not inconsistent with the laws of the territory; they shall appoint a superintendent, who shall be a physician of acknowledged skill and ability, a graduate of a reputable regular medical college, and of unimpeachable moral character; one or more assistant physicians when they shall deem such appointment necessary, a steward and a matron, all of whom shall be styled the resident officers of the hospital, and shall reside therein, and shall be governed by the laws and by-laws established for the same. Said board shall fix from time to time the compensation of the employes of the hospital, and certify the same to the territorial auditor. The salaries of the resident officers of the Dakota hospital for the insane shall be per annum as follows: Superintendent, fifteen hundred dollars; steward, twelve hundred dollars; matron, five hundred dollars; and assistant physician, when such officer is appointed, seven hundred and fifty dollars. These salaries shall be paid monthly, as provided in section 11 of this act. (*Id.* § 7, *as amended*, *Sess. Laws* 1881, c. 23, § 5.)

***§ 8. May take and hold lands, etc.** The board of trustees may take in the name of the territory and hold in trust for the hospital, any land conveyed or devised, and any money or other personal property given or bequeathed, to be applied for any purpose connected with the institution. (*Id.* § 8.)

***§ 9. Shall not be party to contract.** No trustee or officer of the hospital shall be either directly or indirectly interested in any contract for the purchase of building material, supplies, or any other article for the use of the institution. (*Id.* § 9.)

***§ 10. Trustees not eligible to other office.** No trustee shall be eligible to the office of steward or superintendent of the hospital during the term for which he was appointed. (*Id.* § 10.)

*§ 11. **Authority of trustees in constructing new buildings.** Whenever any additional building is to be erected, or extension, alterations, or repairs to be made, in connection with the hospital, the board of trustees shall have authority to procure all necessary plans, drawings, and specifications for such building, alterations, or repairs; to advertise for proposals for the erection and completion thereof, in such manner as may be most advantageous, and to contract with the lowest responsible bidder therefor, such contractor in every case to give adequate security for the faithful performance of his contract; to appoint and discharge a building superintendent, who shall superintend the work and perform such other duties as they may require, and receive such compensation as the board shall determine, and to examine and certify the correctness of the estimates and accounts for work under the contract, and of their superintendent and employes. (*Sess. Laws 1881, c. 83, § 6.*)

*§ 12. **Visits and examinations.** One or more of the trustees shall visit the hospital monthly, and the president of the board, with the superintendent, shall make monthly examinations of the accounts of the steward and certify their approval or otherwise on the same page with his monthly balances. (*Id.* § 7.)

*§ 13. **Steward's bond and duties.** The steward shall execute a bond to the territory of Dakota for the use of the hospital in such sum as may be fixed by the board, to be approved by the board, conditioned that he will faithfully perform the duties of his office and pay over and account for all moneys that shall come into his hands, which bond shall be filed with the secretary of this territory. Upon authority granted by the board he may draw from the territorial treasury, upon his order, approved by the superintendent and president of the board, and under the seal of the hospital, from time to time, from the appropriations made by the legislative assembly for that purpose, such sums as may be requisite to meet the current expenses of the hospital. Upon the presentation of such order to the territorial auditor he shall draw a warrant upon the territorial treasury for the amount therein specified. No part of the money drawn for current expenses shall be used in making improvements. Money appropriated for the purpose of building or other improvements shall in like manner be drawn from the territorial treasury by the steward of the hospital: *provided*, that an itemized account shall be presented and filed with said auditor before auditing any account under this act. (*Sess. Laws 1879, c. 23, § 11.*)

*§ 14. **Duty of steward.** The steward shall keep the accounts, pay those employed in and about the hospital, and have a personal superintendence of the farm, garden and grounds, and perform such other duties as are assigned him by the by-laws of said hospital or by the board of trustees. (*Id.* § 13, *as amended*, *Sess. Laws 1881, c. 83, § 9.*)

*§ 15. **Steward shall make purchases.** Under the direction of the superintendent the steward shall purchase all supplies, upon the best possible terms and lowest cash value; he shall see that the grounds, buildings, and all other property belonging to the hospital are properly preserved and kept in order, and shall perform such other duties as may be required of him by the superintendent and board of trustees. (*Id.*, *as amended*, *Sess. Laws 1881, c. 83, § 10.*)

*§ 16. **Steward to keep accounts, render monthly statements, etc.** He shall keep an accurate account, in detail, which shall always be open to the inspection of the superintendent and board of trustees, and these accounts shall be carefully balanced on or before the fifteenth day of each month and closed biennially on the thirtieth day of November, next preceding each regular session of the legislature. There shall be provided and submitted

for the inspection of the superintendent and board of trustees, on or before the fifteenth day of each month, an original and duplicate balance sheet, which balance sheet shall show the balance of appropriations in the territorial treasury to be applied to the maintenance of the patients, or to the general use of the hospital, or from any source whatever; these balance sheets shall also show a detailed statement of all receipts and disbursements during the month, and to what appropriation each belongs, together with the name of each payee and the price paid; there shall be submitted with the balance sheet the original bills of purchase, vouchers for the same, and receipts for all other disbursements of whatever kind, which bills of purchase, vouchers, and receipts, shall have indorsed on the back of each the signatures attached thereto, with the day, month, and year of payment. After the original and duplicate balance sheets have been indorsed as correct by the superintendent and president of the board of trustees, the steward shall, within five days thereafter, file the original balance sheet in the office of the superintendent, and the duplicate thereof, with the original bills of purchase, vouchers, and receipts pertaining thereto, he shall file in the office of the territorial auditor, and upon the presentation of the monthly balance sheet, properly signed and indorsed as correct by the president of the board of trustees, together with the original bills of purchase, vouchers, and receipts pertaining thereto, the territorial auditor shall draw his warrant upon the territorial treasurer for the respective amounts therein stated, from the appropriations to which they are properly chargeable. (*Id.*, as amended, *Sess. Laws 1881, c. 83, § 11.*)

*§ 17. **Duty of superintendent of hospital for insane.** The superintendent of the hospital shall be a physician of skill and ability in his profession. He shall be the chief executive of the hospital, and shall hold his office during the pleasure of the board of trustees. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and he shall report any neglect of duty on the part of the steward or employes of the institution to the board of trustees. (*Sess. Laws 1879, c. 23, § 12, as amended, Sess. Laws 1879, c. 24, § 2.*)

*§ 18. **Bond and duties of the superintendent.** The superintendent of the hospital shall, before entering upon the duties of his office, give a bond to the territory of Dakota in the penal sum of twenty-five hundred dollars, conditioned that he will faithfully and impartially discharge the duties of his office according to law and the by-laws of said hospital, to be approved by said board, and take and subscribe an oath faithfully and diligently to discharge the duties required of him by law and the by-laws of the board of trustees, which bond and oath shall be filed with the treasurer of the territory; he shall be the chief executive officer of the hospital and have entire control of the medical, moral, and dietetic treatment of the patients; he shall exercise entire control over all subordinate officers; he shall employ all employes and assistants necessarily connected with the institution below the grade designated in the by-laws as officers; and may discharge any employe at will and suspend any resident officers of the hospital except steward, being responsible to the board for the proper exercise of that duty in regard to officers. (*Id.*, as amended, *Sess. Laws 1881, c. 83, § 8.*)

*§ 19. **Assistant physician.** The assistant physician shall be a graduate of a reputable regular medical college and possess such qualifications as to be able to perform the ordinary duties of the superintendent, [and] during his necessary absence or disability, to act of [as] such superintendent. (*Sess. Laws 1881, c. 83, § 12.*)

*§ 20. **Matron.** The matron shall be a person of good moral character and skilled in house-keeping, and shall not be the wife of any of the officers,

and under the direction of the superintendent, and not otherwise; shall have the general supervision of the domestic arrangements of the hospital and do all she can for the comfort and welfare of the patients. (*Id.* § 13.)

*§ 21. **Hospital seal.** The board of trustees shall provide a seal, upon which shall be inscribed the name of the hospital, to-wit: "The Dakota Hospital for the Insane," with the name of the territory, with such other words and devices as they may deem appropriate. (*Sess. Laws* 1879, c. 23, § 14.)

*§ 22. **Trustees to advertise for supplies quarterly.** The board of trustees shall advertise quarterly for proposals for all supplies necessary for the patients and employes of the hospital, and shall award the contract to the lowest responsible bidder, reserving the right to reject any and all bids. The party to whom such contract shall be awarded shall give a bond, approved by the board of trustees, to the territory of Dakota, for the use of the hospital, conditioned for the faithful performance of such contract. (*Id.* § 15.)

*§ 23. **County commissioners of insanity—how appointed.** In each organized county of this territory there shall be a board of commissioners, consisting of three persons, to be styled "commissioners of insanity," two of whom shall constitute a quorum. The judge of probate shall be a member of said board, and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a respectable practicing physician, and the other a respectable practicing attorney; and appointments shall be made of persons residing as near as may be to the county seat. Immediately on the taking effect of this act these appointments shall be made as provided in this section. One of these commissioners shall be appointed for one year; the other for two years. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor shall be appointed and qualify. In case of the temporary absence or inability to act of two of the commissioners, the judge of probate shall call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such cases must show the fact of such absence. (*Id.* § 16.)

*§ 24. **Oath of commissioners—organization and meetings.** Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath or affirmation to support the constitution of the United States and the organic act of the territory of Dakota, and to faithfully discharge their duties according to law as such commissioners, which obligation shall be filed with the clerk of said board, who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number clerk of said board. They shall hold their meetings for business at the office of the judge of probate, unless for good reasons they shall fix on some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board. (*Id.* § 17.)

*§ 25. **Duties of chairman—books to be kept—notices, etc.** The chairman of the board shall sign and give or issue all notices, appointments, warrants, subpoenas, or other process required to be given or issued by the commissioners, affixing thereto his official seal as judge of probate. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports, and other communications. He shall keep separate books in which to minute the proceedings of the board, and his entries shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders, and transactions. The notices, reports, and communications herein required to be given or made, may be sent by mail, unless otherwise ex-

pressed or implied, and the fact and date of such sending, and of their reception, must be noted on the proper record. (*Id.* § 18.)

*§ 26. **Powers of commissioners—may issue subpoenas, etc.** The said commissioners shall have cognizance of all applications for admission to the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise specially provided for. For the purpose of discharging the duties required of them, they shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises. (*Id.* § 19.)

*§ 27. **Admission to hospital—information to be filed.** Application for admission to the hospital must be made in writing, in the nature of an information, verified by affidavit. Such information must allege that the person on whose behalf the application is made, is believed by the informant to be insane, and a fit subject for custody and treatment in the hospital; that such person is found in the county, and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject. (*Id.* § 20.)

*§ 28. **Same—proceedings of commissioners.** On the filing of an information as above provided, the commissioners shall at once take steps to investigate the grounds of the information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his or her presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiries as they shall make, and in making which they shall take the testimony of the informant, if they deem necessary or desirable, and of other witnesses, if offered, that such course would probably be injurious to such person, or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit or see such person and make a personal examination touching the truth of the allegation in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his own hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question insane, if such be the fact; and if otherwise, not insane; and in connection with his examination the said physician shall endeavor to obtain from the relative of the person in question, or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate. (*Id.* § 21.)

*§ 29. **Same—how patient to be sent to hospital.** On the return of the physician's certificate the commissioners shall, as soon as practicable, conclude their investigations, and having done so, they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his or her discharge,

if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding, with the settlement of the person, if found; and if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate, with the finding and certificate of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him or her, with such duplicate and physician's certificate and finding, to the superintendent thereof. The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners with his cost and expenses indorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name or names, if any. It is, however, hereby provided that if any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant, in preference to the sheriff or any other person, and without taking such oath or affirmation, and for so doing he shall be entitled to his necessary expenses, but no fees. (*Id.* § 22.)

*§ 30. **Care of patients to be impartial, except in certain cases.** All patients in the hospital shall be regarded as standing on an equal footing; and the several patients, according to their different conditions of mind and body and their respective needs, shall be provided for and treated with equal care: *provided*, that if the relatives or immediate friends of any patient shall desire it and pay the expenses thereof, such patient may have special care and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases the charges for such special care and attendance shall be paid quarterly in advance. (*Id.* § 23.)

*§ 31. **Relatives of patients may pay expenses.** The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid. (*Id.* § 24.)

*§ 32. **Disposition of insane person when accommodations of hospital are insufficient.** If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise, until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be, in all suitable ways, to restrain, protect and care for such patient in such manner as to best secure his or her safety and comfort, and in such manner as to best

protect the persons and property of others. In the case of public patients the commissioners shall require that they be in like manner restrained, protected, and cared for by the commissioners of the county, or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county, or overseers of the poor, who shall forthwith comply with the same. If there is no poor-house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in the charge of the sheriff. Or, said commissioners, in their discretion, may require that such patients be taken to the asylum of any state that may be designated by the governor, who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patient or patients. (*Id.* § 25.)

*§ 33. **Insane persons may be cared for by county.** On application to the commissioners on behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed, and asking that provisions be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their care, protection, and restraint, as in the case of other applications. (*Id.* § 26.)

*§ 34. **Commissioners shall provide for insane persons suffering for proper care.** On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded, they shall make all needful provision for the care of such person as provided in other cases. (*Id.* § 27.)

*§ 35. **Insane not to be restrained of liberty except by proper authority.** No person supposed to be insane shall be restrained of his or her liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and such brief period as may be necessary for the safety of persons and property, until such authority can be obtained. (*Id.* § 28.)

*§ 36. **Penalty for cruelty to insane.** Any person having care of an insane person and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness, or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages. (*Id.* § 29.)

*§ 37. **Insane who have been under county care may be transferred.** Insane persons who shall have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may, on application to that effect, be transferred to the hospital, whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable. (*Id.* § 30.)

*§ 38. **Questions to be answered on application for admission to hospital.** In each case of application for admission to the hospital, correct answers to the following interrogations, so far as they can be obtained, shall accompany the physician's certificate; and if, on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

1. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient?
2. Where was the patient born?

3. Where is his or her place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did others occur, and what was their duration?
6. When was [were] the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing, or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subject or in what way is derangement now manifested? State fully.
10. Has the patient shown any disposition to injure others?
11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
12. Is there a disposition to filthy habits, destruction of clothing, breaking glass, etc.?
13. What relatives, including grandparents and cousins have been insane?
14. Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits before the accession of the disease? Any predominant passion, religious impressions, etc.?
15. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharges of sores, or ever had an injury of the head?
16. Was the patient ever addicted to intemperance in any form?
17. Has restraint or confinement been employed? If so, what kind and how long?
18. What is supposed to be the cause of the disease?
19. What treatment has been pursued for the relief of the patient? Mention particulars and the effect.
20. State any other matter supposed to have any bearing on the case. (*Id.* § 31.)

*§ 39. **Preference to be given in receiving patients.** If at any time it may become necessary, for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Recent cases, *i. e.*, cases of less than one year's duration.
2. Chronic cases, *i. e.*, when the disease is of more than one year's duration, presenting the most favorable prospects for recovery, shall be next preferred.
3. Those for whom application has been longest on file, other things being equal, shall be next preferred.
4. When cases are equally meritorious in all other respects, the indigent are to be preferred. (*Id.* § 32.)

*§ 40. **Proceedings to release patient alleged to be not insane.** On a statement in writing, verified by affidavit, addressed to the judge of probate of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his or her legal settlement, alleging that such person is not insane, and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital, and have a personal interview with such person, so managed as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the

merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the judge of probate making the appointment, the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the superintendent. If on such report and statement, and the hearing of the testimony, if any is offered, the judge of probate shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge of probate, with the report and other papers, shall be filed in his office and entered on his records, and shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by said judge of probate and paid by the territory out of any funds not otherwise appropriated: *provided*, that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order. (*Id.* § 33.)

*§ 41. **Same — such proceeding not to be repeated oftener than once in six months.** The commission so provided for shall not be repeated oftener than once in six months, in regard to the same party, nor shall such commission be appointed in case of any patient within six months of the time of his or her admission. (*Id.* § 34.)

*§ 42. **Insane person entitled to habeas corpus.** All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time, whenever it shall be alleged that such person has been restored to reason. (*Id.* § 35.)

*§ 43. **Proceedings where patient escapes from hospital.** If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient, and if the patient cannot be found, he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs; and if such patient is found in the county, the commissioners shall cause him or her to be returned, and shall issue their warrant therefor as in other cases, unless the patient shall be discharged, or unless for good reasons they shall provide for his or her care otherwise, of which they shall notify the superintendent. (*Id.* § 36.)

*§ 44. **Discharge of patient when cured, or when incurable.** Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses, in the hospital, of such patient. The relatives of any patient not susceptible of cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees: *provided*, that in the interim of the meetings of the board the consent of two of the trustees shall be sufficient. (*Id.* § 37.)

*§ 45. **Discharge of patient before cure.** On application of the relatives or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county as in other cases, may authorize his or her discharge therefrom: *provided*, that no patient who may be under

charge or conviction of homicide shall be discharged without the order of the board of trustees. (*Id.* § 38.)

*§ 46. **Discharge of patients without application.** When patients are discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where they belong, and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county, as in other cases, unless such patients are discharged as cured. (*Id.* § 39.)

*§ 47. **Liability of estates of insane persons for their support, etc.** The provisions herein made for the support of the insane at public charge shall not be construed to release the estates of such persons, nor their relatives, from liability for their support, and the commissioners of the several counties are authorized and empowered to collect from the property of such patients, or from any person or persons legally bound for their support, any sums paid by the county in their behalf as herein provided, and the certificate from the superintendent, and the notice from the auditor of the territory stating the sums charged in such cases, shall be presumptive evidence of the correctness of the sum so stated. If the board of county commissioners, in the case of any insane person who has been supported at the expense of the county, shall deem it a hardship to compel the relatives of such person to bear the burden of his or her support, they may relieve the relatives from any part or all of such burden, as may seem to them reasonable and just. (*Id.* § 40.)

*§ 48. **Salary and fees—how and by whom paid.** The commissioners of insanity shall be allowed at the rate of two dollars per day each for all the time actually employed in the duties of their office. The judge of probate, in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process, given or issued under seal, as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for his personal service in conveying a patient to the hospital and returning therefrom, at the rate of three dollars per day for the time necessary and actually employed, and mileage the same as allowed in other cases, and for other service the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except those of sheriff, which shall be paid out of the territorial treasury in the usual manner. Whenever the commissioners of insanity issue their warrant for the admission of a person to the hospital, and funds to pay the expenses thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including necessary assistance, including the compensation allowed the sheriff, and on such estimate, certified by the clerk of the commissioners of insanity, the auditor of the territory shall audit the account and shall issue his order on the treasury of the territory in favor of the sheriff or other person intrusted with the execution of such warrant. The sheriff or other person executing such warrant shall accompany said statement with a statement of the expenses incurred, and the excess or deficiency may by said auditor be deducted from or added to his compensation, as the case may be. If the funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the

admission of such person or persons into the hospital. When the commissioners of insanity order the return of a patient, compensation and expenses shall in like manner be allowed and paid out of the territorial treasury. (*Id.* § 41.)

*§ 49. **Penalty when officer or person neglects duty.** Any officer required as herein to perform an act, and any person accepting an appointment under the provisions of this act, and willfully refusing or neglecting to perform his duty, as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages. (*Id.* § 42.)

*§ 50. **Superintendent of hospital not responsible for reception of patient, when.** The warrant of the commissioners of insanity authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate, as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind, on account of the reception and detention of such persons in the hospital: *provided*, such detention shall be otherwise in accordance with the laws and by-laws regulating its management. (*Id.* § 43.)

*§ 51. **Hospital seal to be affixed.** The superintendent shall affix the seal of the hospital to any notice, order of discharge, report, or other paper required to be given or issued by him. (*Id.* § 44.)

*§ 52. **Terms "insane" and "idiot" defined.** The term "insane," as used in this act, includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for insane. (*Id.* § 45.)

*§ 53. **Trustees to furnish blanks.** The trustees of the hospital shall provide for furnishing the commissioners of insanity of the counties entitled to send patients to the hospital with such blanks for warrants, certificates, etc., as will enable them with regularity and facility to comply with the provisions of the law, and also with copies of the by-laws of the hospital when printed. (*Id.* § 46.)

*§ 54. **Penalty for using certain lands as burying ground.** It shall be unlawful for any person or persons to use any portion of section thirty-six, township ninety-four, range fifty-six, as a burying ground, or to bury any dead body thereon, and any person or persons violating or causing any other person to violate the provisions of this section shall be guilty of a misdemeanor. (*Id.* § 47.)

*§ 55. **Expenditures beyond appropriation forbidden.** Nothing in this act shall be construed to authorize the board of trustees to expend money under this bill unless an appropriation shall have been made therefor. (*Id.* § 48.)

*§ 56. **Dakota hospital for insane.** There [be and hereby] is appropriated out of the funds provided for in this act, by the negotiation of the bonds herein mentioned, the sum of forty thousand dollars, for the purpose of erecting a hospital for the insane. (*Sess. Laws 1881, c. 22, § 1.*)

*§ 57. **Bonds—denomination—where payable, and interest.** To provide such fund, bonds of this territory shall be issued to the amount of forty thousand dollars, in denomination of five hundred dollars, bearing date the first day of May, 1881, with interest payable semi-annually at some place in New York city, to be specified in said bonds, on the first day of July and January each year, at the rate of six per cent. per annum, running twenty years, and payable, at the option of the territory, at any time after five years from the date of the same. (*Id.* § 2.)

*§ 58. **By whom executed and negotiated.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer; shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id.* § 3.)

*§ 59. **Manner of selling bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers of general circulation, one of which shall be published in the territory, and the other in the city of New York, and said bonds shall be sold to the highest bidder for cash. (*Id.* § 4.)

*§ 60. **Provisions for payment of interest and principal.** For the purpose of the prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and the exchange thereon; and after ten years from the first day of May, 1881, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity. And it shall be the duty of the territorial treasurer to pay promptly on the first days of July and January of each year such interest as shall then be due, and to purchase said bonds at their market value, and retire and cancel the same with the sinking-fund tax as fast as the same shall be received. And no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 5.)

*§ 61. **Provisions for prompt payment of interest.** If for any reason the territorial treasurer shall not have in his hands sufficient of the funds, herein provided, to pay either principal or interest upon such bonds when due, he shall pay such interest or principal out of any other unappropriated fund belonging to the territory. And there is hereby appropriated and set apart out of the general funds belonging to the territory, a sum sufficient to pay such interest on said bonds as may become due before the funds and tax herein provided can be made available, and it shall be the duty of said treasurer to pay said interest promptly at the time it falls due, out of said funds. (*Id.* § 6.)

*§ 62. **Replacing funds.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 7.)

*§ 63. **Liability upon division of territory.** That part of the territory of Dakota in which said hospital for the insane is situated, shall, on the division of the territory, assume all debts incurred and then existing on account of the construction of said hospital. (*Id.* § 15.)

*§ 64. **Construction of west wing to Dakota hospital.** There [be and hereby] is appropriated out of the funds provided for in this act, by the negotiation of the bonds herein mentioned, the sum of twenty-five thousand dollars for the purpose of erecting a wing on the west side of the center building of the Dakota hospital for the insane, which shall be of the same size and general dimensions of the wing now built on the east side of said center building; and the sum of eight thousand dollars to complete and furnish the center building of said hospital; and the sum of fifteen thousand dollars to purchase and place in said hospital buildings steam-heating apparatus, and the necessary fixtures and machinery in kitchen and laundry; and the sum of six thousand dollars for building a boiler, engine, and steam-pump house; and the sum of ten thousand dollars for building a kitchen, laundry, chapel, library, and shops; and the sum of two thousand and five hundred

dollars for purchasing steam-engine, steam-pumps, and necessary fittings and attachments for the same; and the sum of one thousand one hundred and fifty dollars for performing the necessary labor of steam-fitting and plumbing; and the sum of four thousand and five hundred dollars for purchasing a gas-machine and gas-burners and fixtures and for properly constructing and placing the same in said hospital buildings; and the sum of four thousand dollars for building a barn upon the hospital farm; and the sum of one thousand and three hundred dollars for sinking and tubing an artesian well, and for conveying the water from it into and through said hospital buildings. (*Sp. Laws 1883, c. 6, § 1.*)

*§ 65. **Bonds to be issued.** To provide such funds, bonds of this territory shall be issued to the amount of seventy-seven thousand and five hundred dollars, in denominations of five hundred dollars, bearing date the first day of May, 1883, with interest payable semi-annually at some place in New York city, to be specified in said bonds, on the first day of July and January of each year, at the rate of five per cent. per annum, running twenty years, and payable at the option of the territory at any time after five years from the date of the same. (*Id. § 2.*)

*§ 66. **Bonds—how executed.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer; and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id. § 3.*)

*§ 67. **Proposals for bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers of general circulation, one of which shall be published in the territory and the other in the city of New York, and said bonds shall be sold to the highest bidder for cash. (*Id. § 4.*)

*§ 68. **Tax for payment of bonds.** For the purpose of the prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and the exchange thereon; and after ten years from the first day of May, 1883, in addition thereto a sinking fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity. And it shall be the duty of the territorial treasurer to pay promptly on the first days of July and January of each year, such interest as shall then be due, and to purchase said bonds at not more than their par value, and retire and cancel the same with the sinking fund tax as fast as the same shall be received. And no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id. § 5.*)

*§ 69. **Payment of interest.** If for any reason the territorial treasurer shall not have in his hands sufficient of the funds herein provided to pay either principal or interest upon such bonds when due, he shall pay such interest or principal out of any other unappropriated fund belonging to the territory, and there is hereby appropriated and set apart out of the general fund belonging to the territory a sum sufficient to pay such interest on said bonds as may become due before the funds and tax herein provided can be available, and it shall be the duty of said treasurer to pay said interest promptly at the time it falls due, out of said funds. (*Id. § 6.*)

*§ 70. **Replacing funds.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id. § 7.*)

*§ 71. **In case of division of territory.** That part of the territory of Dakota in which said hospital for the insane is located, shall, on the division of the territory, assume all debts incurred and then existing on account of the construction of said hospital buildings. (*Id.* § 15.)

*§ 72. **Jamestown hospital.** There [be and hereby] is appropriated out of the funds provided for in this act, by the negotiation of the bonds herein mentioned, the sum of fifty thousand dollars, for the purpose of erecting a hospital for the insane at or near the city of Jamestown, Dakota. (*Sp. Laws* 1883, c. 7, § 1.)

*§ 73. **Bonds to be issued.** To provide such fund, bonds of this territory shall be issued to the amount of fifty thousand dollars, in denomination of five hundred dollars, bearing date May 1, 1884, with interest payable semi-annually at some place in New York city, to be specified in said bonds, on the first day of July and January of each year, at the rate of six per cent. per annum, running twenty years, and payable at the option of the territory at any time after ten years from the date of the same. (*Id.* § 2.)

*§ 74. **Bonds—how executed.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, [and] shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id.* § 3.)

*§ 75. **Proposals to be received.** It shall be the duty of [the] treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers of general circulation, one of which shall be published in the territory and the other in the city of New York, and said bonds shall be sold to the highest bidder for cash. (*Id.* § 4.)

*§ 76. **Bond tax.** For the purpose of prompt payment of principal and interest of the bonds herein provided there shall be levied by the territorial board of equalization, at the time the other taxes are levied and collected, in the same manner as other territorial taxes are collected, such sums as are sufficient to pay such interest and the exchange thereon; and after nine years from the first day of May, 1884, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly on the first days of July and January of each year such interest as shall then be due, and purchase said bonds at their par value, and retire and cancel the same with the sinking-fund tax as fast as the same shall be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 5.)

*§ 77. **Interest to be paid out of other fund.** If for any reason the territorial treasurer shall not have in his hands sufficient of the funds, herein provided, to pay either principal or interest upon such bonds when due, he shall pay such principal and interest out of any other unappropriated fund belonging to the territory; and there is hereby appropriated and set apart out of the general funds belonging to the territory, a sum sufficient to pay such interest on said bonds as may be due before the funds and tax herein provided can be made available, and it shall be the duty of the said treasurer to pay said interest promptly at the time it falls due out of said funds. (*Id.* § 6.)

*§ 78. **Replacing funds.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 7.)

*§ 79. **Debt in case of division.** That part of the territory of Dakota in which said hospital for the insane is situated, shall, on the division of the

territory, assume all debts incurred and then existing on account of the construction of said hospital. (*Id.* § 15.)

*§ 80. **Patients from north Dakota to be sent to Jamestown.** As soon as said north Dakota hospital for the insane shall be ready for the reception and care of patients, the board of commissioners of insanity constituted under chapter twenty-three of the laws of eighteen hundred and seventy-nine, in each organized county lying north of the forty-sixth parallel of latitude, and in each such county of which the greater portion shall be north of said parallel, shall transact all business arising under said chapter twenty-three, with the trustees and officers of the said north Dakota hospital, instead of the Dakota hospital, for the insane at Yankton; and all counties thus lying north of said line are hereby constituted the district belonging to said north Dakota hospital for all purposes contemplated in said chapter twenty-three, and the other counties in the territory are constituted the district belonging to the Dakota hospital, for such purposes; and all patients belonging to said northern district under treatment at the Dakota hospital for the insane at the time said north Dakota hospital shall be ready for patients as aforesaid, shall be transferred to said north Dakota hospital at the expense of the last-named institution. (*Id.* § 17.)

*§ 81. **Certain laws applicable.** All laws heretofore enacted for the government of the Dakota hospital for the insane shall apply to and govern the north Dakota hospital aforesaid, so far as applicable to the same; and all by-laws heretofore adopted by the board of trustees of said Dakota hospital to govern the same, shall apply to and govern the said north Dakota hospital until they shall be modified or repealed by the action of the board of trustees thereof. (*Id.* § 18.)

CHAPTER LII.

REGISTRATION OF VOTERS.

*§ 1. **Board of registry—when to meet.** The persons authorized by law or appointed pursuant to any town or city ordinance to act as judges or inspectors in any town, city, or ward, or other election precinct in this territory, shall constitute a board of registry for their respective towns, cities, wards, or precincts, and shall meet on Tuesday, two weeks preceding any general election, at nine o'clock A. M., and proceed to make a list as hereinafter prescribed, of all persons, qualified and entitled to vote at the ensuing election, in the election precinct of which they are judges or inspectors, which list when completed, shall constitute and be known as the register of electors of said election precinct. (*Sess. Laws 1881, c. 122, § 1.*)

*§ 2. **Registry lists—what to contain.** Said registers shall each contain a list of the persons so qualified and entitled to vote in said election precinct, alphabetically arranged, according to their respective surnames, so as to show, in one column, the name at full length, and in another column in cities and towns, the residence, by the number of the dwelling, if there be a number, and the name of the street or other location of the dwelling place of each elector. It shall be the duty of said board to enter in said lists the names of all persons residing in their election precinct, whose names appear on the poll list kept in said precinct at the last preceding election, in cities and towns, the number of the dwelling and name of the street or other loca-

tion, if the same shall be known to or can be ascertained by such board; and for this purpose, said board are authorized to take from the office in which they are filed, the poll lists made and filed by the judges or inspectors of such precinct, at the election held next prior to the making of such register. In making such register, the board shall enter thereon, in addition to the names on the poll list, the names of all other persons who are well known to them to be electors in said precinct, or shall be proved to be electors by the oath of the person applying to be registered, or by the oath of some elector, whose name has been already placed upon the poll list; and the names of all persons on the poll list who have died or removed from the precinct, shall be omitted from the register. The said board shall complete, as far as practicable, the said register on the day of their meeting aforesaid, and shall make two copies thereof, and certify the register and each of the copies to be a true list of the voters in their precinct, so far as the same are known, within ten days thereafter; the said original list, together with the list taken from the office as aforesaid, shall be filed with said board, and shall be kept by one of said judges or inspectors, and carefully preserved by him for their use on the day or days hereinafter mentioned, for the revision and correction of the same. One copy of said list shall, immediately after its completion, be posted in some public and conspicuous place, at or near where the last preceding election in said precinct was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall take down, tear down, or deface or destroy any list so posted, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding five years. (*Id.* § 2.)

*§ 3. **Registry list in new precinct.** In case a new election precinct shall be formed by the organization of a new precinct or by division of any town, ward, or precinct, or the incorporation of a city or town, the judges or inspectors of the election in the new precinct thus formed may make their registry of electors on the day prescribed by this act, in such manner as a majority of them may direct, and for this purpose may make a list or cause to be made a certified copy of the poll list or lists of the precinct or precincts in which said new precinct was situated, or they may dispense with such list or lists and proceed to make a register of electors from the best means at their command. Said lists shall only embrace the names of such persons as are known to them to be electors in their precinct, or proved to be such upon the oath of an elector whose name has already been entered upon said register, or by the oath of the applicant; and said lists shall be preserved and a copy posted up as prescribed in the preceding section, and shall be revised and corrected in the same manner as other lists are corrected. (*Id.* § 3.)

*§ 4. **Second meeting of board.** The said board shall again meet on Tuesday of the week preceding the said election in their respective election precincts, at the place designated for holding the polls of election, for the purpose of revising, correcting, and completing said lists, and for this purpose they shall meet at eight o'clock A. M. and remain in session until eight o'clock P. M. (*Id.* § 4.)

*§ 5. **Lists — how made for first election.** For the first election after the passage of this act the judges or inspectors in all election precincts may make the lists in the same manner as provided for new precincts in section three of this act. (*Id.* § 5.)

*§ 6. **Proceedings of board, etc.** The proceedings of said board shall be open, and all persons residing and entitled to vote in said precinct shall be entitled to be heard by said board in relation to corrections or additions to said register, and the judges or inspectors are empowered to administer

oaths for this purpose. One of the lists so kept by the judges or inspectors as aforesaid, shall be used by them on the day or days of making corrections or additions for the purpose of completing the registry of the precinct or ward. (*Id.* § 6.)

***§ 7. Revising list.** It shall be the duty of said board, at their meeting for revising and correcting said lists, to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of said precinct, to the satisfaction of said board, to be non-resident of said precinct, or otherwise not entitled to vote in said precinct at the election then next to be held. Any elector residing in said precinct, and entitled to vote therein, may appear before said board and require his name to be recorded in said alphabetical list. Any person so requiring his name to be so entered on said lists shall make the same statement as to street and number thereof, and where he resides, required by the provisions of this act of persons offering their votes at elections, and shall be subject to the same penalties for refusing to give such information, or for falsely giving the same, and shall also be subject to challenge, either by the judges or inspectors, or either of them, or by any other elector whose name appears on said alphabetical lists, and the same oaths may be administered by the judges or inspectors, or other duly authorized person, as are now or may hereafter be provided in case of persons offering to vote at an election; and in case no challenge is made of any person requiring his name to be entered on said alphabetical list, or in case of challenge, if such person make oath that would entitle him to vote in case of challenge at an election, then the name of any such person shall be added to the alphabetical poll list. (*Id.* § 7.)

***§ 8. Receiving vote from person not on the list.** After said lists shall have been fully completed, the said board shall, within two days, cause two copies of the same to be made, each of which shall be certified by them to be a correct list of the voters of their precinct so far as known, which said lists the said judges or inspectors shall carefully keep and preserve for their use on election day; and at the opening of the polls the judges or inspectors shall designate two of their number to check the name of every voter voting in such precinct, whose name is on the register. No vote shall be received at any election in this territory if the name of the person offering to vote be not on the said register, made on the Tuesday preceding the election, unless such person offering to vote shall furnish to the judges of the election his affidavit in writing, stating therein that he is an inhabitant of said precinct and resides therein, giving his place of residence and length of time he has so resided there, and also prove by the oath of a householder and registered voter of the precinct in which he offers to vote that he knows such person to be an inhabitant of the precinct, giving his place of residence therein. The oath may be administered by one of the said judges of election of the poll where the vote is offered, or any other person authorized to administer oaths, but no person shall receive any compensation for administering said oath. Said oath shall be preserved and filed by the judges of election. Any person may be challenged, and the same oaths required as now are or hereafter may be prescribed by law. (*Id.* § 8.)

***§ 9. Duty of clerk of election.** The clerks at each poll, in addition to the duties now prescribed by law, shall enter on the poll list kept by them, in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute heretofore required of the board in making the registry; but such entry is not to be made by them if the registry contains correctly the name and residence of such voter; and in all cases said clerks shall enter in a column opposite the name of each person not regis-

tered, the words, "not registered." And the clerks of the polls in case the name of such voter is not registered shall truly enter in the appropriate column of the poll list the name and residence as in other cases. Any person making a false statement as to his residence or dwelling place shall be deemed guilty of a misdemeanor, and upon conviction, punished by a fine not less than two hundred dollars nor more than five hundred dollars, or imprisonment, at the discretion of the court. (*Id.* § 9.)

*§ 10. **Filing register.** After the canvass of the votes the said register so kept and checked as aforesaid, shall within three days be filed with the county clerk of the county in which said precinct is situated, and shall be retained and carefully preserved as a public record. (*Id.* § 10.)

*§ 11. **Register to remain public record.** The registers shall at all times be open to public inspection at the county clerk's office or the judges' of election, without charge. (*Id.* § 11.)

*§ 12. **Compensation of members of board.** The members of the board of registry shall receive the same compensation as is now or may hereafter be allowed by law, not to exceed two dollars per diem. (*Id.* § 12.)

*§ 13. **Board have power to preserve order.** The said board shall have and exercise the same power in preserving order at their meetings under this act as are given to judges of election for preserving order on election day, and vacancies may be filled in said board in the same manner that vacancies of judges are now filled at elections. (*Id.* § 13.)

*§ 14. **Penalty for repeating, etc.** Any person who shall cause his name to be registered in more than one election precinct, or who shall cause his name to be registered knowing that he is not a qualified voter in the precinct where said registry is made, or who shall falsely personate any registered voter, and any person aiding or abetting any person in any manner, in either of said acts, shall be punished for every and each offense by imprisonment in the territorial prison for not less than two nor more than five years. If any member or officer of said board shall willfully violate any of the provisions of this act, or be guilty of any fraud in the execution of the duties of his office, he shall be punished by imprisonment in the territorial prison not less than one nor more than five years. (*Id.* § 14.)

*§ 15. **Provisions of this law shall apply only to certain sections.** The county clerks shall provide to the board of registry of the several precincts within their respective counties the necessary blank registers and blanks at the expense of their respective counties: *provided, however*, that the provisions of this act shall only extend to and be in force in the counties of Lawrence, Pennington, and Custer, and in those counties bordering on the Missouri river, except the counties of Bon Homme, Yankton, Clay, and Union: *and provided*, that the provisions of this act shall apply to all villages, towns, or cities containing a population of over three thousand persons, whether situated in the counties excepted by the provisions of this act or not. (*Id.* § 15.)

*§ 16. **County may adopt this act by vote.** Any other county may adopt the provisions of this act by a majority vote at any general election or special election called for this purpose: *and provided further*, in all elections of township, county, district, or territorial officers or delegate to congress, all the territory situated in the same precinct with such city, town, or village, shall be included therein in the calculating the number of inhabitants, and for all purposes of registration, as provided for in this act: *provided*, that the county of Charles Mix be exempted from the provisions of this act. (*Id.* § 16.)

*§ 17. This act shall be in force and take effect from and after its passage and approval, and shall apply to any special election that may be held in case congress shall pass an act for the admission of this territory into the Union as a state. (*Id.* § 17.)

CHAPTER LIII.

PENITENTIARY.

PART I.—PENITENTIARY AT SIOUX FALLS.

*§ 1. **Directors to purchase site.** The penitentiary of the territory of Dakota shall be located on a tract of land, not less than eighty acres in extent, to be selected by the directors hereinafter mentioned within the corporate limits of the villiage of Sioux Falls, in Minnehaha county, Dakota territory, and if a suitable tract of land cannot be obtained within the corporate limits of said villiage, then the said penitentiary shall be located on such tract of land as said directors shall select, within a radius of one mile of the corporate limits of said villiage. The said directors, after having selected a suitable spot or tract of land as herein provided, shall purchase the same for the territory of Dakota, to be used for the purpose of a territorial penitentiary, and they shall certify to the auditor of said territory the price agreed to be paid for said land, not exceeding the sum of five hundred dollars, and he shall draw a warrant on the treasurer of said territory for the payment of the sum so agreed upon. (*Sess. Laws* 1881, c. 104, § 1.)

*§ 2. **Appointment of directors.** Said penitentiary shall be erected and constructed under the direction and government of three directors, who shall be appointed by the governor of the territory, with the advice and consent of the council; said directors to hold their office for the term of two years, or until their successors are appointed and qualified, unless sooner removed by the governor upon specific charges; and in case a vacancy shall occur in the position of directors, such vacancy shall be filled by appointment by the governor of the territory, which person so appointed shall hold his position until the end of the next legislature thereafter, unless a new appointment and confirmation shall sooner be made. (*Id.* § 2.)

*§ 3. **Directors to make contract for building.** Such directors shall immediately proceed to contract for the erection of a suitable building for a penitentiary which shall accommodate from one hundred and twenty-five to one hundred and fifty persons, at a cost for land and buildings, and fixtures complete, not exceeding fifty thousand dollars, upon such lands within the aforesaid limits as they may select therefor, and for that purpose shall advertise for plans and specifications for a suitable building for a penitentiary, and said plans may or may not be accompanied with the price for which the proprietor will perform the work and build said building. From the plans so furnished, if the said directors shall deem it best, or from any other plans furnished, they shall select a plan for a penitentiary building.

After said plan shall be selected, the same shall be placed on file in the office of the treasurer of the territory, and be open for inspection for four weeks, and during said time bids shall be received from persons desiring to erect said building as per plans selected by said directors, and at the expiration of said time said directors shall, in a public manner, open said bids and award the contract to the lowest responsible bidder: *provided, however*, that they shall reserve the right to reject any and all bids, and again advertise for proposals, or erect said building under their own direction and management, if they shall deem best. (*Id.* § 3.)

*§ 4. **Walls and cells.** The walls of said building containing the cells, and of the prison yard of said penitentiary, shall be constructed of good, substantial stone masonry, and the cells shall be lined with or made of suitable iron, if thought necessary by the directors; and they shall be of suitable size; and the material used shall be examined by said directors, and they shall reject all material which they may deem unsuitable. (*Id.* § 4.)

*§ 5. **When to be completed.** The contract shall stipulate that the walls shall be constructed of stone of suitable size and fine texture, and shall be laid in good cement, and that all other material shall be of good quality, and that all the stone or mason work shall be completed and the building covered in within six months from the letting of the contract, and the whole work completed within one year from the date of letting of said contract. (*Id.* § 5.)

*§ 6. **Payments.** The directors, as the work progresses, on application of the contractor, shall certify to the auditor of the territory the value of the work done on the building at the time, and on such certified statement the auditor shall issue a penitentiary warrant on the treasurer of the territory for a sum not exceeding eighty per cent. of the value of the work so certified to have been done, which warrants shall be paid out of the penitentiary fund. (*Id.* § 6.)

*§ 7. **Report of directors and bond.** The directors shall make a full and complete report to the governor, to be by him communicated to the legislature at each session, of all their doings, specifying the amount paid to each person, for what service or material the same was paid, and the said directors shall, before entering upon the duties of their office, give a bond to the territory of Dakota in the sum of ten thousand dollars for the faithful discharge of all the duties of their office, to be approved by the territorial treasurer and put on file in his office. (*Id.* § 7.)

*§ 8. **Compensation of directors.** The said directors shall receive five dollars per day for every day they may be actually employed about the erection of said building: *provided*, that but one of said directors shall be paid for attendance during the progress of the work, except when meetings are held for conference, and traveling expenses not to exceed ten cents per mile for each mile actually and necessarily traveled in discharge of their duties, the said sum to be paid out of the territorial treasury on the warrant of the auditor. (*Id.* § 8.)

*§ 9. **Purpose of penitentiary.** The penitentiary when constructed, as herein provided, shall be the general penitentiary and prison of the territory of Dakota for the punishment and reformation of offenders, in which shall be confined and employed at hard labor, and governed in the manner herein-after directed, all offenders who have been committed and sentenced according to law by any court of the territory of Dakota, or any district court, for an offense against the United States, held in the territory of Dakota, to the punishment of solitary imprisonment or at hard labor therein. (*Id.* § 9.)

***§ 10. Courts of Minnehaha county to have jurisdiction.** For the purpose of all judicial proceedings the prison and precincts thereof shall be deemed to be within and a part of the county of Minnehaha, and the courts of said county shall have jurisdiction of all the crimes and offenses committed within the same. (*Id.* § 10.)

***§ 11. Warden to serve process.** All process to be served within the precincts of the prison, either upon convicts or upon persons or officers employed within the precincts of the prison, except the warden, shall be served and returned by the warden, and all officers and employes of the prison shall be exempt from serving upon juries in any court, and from highway poll tax. (*Id.* § 11.)

***§ 12. Officers of prison.** The officers of the prison shall consist of three directors as herein provided—one warden, one gate-keeper, one turn-key, and such guards, overseers, and laborers as may be necessary. (*Id.* § 12.)

***§ 13. Warden, appointment of.** The warden shall be appointed by the directors, to hold his office for two years, unless sooner removed by the directors, and said directors are hereby authorized to remove such warden at their discretion. (*Id.* § 13.)

***§ 14. Other officers, appointment of.** All other officers and employes shall be appointed by the warden, to be approved by the directors, and shall hold their office during the pleasure of the warden. (*Id.* § 14.)

***§ 15. Warden's salary.** The warden shall receive a salary, to be fixed by the directors, not to exceed twenty hundred dollars per annum, and all other officers and employes such amounts as the directors may from time to time determine and fix upon. (*Id.* § 15.)

***§ 16. Directors to visit prison.** The directors, or some one of them, shall visit the prison at least once in each month, and oftener if they think necessary, for the purpose of inspecting the books and all the concerns of the prison, and ascertaining whether the officers are competent and faithful, and the convicts properly governed and employed, with power to direct any alteration in the business there carried on which such directors may consider necessary. (*Id.* § 16.)

***§ 17. Books to be public records.** All books and documents relating to the concerns of the prison shall at all times be open to the examination of the directors and the public. (*Id.* § 17.)

***§ 18. Directors to make detailed report.** The directors shall on or before the fifteenth day of December of each year make a detailed report to the governor for the year ending on the last day of the preceding month, stating therein the names of the officers of the prison, with their several salaries, the number of convicts, the amount of manufacture, and the cost of each addition to and change in the prison building, together with a full statement of all the concerns of the prison. (*Id.* § 18.)

THE WARDEN.

***§ 19. Warden's responsibility and duty.** The warden shall, under the direction of the directors, have the charge and custody of the prison, with all lands, buildings, furniture, tools, implements, stock, and provisions, and every other species of property pertaining thereto, or within the precincts thereof, and shall superintend the police of the prison and discipline of the convicts. He shall be treasurer of the prison, and he shall render to the directors, on the first day of each month, a full and accurate statement of all moneys received by him, and all sums of money expended by him during the preceding month, showing on what account received and expended, and shall

accompany said report with proper vouchers for all such expenditures, which report shall be verified by the oath of the warden, and shall receive and pay out all moneys granted by the legislature for the support of the prison, and such as may accrue from the business of manufacturing, under contract or otherwise, convict labor, or rentage or sale of any personal property. The warden shall keep an account of all moneys received for gate fees for the admission of visitors to the prison, the amount of which for each year shall be embraced in his annual report, and shall constitute a part of the prison revenues. (*Id.* § 19.)

*§ 20. **Same.** The warden shall be his own clerk, and shall keep a correct record of all the transactions of his office, and a correct account of all his doings. (*Id.* § 20.)

*§ 21. **Warden to give bond and make oath.** Before the warden enters upon the duties of his office, he shall give a bond to the territory of Dakota in the sum of fifteen thousand dollars, with two or more sureties, to be approved by the directors, conditioned that he will faithfully account for all moneys which shall come into his hands as prison treasurer, and perform all duties incumbent upon him as warden of the prison; he shall also, before entering upon the duties of his office, take and subscribe the constitutional oath of office, and such bond, with the approval of the directors indorsed thereon, and the oath aforesaid, shall be filed in the office of the territorial treasurer. (*Id.* § 21.)

*§ 22. **New bond of warden.** Whenever the directors shall deem it necessary, they may require the warden to file new bonds, with satisfactory security, in a larger sum than that specified in the preceding section, subject to their approval. (*Id.* § 22.)

*§ 23. **Rules and regulations.** The warden shall make such rules and regulations, not inconsistent with the laws of this territory, for the government of the officers and convicts of the prison, as he may deem necessary and proper, subject to the approval of the directors. (*Id.* § 23.)

*§ 24. **Certain persons to have no interest in contract.** The warden shall reside within the prison grounds, and neither the warden nor any prison officer appointed by him or holding any office in the prison, including the directors, shall directly or indirectly have any interest or concern pecuniarily in any contract, either verbal or written, which may be entered into by said warden on the part of the territory, for any purpose whatever connected with the business of the prison. (*Id.* § 24.)

*§ 25. **Warden's report.** The warden shall on the thirtieth day of November in each year, make an annual detailed report to the directors, verified on oath, which shall contain a full and accurate statement of all concerns of the prison for the year ending on that day; also a list of convicts who have been received, discharged, pardoned, or who have died during the year, including the prisoners sentenced by the United States courts, and an estimate of expenses for the ensuing year, which report the directors shall submit to the governor with their own, and by him be submitted to the legislature. (*Id.* § 25.)

*§ 26. **Purchasing supplies, contracts, etc.** All contracts made on the part of the territory by the warden, on account of the prison, shall be in writing and approved by the directors before taking effect, unless when the wants or necessities of the prison shall compel the warden to purchase supplies of any kind immediately, in which case he may purchase the same upon verbal agreement. All contracts lawfully made by him shall be deemed the contracts of the territory. The prison property of every kind in his charge is the property of the territory, and all funds of the prison received by him.

shall at all times be kept separate from any other funds. The warden shall have power to make all purchases for the prison, on such conditions and in such manner as in his opinion will best promote the interests of the territory. (*Id.* § 26.)

*§ 27. **Contracts for supplies—how let.** Whenever the warden shall determine to contract for the furnishing of the principal articles purchased for the use of the prison, such as food, fuel, lumber, stone, iron, or steel, the same shall be contracted for by the year, when such contracts can be advantageously made. The warden shall give previous notice in at least two newspapers printed in the territory of Dakota, of the articles wanted, the quality and quantity thereof, as near as the same can be ascertained, the time and manner of delivery, and the period during which such articles shall be received. Such notice shall be published at least three successive weeks. (*Id.* § 27.)

*§ 28. **Lowest and best bidder to receive contract.** All such proposals shall be in writing and sealed up, and, upon the day appointed in the notice in the foregoing section, they shall be opened by the warden, who shall cause all offers made in such proposals to be entered in a book and compared. The person offering the best terms, together with satisfactory security for the performance which shall be required by the warden in said notice, shall be entitled to the contract, unless it shall appear to the warden that no one of the offers is as low as the fair market price. In that case no offer shall be accepted, but the warden may, if he thinks necessary, advertise again and proceed, as before provided for. (*Id.* § 28.)

*§ 29. **Bonds of contractor.** All persons contracting under the provisions of the preceding sections shall give bonds to the territory in a reasonable sum, with satisfactory security, for the faithful performance of their contract. All bills contracted by the warden for the purchases on account of the prison shall be approved by a majority of the directors before payment. (*Id.* § 29.)

*§ 30. **Invoices to be compared.** The warden shall take bills of quantity and price of the supplies furnished, in all cases where the same is practicable at the time of their delivery, and the warden or such other officer as the warden shall direct, shall compare the bill with the articles delivered, and if the same are found correct, he shall make a corresponding entry on the account books of the prison, and file the bill as a voucher of the fact of such delivery. If any bill so rendered for supplies shall be discovered to be incorrect on comparing it with the articles delivered, the warden shall immediately give notice to the person furnishing such supplies. (*Id.* § 30.)

*§ 31. **Delivering prisoners—compensation of sheriff.** The sheriff of each county shall convey to the territorial prison all persons convicted in his county, and sentenced to be confined in said prison, as soon as may be after such conviction and sentence shall have been had, and after delivering such convict or convicts to the warden, together with a certified copy of the judgment of conviction of the court ordering such imprisonment, and the warden shall deliver to such sheriff a receipt, in which he shall acknowledge having received the prisoner, naming him, which receipt the said sheriff shall file in the office of the clerk of the court where such conviction and sentence were had, and such sheriff shall be entitled to receive from the treasurer of the territory the amount actually and necessarily expended by him in transporting such prisoner, including the amount paid for boarding and lodging, and such guards as may have been necessary, and such further reasonable sum as shall be a fair compensation for the time necessarily spent in transporting such prisoner, to be fixed and allowed by the territorial auditor. (*Id.* § 31.)

DISCIPLINE OF CONVICTS.

*§ 32. **Warden to have custody of convicts.** All convicts in the prison shall be in the charge and custody of the warden, who shall govern and employ them in the manner prescribed by law, the rules and regulations of the prison, and in conformity to the respective sentence under which they shall be confined. (*Id.* § 32.)

*§ 33. **Officers and employes to perform certain duties.** All officers and persons employed in and about the prison shall perform such duties in charge and oversight of the prison, the care of the property belonging thereto, and the custody, government, discipline, and employment of the convicts as shall be required of them by the warden, in conformity to law and the rules and regulations of the prison, and no such officer or person shall be engaged directly or indirectly in procuring a pardon of any convict confined in said prison, and any person violating the provisions of this section shall be subject to immediate removal. (*Id.* § 33.)

*§ 34. **Solitary confinement.** Every convict against whom the punishment of solitary confinement shall be awarded by sentence of the court, or for violating any of the rules and regulations of the prison, shall be confined in one of the solitary cells, and during said confinement shall be fed on bread and water only, unless a physician called upon to ascertain the fact shall certify to the warden that the health of such convict requires other diet. (*Id.* § 34.)

*§ 35. **Hard labor.** All convicts sentenced to punishment of hard labor in said prison shall be constantly employed for the benefit of the territory. No communication shall be allowed between them and any person without the prison, except under supervision prescribed by the rules of the prison. They shall be confined in separate cells at night-time, and in day-time all intercourse between them shall be prevented as far as practicable. All communication between male and female convicts shall be prevented. (*Id.* § 35.)

*§ 36. **Food of convicts.** The daily sustenance of convicts not in solitary confinement nor in the hospital, shall consist of wholesome, coarse food, with such proportions of meat and vegetables as the warden shall deem best for the health of the convicts. (*Id.* § 36.)

*§ 37. **Same.** No spirituous liquors or any article of indulgence shall be allowed any convict, except by order of the physician, which order shall be in writing and for a definite period, and the warden may, in his discretion, make moderate allowance of tea or tobacco to convicts as a reward for industry and good behavior. (*Id.* § 37.)

*§ 38. **Clothing and bedding.** The clothing and bedding of convicts shall be of such quality and quantity as the judgment of the warden may direct, consulting the health and comfort of the convicts and the interests of the territory. (*Id.* § 38.)

*§ 39. **Power of warden to maintain discipline.** All necessary means shall be used, under the direction of the warden, to maintain order in the prison, enforce obedience, suppress insurrections, and effectually prevent escapes, even at the hazard of life, for which purpose he may at all times command the aid of the officers of the institution, and of the citizens outside the precincts of the prison; and any citizen refusing to obey such command shall be held liable to such fines, penalties, and forfeitures as apply to persons refusing to obey a sheriff, or other officer, calling upon the aid of the county to assist in serving a process, or for quelling an insurrection. (*Id.* § 39.)

*§ 40. **Treatment of prisoners.** The warden, and all prison officers, shall uniformly treat prisoners with kindness, and the warden shall require

of the officers that in the execution of their respective duties they shall, in all cases, refrain from boisterous and unbecoming language in giving their orders and commands. There shall be no corporal or other painful and unusual punishment inflicted upon convicts for violation of prison rules. (*Id.* § 40.)

*§ 41. **Effects of convict.** The money and effects, except the clothes, in possession of each convict when committed to the prison, shall be preserved by the warden, and restored to the convict when discharged. (*Id.* § 41.)

*§ 42. **Convict's discharge.** Every convict, when discharged, shall be provided with a decent suit of clothes, and a sum of money not to exceed five dollars, and transportation to the place where the convict received sentence, and may also be allowed employment in the prison under the rules established for the government of convicts, for such period of time, and at such rate of compensation, as the warden shall deem proper and equitable. (*Id.* § 42.)

*§ 43. **Death of convict.** The warden shall, in case of death of any convict, cause the body to be decently buried, or deliver it to the relatives or friends of such convict, if demanded by them, within twenty-four hours. (*Id.* § 43.)

*§ 44. **Employing convict outside prison.** If the warden shall at any time deem it for the interest of the territory, he may employ the convicts outside the prison yard in quarrying or getting stone from and cultivating the prison farm, or in doing any work necessary to be done in the prosecution of the regular business of the institution; and in all such cases the warden shall detail such force from the prison police as he shall deem necessary to watch and guard them, and in case any convict employed outside the prison yard shall escape, he shall be deemed as having escaped from the prison proper: "*provided, however*, that the warden shall be held responsible for the escape of any prisoners through the carelessness or neglect of himself or any of his subordinates." (*Id.* § 44.)

*§ 45. **Record and certificate of convict's conduct.** The warden shall keep a true record of the conduct of each convict, specifying each infraction of the rules of discipline. At the end of each month the said warden shall give a certificate of good conduct to each convict who shall require it, against whom is recorded no infraction of the rules of discipline. (*Id.* § 45.)

*§ 46. **Modification of sentence.** When any convict sentenced to periodical terms of solitary confinement shall, after suffering one term of solitary confinement, conduct himself in a peaceful, obedient, and industrious manner, the board of directors may exempt him from further solitary confinement during good behavior. (*Id.* § 46.)

*§ 47. **Capture of escaped convicts.** The warden may adopt such measures as he may deem proper, with the approval of the directors, to aid in detecting and capturing escaped convicts. (*Id.* § 47.)

UNITED STATES CONVICTS.

*§ 48. **United States convicts to be received.** The warden shall receive into the prison all persons convicted before any district court of this territory for an offense against the laws of the United States, and sentenced by such court to punishment of imprisonment at hard labor in said prison, and he shall safely keep and employ such convicts pursuant to their sentence, under the rules and regulations of the prison, until such sentence shall be performed or such convicts be otherwise discharged by due course of law of the United States. (*Id.* § 48.)

*§ 49. **Accounts against United States.** The warden once every six months shall make out and present for settlement to the proper auditing officer of the United States a certified account of the amount which shall then be due and unsettled for the support and maintenance of United States convicts in the territorial prison in this territory. (*Id.* § 49.)

*§ 50. **Funds received from United States—how disbursed.** Whenever the amount due for the maintenance of United States convicts shall be audited and allowed as provided by the preceding section, the warden shall file with the auditor of the territory a copy of such account with the amount allowed thereon. The auditor shall thereupon draw his warrant upon the territorial treasurer for the amount so allowed, payable to the warden out of the territorial treasury for the use of the territorial prison, when the same shall be received from the United States. (*Id.* § 50.)

*§ 51. **Warden's annual report.** The warden when making his annual report shall include therein the number of United States convicts in the prison at the date of such report, the whole number therein during the preceding year, the number received, and the number discharged during the same time, the amount received from the general government for their support and maintenance, and also the amount that may be due and unaudited for like purpose. (*Id.* § 51.)

*§ 52. **Oath of prison official.** Each officer, overseer, or keeper employed in or about the prison shall take an oath before some officer authorized to administer oaths, to discharge the duties respectively required by law and the regulations of the prison faithfully and to the best of his ability. (*Id.* § 52.)

LEASING THE LABOR OF THE CONVICTS.

*§ 53. **Leasing prison labor.** The warden is authorized and empowered by and with the advice and approval of the board of directors of said prison, to lease from time to time the labor of such portion of the prisoners confined therein, together with such shop room, machinery, and power as may be necessary for their proper employment, to such persons, for such purposes, upon such terms and conditions, and for such length of time, not exceeding five years at any one time, as he shall deem most conducive to the interests of the territory and the welfare of the prisoners. (*Id.* § 53.)

*§ 54. **In all contracts certain right reserved.** In every contract made pursuant to the authority herein conferred there shall be reserved to the directors of said prison and to the warden, and each and every of his subordinates, full power and authority to prevent the demanding or imposition of unusual or severe labor, or labor whereby the health or safety of the convicts may be impaired or jeopardized; and the said warden may from time to time prescribe all needful rules for the government and conduct of all contractors, their overseers and agents, in their relations to the convicts, and may require summary dismissal of any individual employed by any contractor in said prison whenever it shall appear that the presence or conduct of such individual is prejudicial to the discipline of the prison or the welfare of the convicts. (*Id.* § 54.)

*§ 55. **Security to be given by contractors.** Adequate security shall be exacted of all contractors for the faithful performance of all the provisions of the contracts on their part to be performed, and the directors and warden of said prison shall use their utmost endeavors to have all the terms and conditions of said contracts fully complied with on the part of the warden; but no contractor shall have, or claim, from the territory of Dakota, or the warden, or from the prison, or any of its funds, any damages, whether by way of recoupment, set-off, or otherwise, for or on account of the failure

or neglect of said warden to furnish to such contractor the labor of the full number of convicts specified in his contract. (*Id.* § 55.)

*§ 56. **Board of directors to make rules.** The board of directors of said prison are empowered to make all needful rules and regulations for the guidance of the warden in the exercise of the authority herein conferred upon him, and may, whenever in their judgment it is impracticable to continue to furnish the labor of convicts to any contractor, order and direct the cancellation of any contract, and thereupon, after six months' notice to such contractor, all obligations of the warden under such contract shall cease and determine, and such contractor shall not have, or be entitled to have, any compensation, whether by way of damages, set-off, recoupment, or otherwise, in consequence thereof. (*Id.* § 56.)

*§ 57. **Modification of sentence.** Whenever any convict convicted under the territorial law, by continued good behavior, diligence in labor or study, or otherwise, shall surpass the general average of convicts, he may be compensated therefor, at the discretion of the governor, upon the recommendation, in writing, of the directors, either by diminishing the period of his confinement, or by payment in money, or both. (*Id.* § 57.)

*§ 58. **Convict labor—how let.** Before entering into any contract for the leasing of convict labor, the warden shall, by public advertisement, invite sealed proposals for the hiring of such labor, shop-room, machinery, and power. Such advertisement shall specify the time and place, when and where such proposals will be opened and considered, and there shall be reserved the right to reject any or all bids that may be made. (*Id.* § 58.)

*§ 59. **When convict becomes insane.** Whenever it shall appear to the satisfaction of the governor, by the representations of the warden and directors of the territorial prison, that any person confined therein, in pursuance of a sentence of any court within this territory, has become insane during such imprisonment and is still insane, it shall be lawful for the governor to make inquiry thereof, and if he shall determine that such person has become and is insane, to make an order that such person be taken from said prison and be confined and treated in one of the territorial hospitals for the insane, and upon his recovery from such insanity, if before the expiration of his sentence, that he be returned to said territorial prison; and it shall be the duty of the warden of said prison to deliver such insane person to the superintendent of such hospital, and such superintendent shall receive such person into such hospital upon the presentation of such order and in obedience thereto, and the expense of the same shall be audited by the auditor and paid upon his warrant out of the territorial treasury. (*Id.* § 59.)

*§ 60. **Expenses in case of division of territory.** In case of any division of the territory of Dakota before the expenses hereby incurred shall have been paid, that part of said territory in which the penitentiary is located after such division, shall assume and pay all debts, bonds, and liabilities of the said territory of Dakota existing on the date of such division by reason of the erection of the building herein provided for. (*Id.* § 60.)

*§ 61. **Governor to make public proclamation of completion of territorial prison.** The governor of this territory shall, upon the completion of the territorial penitentiary located at Sioux Falls, in the county of Minnehaha, ready for occupancy, issue his proclamation announcing such fact, and shall cause a copy of the same to be mailed to each sheriff and judge of the district court, in this territory, and publish the same in a daily newspaper for at least thirty days, and thereafter any and all persons sentenced to imprisonment in the territorial prison shall be committed to such prison. (*Sess. Laws 1881 c. 105 § 1.*)

***§ 62. Governor to notify Detroit penitentiary of termination of contract—removing prisoners.** Whenever in the opinion of the governor said penitentiary is sufficiently progressed to justify it, he shall give due notice, as provided in the contract with the house of correction located at the city of Detroit, in the state of Michigan, terminating such contract. And upon the completion of said penitentiary all territorial prisoners sentenced by any court held in the territory of Dakota shall be removed from the house of correction in the state of Michigan to the territorial penitentiary at Sioux Falls, in the territory of Dakota; and the proper officers of said territorial penitentiary at Sioux Falls are hereby authorized and empowered to receive said prisoners, and they shall be confined therein according to law and the rules and by-laws of said penitentiary, the same in all respects as though such prisoners had been originally sentenced and committed to said territorial penitentiary at Sioux Falls. And all expense of such removal and advertising shall be certified to the auditor by the governor, and thereupon said auditor is hereby authorized and empowered to draw his warrant for such amount upon the territorial treasurer, who is authorized and directed to pay the same out of any funds in the treasury not otherwise appropriated. (*Id.* § 2.)

***§ 63. Removal of prisoners.** The directors and warden of the territorial penitentiary, as soon as the same is completed and ready to receive prisoners, shall forthwith procure the transfer of all territorial prisoners and United States prisoners, sentenced by any court in this territory, confined in the house of correction of the state of Michigan, to the territorial penitentiary, and for the purpose may summons the sheriffs or any of their deputies from the counties nearest said penitentiary in any number sufficient for the purpose; when they shall organize under regulations to be approved by the governor of the territory, and with an order from the governor shall proceed to Detroit, in the state of Michigan, and there take charge of such prisoners and deliver them with the least possible delay to the proper officers of the penitentiary. (*Id.* § 3.)

***§ 64. Fees of officers for removal.** The fees which shall be allowed to any sheriff or deputy sheriff summoned to assist in the removal of said prisoners shall be three dollars per day, and actual and necessary traveling expenses for the time actually employed for the purpose named, and this shall be in lieu of all other fees. (*Id.* § 4.)

***§ 65. Manner of providing funds for building penitentiary.** For the purpose of providing funds to pay the cost of constructing and furnishing of a territorial penitentiary and the land upon which the same is [to be] erected, and for use herewith, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue fifty thousand dollars of territorial bonds, running for a term or period of twenty years, and payable at the option of the territory after a term of five years, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January in each year, in denominations of not less than one hundred dollars each. Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Sess. Laws 1881, c 23, § 1.*)

***§ 66. Bonds known and kept.** Said bonds to be known and designated as the "Dakota penitentiary loan," and to be kept as a separate fund on the books of the treasurer, and to be issued and sold in the following manner, viz.: Whenever the directors of the penitentiary shall certify to the treasurer that contracts with good and sufficient securities have been executed with responsible persons for furnishing the land, buildings, and fixtures, ready for use, of a penitentiary, in accordance with this act, which shall accommo-

date at least one hundred and twenty-five territorial prisoners, it shall be the duty of the treasurer to issue and offer for sale by public advertisement in one or more newspapers, to the person paying par, or the highest premium above par, the whole fifty thousand dollars of bonds, or any part thereof, as may be necessary, as hereinafter provided. (*Id.* § 2.)

*§ 67. **Treasurer authorized to receive government appropriation.** The territorial treasurer is hereby authorized to receive from the United States treasurer any sum of money appropriated by congress for the building and equipment of [a] suitable penitentiary for this territory, and to place the same to the credit of the penitentiary fund. (*Id.* § 3.)

*§ 68. **Government appropriation—how expended.** Said appropriation by the United States congress, to be expended under the same restrictions and to take the place of an equal amount of the fifty thousand dollars of the bonds provided for in this act, and no larger amount of bonds shall be issued under this act than will create a penitentiary fund of fifty thousand dollars, including all sums appropriated by congress. (*Id.* § 4.)

*§ 69. **Bonds not required to be used, to be canceled.** All bonds not required to be issued by reason of appropriations for a penitentiary by congress, shall be retired and canceled by the governor and territorial treasurer; and no part of the appropriation received from the United States, nor from the proceeds of the sale of the penitentiary bonds, shall be issued and expended until contracts for the completion of the penitentiary provided for in this act shall have been duly executed. (*Id.* § 5.)

*§ 70. **Payment of funds by territorial treasurer.** After the execution of proper contracts the penitentiary fund containing the fifty thousand dollars may be paid out by the treasurer, upon the approval of the proper accounting officer, during the progress of the building of the penitentiary; and upon the completion and acceptance of the work, the reserved amount shall be paid: *provided, however,* that the amounts reserved upon each contract shall not be paid until the directors and the governor shall file certificates with the treasurer that the contracts have been fully executed and the prison accepted. (*Id.* § 6.)

*§ 71. **Appropriation for salaries, etc.** There is hereby appropriated out of the territorial treasury for the salary of the warden of the territorial prison the sum of three thousand dollars; for assistant warden and other employes, the sum of three thousand dollars; for office, furniture of office, stoves, fuel, lights, incidental expenses of the prison, including pay of directors, including necessary traveling expenses while in the actual discharge of their duties as such directors, the sum of seven thousand dollars, or as much thereof as may be necessary. (*Id.* § 7.)

*§ 72. **For subsistence, clothing, etc.** There is also appropriated for subsistence, clothing, and incidental expenses of the prisoners, for two years, the sum of five thousand dollars or so much thereof as may be necessary for such purpose. (*Id.* § 8.)

*§ 73. **Payment of bonds in case of division of territory.** In case of any division of the territory of Dakota before the bonds hereby provided for shall be paid, that part of said territory in which the penitentiary is, or may be located after such division, shall assume and pay all debts, bonds, and liabilities of the whole territory existing on the date of said division by reason of this act. (*Id.* § 9.)

*§ 74. **Bonds authorized for certain improvements.** For the purpose of providing funds to pay the costs of making necessary improvements at the territorial penitentiary, to-wit: Constructing a building for a boiler-

house, laundry, hospital, and female prison, eight thousand dollars; a residence for the warden, six thousand dollars; furnishing and finishing the upper story of the main building, twenty-five hundred dollars; providing steam-heating and plumbing for said buildings, thirty-five hundred dollars; purchasing or leasing additional land for stone-quarry, three thousand dollars; providing machinery and tools, five thousand dollars; constructing yard wall at quarry, two thousand dollars. The territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue thirty thousand dollars of territorial bonds, running for a period of twenty years, and payable at the option of the territory at any time after five years from the date of the same, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January in each year, in denominations of not less than one hundred dollars each. (*Sess. Laws 1883, c. 29, § 1.*)

*§ 75. **Bonds, how executed.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, shall be attested by the secretary, and shall be negotiated by the treasurer. (*Id. § 2.*)

*§ 76. **Proposals for bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers in general circulation, one of which shall be published in the territory and the other in the city of New York, and shall sell to the person paying par, or the highest premium above par, the whole thirty thousand dollars of bonds; or such part thereof as may, in the judgment of the directors of said penitentiary and the governor of the territory, be deemed necessary. (*Id. § 3.*)

*§ 77. **Bond tax.** For the purpose of the prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and the exchange thereon; and after ten years from the first day of May, eighteen hundred and eighty-three, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly, on the first days of July and January of each year, such interest as shall then be due, and to purchase said bonds at their market value, and retire and cancel the same with the sinking-fund tax as fast as the same shall be received. And no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id. § 4.*)

*§ 78. **Interest paid from other funds, when.** If for any reason the territorial treasurer shall not have in his hands sufficient of the funds herein provided to pay either principal or interest upon such bonds when due, he shall pay such interest or principal out of any other unappropriated fund belonging to the territory. And there is hereby appropriated and set apart out of the general funds belonging to the territory a sum sufficient to pay such interest on said bonds as may become due before the funds and tax herein provided can be made available, and it shall be the duty of said treasurer to pay said interest promptly, at the time it falls due, out of said funds. (*Id. § 5.*)

*§ 79. **Replacing funds.** All money belonging to the general territorial fund appropriated by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id. § 6.*)

*§ 80. **Improvements, how to be made.** The work and improvement specified in the first section of this act may be done under contract, let

to the lowest responsible bidder, after thirty days' notice printed in two or more newspapers published in the territory, provided the person or persons to whom said contract or contracts may be let, shall give bonds for the faithful performance of the contract or contracts in such sum or sums as the governor and directors may require; or the said directors may construct said buildings, or any portion thereof, or do and perform any of said work by or with the aid of the labor of the convicts of said prison, as in the judgment of the governor and directors of said penitentiary may be thought advisable and for the public interest. (*Id.* § 7.)

*§ 81. **Payments, how made.** All payments for labor done or material furnished shall be made upon a statement certified and approved by the board of directors or a majority of them. Upon such statement the auditor shall draw a warrant upon the territorial treasurer for the amount stated and certified to be due. (*Id.* § 8.)

*§ 82. **Appropriation.** For the purpose of performing and accomplishing the work and making improvements mentioned in this act, there is hereby appropriated out of the territorial treasury the sum of thirty thousand dollars, or so much thereof as may be necessary, being the proceeds of the bonds hereby authorized to be issued and negotiated, and the proceeds of said bonds shall not be used for any other purpose whatever. (*Id.* § 9.)

*§ 83. **Debt, in case of division.** That part of the territory of Dakota in which the penitentiary is or may be situated, shall, on the division of the territory, assume all debts and liabilities arising and existing under the provisions of this act. (*Id.* § 10.)

PART II.—PENITENTIARY AT BISMARCK.

*§ 1. **Where established.** A penitentiary of the territory of Dakota shall be erected and continually maintained for the care and custody of the convicts in Dakota, or of such thereof as may be assigned or sentenced thereto, on a tract of land hereafter to be selected by the directors provided for in this act, within the corporate limits of the city of Bismarck, in the county of Burleigh, Dakota territory, or within a radius of one mile of the corporate limits of said city: *provided*, that the city of Bismarck aforesaid shall, by deed in fee, convey to the directors aforesaid, in trust for the territory of Dakota, a tract of land for the location of said penitentiary, within the limits aforesaid, of not less than forty acres in area: *and provided, further*, that said tract of land shall be satisfactory to the directors. (*Sp. Laws 1883, c. 30, § 1, as amended, Sp. Laws 1883, c. 31, § 1.*)

*§ 2. **Board of directors.** Said penitentiary shall be erected and constructed under the direction and government of a board of directors composed of six persons, who shall be appointed by the governor of the territory, with the advice and consent of the council. Said directors shall hold their offices respectively, except those appointed to the first board, for the term of six years, or until their successors are elected and qualified, unless sooner removed by the governor upon specific charges, and in case a vacancy shall occur in the position of directors such vacancy shall be filled by the governor of the territory, which person so appointed shall hold his position until the

end of the next legislature thereafter, unless a new appointment and confirmation shall sooner be made. (*Id.* § 2.)

*§ 3. **Governor to appoint.** Immediately upon the passage of this act it shall be the duty of the governor to appoint the members of the first board of directors, two of whom he shall appoint for two, two for four, and two for six years, and at every session of the legislative assembly thereafter: *provided*, that said body shall not meet oftener than once in two years; shall appoint two directors, as provided in section two of this act. (*Id.* § 3.)

*§ 4. **Directors to contract for building.** Such directors shall immediately proceed to contract for the erection of a suitable building for a penitentiary, which shall accommodate from one hundred to one hundred and fifty persons, at a cost for said building and fixtures complete not to exceed fifty thousand dollars, upon the tract of land which may be selected as provided for in section one of this act, and for that purpose shall advertise for plans and specifications for a suitable building for a penitentiary, which plans may or may not be accompanied with the price for which the projector will perform the work and erect the said building. From the plans so furnished, if the directors shall deem it best, or from any other plans furnished, they shall select a plan for a penitentiary building. After said plan shall be selected, the same shall be placed on file in the office of the treasurer of the territory, or at such other public place which said treasurer may designate, and be open for inspection for four weeks, during which time parties desiring to make proposals to erect the said building on the plan so selected and placed on file as aforesaid, shall submit the same to the said directors, together with the names of parties who will guaranty that if the proposal be accepted, the work shall be performed according to the plans and specifications so selected, and under such contract as may be required by said board. At the expiration of the time aforesaid, and on a day of which public notice shall be given, the said board of directors shall, in a public manner, open said bids and award the contract to the lowest responsible bidder: *provided, however*, that they shall reserve the right to reject any and all bids, and again advertise for proposals, or erect said building under their own direction and management, if they shall deem best. (*Id.* § 4.)

*§ 5. **Material to be used.** The walls of said building containing the cells, and of the prison yard of said penitentiary, shall be constructed of good, substantial stone or brick masonry, and the cells shall be lined with or made of suitable iron, if thought necessary by the directors; and they shall be of suitable size, and the material used shall be examined by said directors, and they shall reject all material which they may deem unsuitable. (*Id.* § 5.)

*§ 6. **Contract—what to stipulate.** The contract shall stipulate that the walls shall be constructed of stone of suitable size and fine texture, or of brick as aforesaid, and shall be laid in good cement, and that all other material shall be of good quality of the classes specified, and that the work of erection shall be constantly prosecuted, and that the said building, erection, and inclosure shall be completed according to the said contract and the plans and specification aforesaid, and the whole building and work completed within one year from the date of letting said contract. (*Id.* § 6.)

*§ 7. **Partial payment.** The directors, as the work progresses, on application of the contractor, shall certify to the auditor of the territory the value of the work done on the building at the time, and on such certified statement the auditor shall issue a penitentiary warrant on the treasurer of the territory for a sum not exceeding eighty per cent. of the value of the work so certified to have been done, which warrants shall be paid out of the fund appropriated by section one of this act. (*Id.* § 7.)

***§ 8. Report of directors.** The directors shall make a full and complete report to the governor, to be by him communicated to the legislature at each session, of all their doings, specifying the amount paid to each person, for what service or material the same was paid, and shall also give in detail a statement of the transactions of the penitentiary for the preceding year, including the receipts from all sources, all expenditures, and all other matters pertaining to the general business, construction, and discipline of the penitentiary; also a full statement of the number of convicts received into the penitentiary, and from what county received and for what crimes convicted; the number discharged, died, escaped, and pardoned, and the general health of the convicts. The said directors shall, before entering upon the duties of their office, give a bond to the territory of Dakota in the sum of ten thousand dollars for the faithful discharge of all the duties of their office, to be approved by the territorial treasurer and put on file in his office. (*Id.* § 8.)

***§ 9. Pay of directors.** The said directors shall receive five dollars per day for every day they may be actually employed about the erection of said building: *provided*, that but one of said directors shall be paid for attendance during the progress of the work, except when meetings are held for conference, and traveling expenses not to exceed ten cents per mile for each mile actually and necessarily traveled in discharge of their duties; the said sum to be paid out of the territorial treasury on the warrant of the auditor. (*Id.* § 9.)

***§ 10. Penitentiary to be prison of the territory.** The said penitentiary, when completed as herein provided, shall be a general penitentiary and prison of the territory of Dakota, for the punishment and reformation of offenders, in which shall be confined and employed at hard labor, and governed in the manner hereinafter directed, all offenders who shall hereafter be committed and sentenced according to law, by the district court of the Third judicial district of the territory of Dakota, from any of the counties comprising said district: *provided*, that convicts may be transferred from the penitentiary at Sioux Falls to said penitentiary at Bismarck, or from the penitentiary at Bismarck to that at Sioux Falls, under the direction of the governor of the territory, whenever in his judgment the interests of the territory will be promoted thereby: *provided, further*, that should there be a division in said judicial district, that the same shall not affect the provisions of this act, its true intent and meaning being that all prisoners and convicts sentenced to the penitentiary from the territory now embraced in said judicial district shall be confined in said penitentiary at Bismarck, unless transferred therefrom as provided for above. (*Id.* § 10.)

***§ 11. Jurisdiction of Burleigh county.** For the purpose of all judicial proceedings, the prison and precincts thereof shall be deemed to be within and a part of the county of Burleigh, and the courts of said county shall have jurisdiction of all the crimes and offenses committed within the same. (*Id.* § 11.)

***§ 12. Process, by whom served.** All process to be served within the precincts of the prison, either upon convicts or upon persons or officers employed within the precincts of the prison, except the warden, shall be served and returned by the warden, and all officers and employes of the prison shall be exempt from serving upon juries in any court and from highway poll-tax. (*Id.* § 12.)

***§ 13. Officers.** The officers of the penitentiary shall consist of the board of directors as herein provided, one warden, one gate-keeper, one turnkey, and such guards, overseers, and laborers as may be necessary. (*Id.* § 13.)

*§ 14. **Warden.** The warden shall be appointed by the directors, to hold his office for two years, unless sooner removed by the directors, and said directors are hereby authorized to remove such warden at their discretion. All other officers and employes shall be appointed by the warden, to be approved by the directors, and shall hold their office during the pleasure of the warden. (*Id.* § 14.)

*§ 15. **Warden's salary.** The warden shall receive a salary to be fixed by the directors, not to exceed two thousand [dollars] per annum, and all other officers and employes such amounts as the directors may from time to time determine and fix upon. (*Id.* § 15.)

*§ 16. **Visiting prison.** The directors shall appoint some one of their number from time to time, whose duty it shall be to visit the prison at least once in each month, and inspect the books and all the concerns of the prison, and ascertain whether the officers are competent and faithful, and the convicts properly governed and employed and cared for, and said visitor shall have power to direct any alteration or change therein, with the assent of the directors. (*Id.* § 16.)

*§ 17. **Records open to inspection.** All books and documents relating to the concerns of the prison shall at all times be open to the examination of the directors and the public. (*Id.* § 17.)

*§ 18. **Duties and responsibilities of warden.** The warden shall, under the direction of the directors, have the charge and custody of the prison, with all lands, buildings, furniture and tools, implements, stock and provisions, and every other species of property pertaining thereto or within the precincts thereof, and shall superintend the police of the prison and discipline of the convicts. He shall be secretary of the board of directors, and keep and preserve accurate minutes of all their meetings. He shall be treasurer of the prison, and he shall render to the directors, on the first day of each month, a full and accurate statement of all moneys received by him, and all sums of money expended by him, during the preceding month, showing on what account received and expended, and shall accompany such report with proper vouchers for all such expenditures, which report shall be verified by the oath of the warden; and shall receive and pay out all moneys granted by the legislature for the support of the prison, and such as may accrue from the business of manufacturing, under contract or otherwise, convict labor or rentage, or sale of any personal property. The warden shall keep an account of all moneys received for gate-fees for the admission of visitors to the prison; the amount of which for each year shall be embraced in his annual report, and shall constitute a part of the prison revenues. He shall be his own clerk, and keep a correct record of all the transactions of his office, and a correct account of all his doings. He shall keep a daily journal of the proceedings of the penitentiary, in which he shall note all infractions of the rules and regulations of the penitentiary by any officer or guard thereof, and make a memorandum of every complaint made by any convict of cruel or unjust treatment by any officer of the prison, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any prisoner, naming him and specifying the offense, and also what punishment, if any, was awarded; which journal shall be laid before the directors at every meeting. (*Id.* § 18.)

*§ 19. **Bond of warden.** Before the warden enters upon the duties of his office he shall give a bond to the territory of Dakota in the sum of fifteen thousand dollars, with two or more sureties, to be approved by the directors, conditioned that he will faithfully account for all moneys which shall come into his hands as prison treasurer, and perform all duties incumbent upon

him as warden of the prison; he shall also take and subscribe the constitutional oath of office; and such bond, with the approval of the directors indorsed thereon, and the oath aforesaid, shall be filed in the office of the territorial treasurer. The directors may require the warden to file new bonds, with other and satisfactory security, in a larger sum than that specified above, whenever in their judgment it may seem necessary. (*Id.* § 19.)

*§ 20. **Rules and regulations.** The warden shall make such rules and regulations, not inconsistent with the laws of the territory, for the government of the officers and convicts of the penitentiary, as he may deem necessary and proper, subject to the approval of the directors. (*Id.* § 20.)

*§ 21. **Warden's residence, etc.** The warden shall reside within the prison grounds, and neither the warden nor any prison officer appointed by him or holding any office in the penitentiary including the directors, shall have any interest or concern pecuniarily in any contract, either verbal or written, which may be entered into by said warden on the part of the territory, for any purpose whatever connected with the business of the penitentiary. (*Id.* § 21.)

*§ 22. **Contracts.** All contracts made on the part of the territory by the warden on account of the penitentiary, shall be in writing and approved by the directors before taking effect, unless when the wants or necessities of the prison shall compel the warden to purchase supplies of any kind immediately, in which case he may purchase the same upon verbal agreement. All contracts lawfully made by him shall be deemed the contracts of the territory. The prison property of every kind in his charge is the property of the territory, and all funds of the prison received by him shall at all times be kept separate from any other funds. The warden shall have power to make all purchases for the prison on such conditions and in such manner as in his opinion will best promote the interests of the territory. (*Id.* § 22.)

*§ 23. **Public notice.** Whenever the warden shall determine to contract for the furnishing of the principal articles purchased for the use of the prison, such as food, fuel, lumber, stone, brick, iron, or steel, the same shall be contracted for by the year, when such contracts can be advantageously made. The warden shall give previous notice in at least two newspapers, printed in the territory of Dakota, of the articles wanted, the quality and quantity thereof, as near as the same can be ascertained, the time and manner of delivery, and the period during which such articles shall be received. Such notice shall be published at least three successive weeks. (*Id.* § 23.)

*§ 24. **Awarding contract.** All such proposals shall be in writing and sealed up, and upon the day appointed in the notice in the foregoing section, they shall be opened by the warden, who shall cause all offers made in such proposals to be entered in a book and compared. The person offering the best terms, together with satisfactory security for the performance which shall be required by the warden in said notice, shall be entitled to the contract, unless it shall appear to the warden that no one of the offers is as low as the fair market price. In that case no offer shall be accepted, but the warden may, if he thinks necessary, advertise again and proceed as before provided for. (*Id.* § 24.)

*§ 25. **Contractor to give bond.** All persons contracting under the provisions of the preceding sections shall give bonds to the territory in double the value of the supplies to be furnished, with satisfactory security for the faithful performance of their contract. All bills contracted by the warden for purchases on account of the prison shall be approved by a majority of the directors before payment. (*Id.* § 25.)

*§ 26. **Invoices.** The warden, shall take bills of quantity and price of the supplies furnished in all cases, where the same is practicable, at the time of their delivery, and the warden, or such other officer as the warden shall direct, shall compare the bill with the articles delivered, and if the same are found correct he shall make a corresponding entry on the account-books of the prison, and file the bill as a voucher of the fact of such delivery. If any bill so rendered shall be discovered to be incorrect on comparing it with the articles delivered, the warden shall immediately give notice to the person furnishing such supplies. (*Id.* § 26.)

*§ 27. **Receiving prisoners.** The sheriff of each county shall convey to the penitentiary aforesaid all persons convicted in his county and sentenced to be confined in said prison, as soon as may be after such conviction and sentence shall have been had; and after delivering such convict or convicts to the warden, together with a certified copy of the judgment and sentence of the court ordering such imprisonment, the warden shall deliver to such sheriff a receipt, in which he shall acknowledge having received the prisoner, (naming him,) which said receipt the sheriff shall file in the office of the clerk of the court where such conviction and sentence was had. Such sheriff shall be entitled to receive from the treasurer of the territory the amount actually and necessarily expended by him in transporting such prisoner, including the amount paid for boarding and lodging, and such guards as may have been necessary, and such further reasonable sum as shall be a fair compensation for the time necessarily spent in transporting such prisoner, to be fixed and allowed by the territorial auditor. Each officer, overseer, or keeper, employed in or about the prison, shall take and subscribe an oath, before some officer authorized to administer oaths, to discharge the duties respectively required by law and the regulations of the prison, faithfully and to the best of his ability, which said oaths shall be filed with the warden of the penitentiary. (*Id.* § 27.)

*§ 28. **Custody of convicts.** All convicts in the prison shall be in the charge and custody of the warden, who shall govern and employ them in the manner prescribed by law, the rules and regulations of the prison, and in conformity to the respective sentence under which they shall be confined. (*Id.* § 28.)

*§ 29. **Duty of employes.** All officers and persons employed in and about the prison shall perform such duties in charge and oversight of the prison, the care of the property belonging thereto, and the custody, government, discipline, and employment of the convicts, as shall be required of them by the warden, in conformity to law and the rules and regulations of the prison, and no such officer or person shall be engaged directly or indirectly in procuring a pardon of any convict confined in said prison, and any person violating the provision of this section shall be subject to immediate removal. (*Id.* § 29.)

*§ 30. **Solitary confinement.** Every convict against whom the punishment of solitary confinement shall be awarded by sentence of the court, or for violating any of the rules and regulations of the prison, shall be confined in one of the solitary cells, and during said confinement shall be fed on bread and water only, unless a physician called upon to ascertain the fact shall certify to the warden that the health of such convict requires other diet. (*Id.* § 30.)

*§ 31. **Hard labor.** All convicts sentenced to punishment of hard labor in said prison shall be constantly employed for the benefit of the territory. No communication shall be allowed between them and any person without the prison, except under supervision prescribed by the rules of the prison.

They shall be confined in separate cells at night-time, and in day-time all intercourse between them shall be prevented as far as practicable. All communication between male and female convicts shall be prevented. (*Id.* § 31.)

*§ 32. **Food.** The daily sustenance of convicts not in solitary confinement, nor in the hospital, shall consist of wholesome, coarse food, with such proportions of meat and vegetables as the warden shall deem best for the health of the convicts. (*Id.* § 32.)

*§ 33. **Liquors.** No spirituous liquors or any article of indulgence shall be allowed any convict, except by order of the physician, which order shall be in writing and for a definite period, and the warden may, in his discretion, make moderate allowance of tea or tobacco to convicts as a reward for industry and good behavior. (*Id.* § 33.)

*§ 34. **Beds and clothing.** The clothing and bedding of convicts shall be of such quality and quantity as the judgment of the warden may direct, consulting the health and comfort of the convicts and the interest of the territory. (*Id.* § 34.)

*§ 35. **Discipline.** All necessary means shall be used under the direction of the warden to maintain order in the prison, enforce obedience, suppress insurrections, and effectually prevent escapes, even at the hazard of life, for which purpose he may at all times command the aid of the officers of the institution and of the citizens outside the precincts of the prison, and any citizen refusing to obey such command shall be held liable to such fines, penalties, and forfeitures as apply to persons refusing to obey a sheriff or other officer calling upon the aid of the county to assist in serving a process or for quelling an insurrection. (*Id.* § 35.)

*§ 36. **Treatment.** The warden and all prison officers shall uniformly treat prisoners with kindness, and the warden shall require of the officers that in the execution of their respective duties they shall in all cases refrain from boisterous and unbecoming language in giving their orders and commands. There shall be no corporal or other painful and unusual punishment inflicted upon convicts for violation of prison rules. (*Id.* § 36.)

*§ 37. **Money and effects of prisoners.** The money and effects, except the clothes, in possession of each convict when committed to the prison shall be preserved by the warden and restored to the convict when discharged. (*Id.* § 37.)

*§ 38. **Discharge of convict.** Every convict when discharged shall be provided with a decent suit of clothes and a sum of money, not to exceed five dollars, and transportation to the place where the convict received sentence, and may also be allowed employment in the prison, under the rules established for the government of convicts, for such period of time, and at such rate of compensation, as the warden shall deem proper and equitable. (*Id.* § 38.)

*§ 39. **Death of convict.** The warden shall in case of death of any convict cause the body to be decently buried, or deliver it to the relatives or friends of such convict, if demanded by them within twenty-four hours. (*Id.* § 39.)

*§ 40. **Employment of convicts.** If the warden shall at any time deem it for the interest of the territory, he may employ the convicts outside the prison yard in quarrying or getting stone from and cultivating the prison farm, or in doing any work necessary to be done in the prosecution of the regular business of the institution; and in all such cases the warden shall detail such force from the prison police as he shall deem necessary to watch and guard them, and in case any convict employed outside the prison yard shall escape,

he shall be deemed as having escaped from the prison proper: *provided, however*, that the warden shall be held responsible for the escape of any prisoners through the carelessness or neglect of himself or any of his subordinates. (*Id.* § 40.)

*§ 41. **Record of conduct.** The warden shall keep a true record of the conduct of each convict, specifying each infraction of the rules of discipline. At the end of each month the said warden shall give a certificate of good conduct to each convict who shall require it, against whom is recorded no infraction of the rules of discipline. (*Id.* § 41.)

*§ 42. **Exemption from solitary confinement.** When any convict sentenced to periodical terms of solitary confinement, shall, after suffering one term of solitary confinement, conduct himself in a peaceful, obedient, and industrious manner, the board of directors may exempt him from further solitary confinement during good behavior. (*Id.* § 42.)

*§ 43. **Capturing escaped convicts.** The warden may adopt such measures as he may deem proper, with the approval of the directors, to aid in detecting and capturing escaped convicts. (*Id.* § 43.)

*§ 44. **Leasing convict labor.** The warden is authorized and empowered, by and with the advice and approval of the board of directors of said penitentiary, to lease from time to time the labor of such portion of the able-bodied prisoners confined therein, together with such shop room, machinery, and power as may be necessary for their proper employment, to such persons for such purposes, upon such terms and conditions, and for such length of time, not exceeding five years at any one time, as he shall deem most conducive to the interests of the territory and the welfare of the prisoners. (*Id.* § 44.)

*§ 45. **Reservations in contracts.** In every contract made pursuant to the authority herein conferred, there shall be reserved to the directors of said penitentiary, and to the warden, and to each and every one of his subordinates, full power and authority to prevent the demanding or imposition of unusual or severe labor, or labor whereby the health or safety of the convicts may be impaired or jeopardized; and the said warden may, from time to time, prescribe all needful rules for the government and conduct of all contractors, their overseers and agents, in their relations to the convicts, and may require summary dismissal of any individual employed by any contractor in said prison, whenever it shall appear that the presence or conduct of such individual is prejudicial to the discipline of the prison or the welfare of the convicts. (*Id.* § 45.)

*§ 46. **Security for faithful performance of contracts.** Adequate security shall be exacted of all contractors for the faithful performance of all the provisions of the contracts on their part to be performed, and the directors and warden of said penitentiary shall use their utmost endeavors to have all the terms and conditions of said contracts fully complied with on the part of the warden; but no contractor shall have or claim from the territory of Dakota, or the warden, or from the prison, or any of its funds, any damages, whether by way of recoupment, set-off, or otherwise, for or on account of the failure or neglect of said warden to furnish to such contractor the labor of the full number of convicts specified in the contract. (*Id.* § 46.)

*§ 47. **Rules and regulations.** The board of directors of said penitentiary are empowered to make all needful rules and regulations for the guidance of the warden in the exercise of the authority herein conferred upon him, and may, whenever in their judgment it is impracticable to continue to furnish the labor of convicts to any contractor, order and direct the cancellation of any contract, and thereupon, after six months' notice to such con-

tractor, all obligations of the warden under such contract shall cease and determine, and such contractor shall not have or be entitled to have any compensation, whether by way of damages, set-off, recoupment, or otherwise, in consequence thereof. (*Id.* § 47.)

*§ 48. **Proposals for convict labor.** Before entering into any contract for the leasing of convict labor, the warden shall, by public advertisement, invite sealed proposals for the hiring of such labor, shop room, machinery, and power. Such advertisement shall specify the time and place when and where such proposals will be opened and considered, and there shall be reserved the right to reject any or all bids that may be made. (*Id.* § 48.)

*§ 49. **Reward for good behavior.** Whenever any convict, by continued good behavior, diligence in labor or study, or otherwise, shall surpass the general average of convicts, he may be compensated therefor, at the discretion of the governor, upon the recommendation in writing of the directors, either by diminishing the period of his confinement or by payment of money, or both. (*Id.* § 49.)

*§ 50. **Insane convict—how disposed of.** Whenever it shall appear to the satisfaction of the governor, by the representations of the warden and directors of said prison, that any person confined therein has become insane during such imprisonment and is still insane, it shall be lawful for the governor to make inquiry thereof, and if he shall determine that such person has become and is insane, to make an order that such person be taken from said prison and be confined and treated in one of the territorial hospitals for the insane, and upon his recovery from such insanity, if before the expiration of his sentence, that he be returned to said penitentiary; and it shall be the duty of the warden of said penitentiary to deliver such insane person to the superintendent of such hospital, and such superintendent shall receive such person into such hospital upon the presentation of the order of the governor, and in obedience thereto, and the expense of the same shall be audited by the auditor of the territory, and paid upon his warrant out of the territorial treasury. (*Id.* § 50.)

*§ 51. **If territory divides.** In case of any division of the territory of Dakota before the expenses hereby incurred shall have been paid, that part of said territory in which said penitentiary is located, after such division, shall assume and pay all debts, bonds, and liabilities of the said territory existing on the date of such division by reason of the erection of the building herein provided for. (*Id.* § 51.)

*§ 52. **Bonds to be issued.** For the purpose of providing funds to pay the cost of constructing and furnishing of a territorial penitentiary at the city of Bismarck, and for the use herewith, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue fifty thousand dollars of territorial bonds, running for a term or period of twenty years, and payable at the option of the territory after a term of five years, and bearing interest at the rate of six per cent. per annum with coupons attached, made payable semi-annually on the first day of July and January each year, in denominations of not less than one hundred dollars each. Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Sess. Laws 1883, c. 32, § 1.*)

*§ 53. **When to be issued, and price.** Said bonds shall be known and designated as the "Second Dakota Territory Penitentiary Loan," and be kept as a separate fund on the books of the treasurer, and to be issued and sold in the following manner, viz.: Whenever the directors of the peniten-

tiary shall certify to the treasurer that contracts with good and sufficient securities have been executed with responsible persons for erecting and completing and furnishing the building and fixtures ready for use of a penitentiary in accordance with this act, and the act entitled an "Act to provide for the building and government of a territorial penitentiary for Dakota territory, at Bismarck, Dakota," which shall accommodate at least one hundred and twenty-five territorial prisoners, it shall be the duty of the treasurer to issue and offer for sale, by public advertisement in one or more newspapers, to the person paying par or the highest premium above par, and sell the whole fifty thousand dollars of bonds, or any part thereof as may be necessary, and use the proceeds thereof in accordance with the provisions of the act aforesaid. (*Id.* § 2.)

CHAPTER LIV.

DEAF AND DUMB.

*§ 1. **Deaf and dumb institute—established at Sioux Falls.** The Dakota school for deaf mutes is hereby established and located on the south-west quarter of section number fifteen, in township number one hundred and one, range number forty-nine, in the county of Minnehaha, and within the corporate limits of the city of Sioux Falls, Dakota Territory, and shall be under the charge of a board of trustees, to consist of five residents of this territory. (*Sp. Laws* 1883, c. 26, § 1.)

*§ 2. **Trustees, how appointed.** The governor shall, by and with the advice and consent of the council, appoint said trustees, whose term of office shall be for two years, and until their successors are appointed and qualified. (*Id.* § 2.)

*§ 3. **Oath of trustees.** The trustees so appointed, before entering upon their duties, shall take and subscribe an oath to support the constitution of the United States and the act organizing the territory of Dakota, and to faithfully, honestly, and impartially discharge the duties of trustees of the Dakota school for deaf mutes, which oath shall be filed with the secretary of the territory. (*Id.* § 3.)

*§ 4. **Mileage of trustees.** The trustees shall receive no compensation for any service, but shall be entitled to ten cents per mile going and returning, necessarily traveled in attendance upon meetings of the board. Upon the presentation of the proper vouchers containing statement of mileage traveled in attendance upon said meetings, duly signed by the president of the board of trustees and countersigned by the secretary of the board, the territorial auditor shall draw his warrant upon the territorial treasurer therefor, to be paid out of the territorial treasury. (*Id.* § 4.)

*§ 5. **Meetings of trustees.** The board of trustees shall hold an annual meeting upon the first Wednesday of December, each year, at the school, at which meeting they shall choose a president, a secretary, and a treasurer, who shall be different persons, and from among the members of the board. The board may hold such additional meetings as may be deemed necessary, on the call of the president or secretary. (*Id.* § 5.)

*§ 6. **Duties of the board.** The object and duty of the board of trustees shall be to continue and maintain the school for the education of the deaf and dumb established and located at Sioux Falls, and to afford to that unfor-

tunate class, so far as possible, enlightened and practical education that may aid them to obtain the means of subsistence, discharge the duties of citizens, and secure all the happiness which they are capable of obtaining. (*Id.* § 6.)

*§ 7. **Same.** It shall be the duty of said board:

1. To preserve and care for the buildings, grounds, and all the property belonging to the school.

2. To employ a superintendent and matron, both of whom shall be skilled in the use of the sign language, and capable and efficient in the instruction, management, and care of the deaf and dumb *of the deaf and dumb*; and the matron shall not be the wife of the superintendent, or any teacher or officer of the school; to prescribe the duties of the superintendent and matron, and to fix their compensation.

3. To prescribe such charges for board, tuition, and care of pupils received from without the territory, as will be sufficient, at least, to pay all expenses thereof, and collect all such charges fixed by them.

4. To faithfully apply all funds, effects, and property which may be received for the use and benefit of the school.

5. To report to the governor biennially in the month of December preceding the meeting of each regular session of the legislature. Said report shall contain an account of the school during the period of two years ending the thirtieth day of November preceding, and all matters of interest connected therewith, and a detailed statement of all receipts and disbursements of funds during such years, and of all funds in their charge.

6. To fix the period of the academic year of said school, which period shall be not less than forty weeks. (*Id.* § 7.)

*§ 8. **Liability of trustees.** The trustees for the time being shall be severally liable for the faithful application of all property, funds, and effects which may be received for the use and benefit of the school; and property, funds, and effects received by gift, grant, donation, devise, or bequest shall be applied as directed by the person from whom received. (*Id.* § 8.)

*§ 9. **Pupils.** All deaf and dumb persons, residents of this territory, over six years of age and under twenty-one years of age, capable of receiving instruction, free from contagious or chronic disease, shall be received and taught free of charge. Like pupils may be received from without this territory upon payment to the treasurer of the board of trustees, quarterly in advance, at the rate of one hundred and eighty dollars per academic year; but no pupil from without the territory shall ever be received to the exclusion of any pupil resident within this territory from any of the privileges or benefits of the school. All pupils shall freely and equally enjoy all the benefits and privileges of the school, and have the use of the library and books of tuition, and receive board, washing, lodging, attendance, medical care, fuel, etc., etc., without preference or distinction. And all pupils shall be treated with the utmost considerate regard for their misfortune, and always with kindness and humanity; and the board shall carefully enforce this provision. (*Id.* § 9.)

*§ 10. **No trustee to be interested in contract.** No trustee or officer of the school shall be interested, either directly or indirectly, in any contract for the purchase of building materials, supplies, or any other articles for the use of the school. (*Id.* § 10.)

*§ 11. **Trustee not eligible to superintendency—officers.** No trustee shall be eligible to the office of superintendent of the school during the term of office for which he was appointed. That the trustees appointed under this act shall meet within thirty days after their appointment, and

organize by choosing from their number a president, secretary, and treasurer, to hold their respective offices until the annual meeting in December, or until their successors are elected and qualified. (*Id.* § 11.)

*§ 12. **Bonds to be issued.** For the purpose of providing funds to pay the cost of erecting and furnishing a main building for the Dakota school for deaf mutes at Sioux Falls, Dakota territory, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue twelve thousand dollars of territorial bonds, running for a term or period of twenty years, and payable at the option of the territory after a term of ten years, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January each year. Such bonds shall be executed under the seal of the territory, by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Sj. Laws 1883, c. 27, § 1.*)

*13. **Proposals for sale of bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, and upon request of the board of trustees of said school he shall give public notice for thirty days in two newspapers of general circulation, one of which shall be published in the city of New York, and said bonds shall be sold to the highest bidder for cash. (*Id.* § 2.)

*§ 14. **Bond tax.** For the purpose of the prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and exchange thereon, and after nine years from the first day of May, eighteen hundred and eighty-three, in addition thereto a sinking-fund tax shall be annually levied sufficient to retire and pay such bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly, on the first days of July and January of each year, such interest as shall then be due, and to purchase said bonds at their market value, and retire and cancel the same with the sinking-fund tax as fast as the same be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 3.)

*§ 15. **Interest may be paid from other funds.** If for any reason the territorial treasurer shall not have in his hands sufficient funds herein provided to pay the interest upon such bonds when due, he shall pay such interest out of any other unappropriated fund belonging to the territory, and there is hereby appropriated and set apart out of the general funds belonging to the territory a sum sufficient to pay such interest on said bonds as may become due before the funds and tax therein provided can be made available; and it shall be the duty of said treasurer to pay said interest promptly at the time it falls due out of said funds. (*Id.* § 4.)

*§ 16. **Replacing funds.** All moneys belonging to the general territorial fund applied by said treasurer in payment of the interest of said bonds shall be replaced from the special tax levied to pay the same. (*Id.* § 5.)

*§ 17. **When to commence construction.** And the board of trustees of said school are hereby empowered and directed, within ninety days after this act becomes a law, to proceed, with the co-operation of the governor of the territory, to secure and adopt plans for, and commence the construction of, said main building; and after the same is completed, or to be occupied, to contract for and to purchase suitable furniture and fixtures for the same; said main building to be a stone or brick substantial building; and there shall

be expended in the erection of the same, as herein provided, out of the proceeds of said bonds, not less than the sum of ten thousand dollars. Said board of trustees shall make a full and detailed report of their expenditures and action under this act to the next territorial legislative assembly. (*Id.* § 6.)

*§ 18. **Appropriation.** There is hereby appropriated out of the territorial treasury all the funds realized by the sale of the bonds provided for in this act; and it shall be the duty of the auditor of the territory, upon the application of the board of trustees, or a majority thereof, of said school for deaf mutes, to draw on the territorial treasurer for the purpose of constructing and furnishing said main building, and for the purpose of carrying out the provisions of the aforesaid act. (*Id.* § 7.)

CHAPTER LV.

ATTORNEY GENERAL.

*§ 1. **Office created—duties of attorney general.** There shall be in and for the territory of Dakota an attorney general, who shall be appointed by the governor, by and with the advice and consent of the legislative council, who shall hold his office two years, and until his successor is appointed and qualified. He shall be a member of the territorial board of equalization. He shall appear for the territory and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the territory shall be interested as a party, and shall also, when requested by the governor, or either branch of the legislature, appear for the territory and prosecute or defend in any other court or before any officer in any cause or matter, civil or criminal, in which the territory may be a party or interested, and shall attend to all civil cases remanded by the supreme court to any district court in which the territory is a party or interested. (*Sess. Laws 1883, c. 8, § 1.*)

*§ 2. **To prosecute official bonds.** It shall be the duty of the attorney general, at the request of the governor, auditor, or treasurer, to prosecute any official bond, or any contract in which the territory is interested, upon a breach thereof, and to prosecute or defend for the territory all actions, civil or criminal, relating to any matter connected with either of their departments. (*Id.* § 2.)

*§ 3. **To advise district attorneys.** The attorney general shall consult with and advise the district attorneys, when requested by them, in all matters pertaining to the duties of their office. He shall also, when requested, give his opinion in writing, without fee, upon all questions of law submitted to him by the legislature, or either branch thereof, or by the governor, auditor, treasurer, or superintendent of public instruction. (*Id.* § 3.)

*§ 4. **Shall prepare certain writings.** Whenever requested by the territorial auditor, treasurer, or superintendent of public instruction, he shall prepare proper drafts for contracts, forms, and other writings, which may be wanted for the use of the territory; and he shall report to the legislature, or either branch thereof, whenever requested, upon any business relating to the duties of his office, (*Id.* § 4.)

***§ 5. Moneys received, how disposed of.** All moneys received by the attorney general belonging to the territory shall, immediately upon the receipt thereof, be paid by him into the territorial treasury. (*Id.* § 5.)

***§ 6. Shall keep certain books.** The attorney general shall keep in proper books, to be provided for that purpose, at the expense of the territory, a register of all actions and demands prosecuted or defended by him in behalf of the territory, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. (*Id.* § 6.)

***§ 7. Oath and bond.** Before the attorney general enters upon the duties of his office, he shall take and subscribe the oath required by law, and shall execute to the territory a bond, with not less than three sureties, in the sum of three thousand dollars, to be approved by the governor, conditioned for the faithful performance of his duties as attorney general, and also as member of the territorial board of equalization, which bond and oath shall be filed in the office of the executive, and such bond shall be renewed in larger amounts whenever requested by the legislature. (*Id.* § 7.)

***§ 8. Salary.** The attorney general shall receive a salary of two thousand five hundred dollars per annum, and all necessary traveling expenses incurred while journeying in the performance of the said office, to be paid in quarterly payments, which shall be in full for all his services both as attorney general and as a member of the territorial board of equalization; and there is hereby appropriated, out of any money in the treasury not otherwise appropriated, a sum of money sufficient to pay such salary and expenses: *provided*, that no warrant upon the treasurer for such expenses be drawn by the auditor until an itemized statement of such expenses, verified by oath, shall be filed with the auditor. (*Id.* § 8.)

CHAPTER LVI.

LAND DRAINAGE.

***§ 1. Officers of county or town may cause construction of drain.** The board of county commissioners of any county, or the board of supervisors of any organized township, shall have power at any regular session, when the same shall be conducive to the public health, convenience or welfare, or when the same will be of public benefit or utility, to cause to be constructed as hereafter provided, any ditch, drain, or water-course within said county or township. (*Sess. Laws 1883, c. 75, § 1.*)

***§ 2. Petition—appointment of viewers and other duties, etc.** Before the board of commissioners or board of supervisors shall establish any ditch, drain, or water-course, there shall be filed with the register of deeds (or the clerk of the township) of such county a petition, signed by one or more of the land-owners whose lands will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route, and terminus; and such petitioner or petitioners shall give a bond, with good and sufficient freehold securities, payable to the territory, to be approved by the register of deeds or township clerk, conditioned to pay all expense in case the board of commissioners or board of supervisors shall fail to establish said proposed ditch, drain, or water-course. As soon as said petition is filed

said boards shall, if in regular session, or at any regular session, appoint three resident freeholders of the county or township not interested in the construction of the proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said boards, preparatory to commencing their duties as hereinafter specified. And it shall be the duty of the register of deeds or clerk thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line of said ditch, drain, or water-course from its source to its outlet, and they shall cause stakes or monuments to be set along said line, numbered progressively down stream at each one hundred feet. And they shall make a computation of the total number of cubic yards of earth to be excavated and moved from said drain, ditch, or water-course, and an estimate of the total cost of construction of the whole work. And they shall set apart and apportion to each parcel of land, and each corporate road or railroad, and to the county and townships when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvement, and give location of each share, its length in feet, and the estimated number of cubic yards of earth to be removed therefrom, and the price per cubic yard, and the cost of the construction of each, or allotment separately, and specify the manner in which the work shall be done. And they shall have power, where they find it necessary, to provide [for] running said ditch under ground through drain tiles or other materials, as they deem best, by specifying the size and kind of tile or other material to be used in such under-ground work, and shall estimate the cost of the same as a part of the total cost of the work; and they shall accurately describe, as the same is described on the county or township tax duplicate, each parcel of the land to be assessed for the construction of said ditch, giving the number of acres in each tract assessed, and the estimated number of acres benefited, the amount that each tract of land will be benefited by the construction of said work, and the amount that each tract is assessed therefor. And they shall, in tabular form, give the depth of cut, the width at the bottom and the width at the top, at the source, outlet, and at each one hundred foot stake or monument of said ditch, drain, or water-course. And they shall also ascertain and give the names of the owners of the lands that are assessed for construction of said ditch, drain, or water-course, as far as they can be ascertained with reasonable inquiry and search of the public records, and report also whether or not the proposed ditch or drain will be of public utility. (*Id.* § 2.)

***§ 3. Duty of viewers where proposed drain occupies a private ditch.** Whenever a public ditch, drain, or water-course is located wholly or in part in the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated, and the cost of same on each tract of land, and deduct the same from the assessment thereon. (*Id.* § 3.)

***§ 4. Lands benefited by drain to pay costs.** All lands benefited by a public ditch, drain, or water-course shall be assessed in proportion to the benefit for the construction thereof, whether it passes through said lands or not, and the viewers, in estimating the benefits to lands not traversed by said ditch, shall not consider what benefits such lands will receive after some other ditch or ditches shall be *constructed*, [constructed,] but only the benefits that will be received by reasons of the construction of the public ditch as it affords an outlet for the drainage of such lands. (*Id.* § 4.)

***§ 5. Viewers — Discretionary powers.** In locating a public ditch, drain, or water-course the viewers may vary from the line described in the

petition as they deem best: *provided*, they commence the ditch at the point described in the petition and follow down the line therein described as near as practicable; *and provided, further*, that when there is a sufficient fall in length of the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet, [and] not be detrimental to the usefulness of the whole of the work; they shall, as far as practicable, locate the ditch on division lines between lands owned by different persons, and they shall, so far as practicable, avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch may appear before said viewers and freely express their opinions on all matters pertaining thereto. (*Id.* § 5.)

*§ 6. **Damages.** In locating a public drain or water-course, the viewers shall estimate the damages, if any, that any person or persons will sustain by reason of the construction of such ditch, and assess such damages to parties owning the lands benefited in proportion *in* as each tract of land is assessed for benefits. (*Id.* § 6.)

*§ 7. **Concerning route of ditch.** The viewers, if they find the route proposed is not such as best to effect the object sought, or that the proposed drainage can be effected as well in construction with a ditch necessary for the improvements of public highways already established, or such as may be thereafter required, shall proceed to establish the route. If the route proposed is upon a section line where a public road may be required, and in all cases in which the route proposed is along highways already established, the viewers shall locate the ditch at a sufficient distance from center of such highways to admit of a good road along such central line. The earth taken from the ditch shall be so placed upon the roadway as to form a turnpike, and no nearer to the margin thereof than two feet. But in locating a drain as above, the viewers shall not materially depart from the terminal points described in said petition. (*Id.*, § 7.)

*§ 8. **Viewers—when to meet—report, etc.** Said viewers may, after having met at the time and place specified in the order issued to them by the register of deeds or township clerk, proceed immediately to perform their said duty, or adjourn from time to time, as best suits their convenience, and file their report with the register of deeds or township clerk, at least four weeks before the next regular meeting of said boards: *provided*, the water be high or the weather inclement, they shall not be compelled or required to file the report until at least four weeks before the second regular meeting of said board, after having received their orders from the register of deeds or township clerk, but their report must then state the reason for such postponement. And if the viewers find the proposed ditch, drain, or water-course not of public benefit or utility, they may report against the location of the same, in which case their report need only state that they find the proposed work not to be of public benefit or utility. (*Id.* § 8.)

*§ 9. **Duty of clerk when report is filed.** It shall be the duty of the register of deeds or township clerk on said report being filed, if it be in favor of the proposed work, to cause a notice to be given a publication for three consecutive weeks, by posting three copies of said notice in three public places in the township or townships where the proposed work is located, and one at the door of the court-house in said county, of the pendency of said petition and *at* [of] the time set for the hearing thereof, which notice shall briefly state where said ditch commences at its source, through whose land it passes, and where it terminates at the outlet, together with the names of the owners of the lands that will be affected thereby, so far as these can be ascer-

tained with reasonable inquiry, and search [from] the public records in the offices of the township clerk, register of deeds, and treasurer; and at the same time the register of deeds or township clerk shall mail a copy of the same to all non-residents whose address is known to him or can be ascertained by inquiring at the treasurer's office. (*Id.* § 9.)

*§ 10. **When county commissioners shall establish drain.** Said board of commissioners or board of supervisors, at the time set for the hearing of said petition, shall, if there is no remonstrance filed, proceed to hear said petition, and [if] they find the reviewer's report is made in accordance with the provisions of this act and it be in favor of the proposed work, and [if] they find the proposed drain to be of public utility or conducive to public health, or of public benefit or convenience, they shall establish the same as specified in the report. But if the viewers report against the proposed work the board shall dismiss the petition and tax the cost as hereinafter provided, and, when damages are awarded to any person or persons or corporation as provided by this act, the board of commissioners or board of supervisors shall order the same to be paid out of the county or township treasury to the person, persons, or corporation entitled thereto. (*Id.* § 10.)

*§ 11. **Remonstrance.** It shall be lawful for any person interested in the location of said proposed work to file with the board of commissioners or township board, at or before the time set for the hearing of the petition, a remonstrance against the ditch as located by viewers on and across his lands, by setting forth his grievances therein, and any person deeming his assessment too high or the damages allowed too low, may remonstrate for such reasons against the action of the viewers. Any person filing a remonstrance shall file with the same a bond payable to the territory, with not less than two freehold sureties, conditioned for the payment of all costs and expenses caused by such remonstrance, if any action of the viewers be sustained by viewers to be appointed as hereinafter provided,—such bond to be approved by the board of commissioners or township boards; and thereupon said board shall appoint three disinterested resident freeholders of the county or townships, not of kin to any person interested in the proposed work, as viewers, to meet at a specified time and place preparatory to commencing said review, and it shall be the duty of the register of deeds or township clerk thereupon to issue to said reviewers a certified copy of the petition and remonstrance, and order of the board in appointing such reviewers. (*Id.* § 11.)

*§ 12. **Reviewers—duty of.** Such reviewers shall meet at the time and place specified in the order issued to them by the register of deeds or township clerk, and proceed to review the action and report of the viewers, as well as the entire premises through which the proposed work extends, and shall be vested with all power granted to the viewers originally, except that [if] they find [the] proposed work of public benefit or utility they shall not change the line of the ditch as located by the viewers at any other place or places than those complained of in the remonstrance, and then only far enough to do justice to the party remonstrating. And they shall, before commencing said review, obtain from the register of deeds or township clerk the report of the reviewers, which they shall carefully preserve and return to said officers when they have completed this review, and they shall file with said officers a report of their proceedings in the premises, after having subscribed and sworn to the same, at any time before the next regular meeting of said board; and if the reviewers sustain the action of the viewers and make no change in the proposed work, their report need only state, after having made full examination of the viewers' report, as well as the entire premises through which the proposed work extends, they find the action of the viewers just and correct, and that they sustain and approve the action of the viewers and their report. (*Id.* § 12.)

*§ 13. **Proceedings on report of reviewers.** Upon the filing of the report of such reviewers, as required by the preceding section, the register of deeds or township clerk shall, when the board of commissioners or board of supervisors convenes in regular session, record the same, together with the proceedings had in the matter of the petition, and if said reviewers sustain and approve the action of the viewers without change, all cost occasioned in consequence of the filing of the remonstrance shall be taxed against parties remonstrating, and a *free* [fee] bill shall issue thereon by the register of deeds or township clerk and be collected as provided by law. (*Id.* § 13.)

*§ 14. **Costs of remonstrance—how paid.** If the reviewers find the proposed work of public benefit or utility, and do not sustain the entire action of the viewers, but make changes in favor of the remonstrants, the cost occasioned in consequence of the filing of the remonstrance shall be taxed as a part of the total cost of the work, as the same is taxed against the parties benefited in proportion to their benefits, and if the viewers find the proposed work not of public benefit or utility, the entire cost shall be taxed against the petitioners, and collected as provided in section thirteen of this act. (*Id.* § 14.)

*§ 15. **Adoption of reviewers' report.** Upon the filing of the report of the reviewers the board of commissioners, or the township board, shall, if they find such report made in accordance with the provisions of this act, establish the same as described in the report of the viewers, as they find the same sustained, correct, or changed in the report of the reviewers. (*Id.* § 15.)

*§ 16. **Proceedings after adoption of report.** Whenever the board of commissioners or township board establish a public ditch, drain, or water-course, they shall order the viewers, if the same is established without remonstrance according to the viewers' report, or the reviewers, if the same is established according to their report, to meet at a time and place specified, after a lapse of ten days, and make a final report, in which they shall specify the time in which each share or allotment of the ditch shall be constructed and completed; and they shall apportion the cost of the location thereof, including printers' fees, damages, if any shall have been allowed, and compensation to the laborers who assist the viewers in marking out the ditch, and award to each person or persons, or corporation, owning the lands assessed for the construction of said work, their proportionate share of said cost, and shall specify the time [in] which costs and expenses shall be paid to the county or township treasurer, and file their report with the register of deeds or township clerk, after having subscribed and sworn to the same. And it shall be the duty of the viewers and the reviewers to file with the report an account of the names of the laborers, and the time each was employed by them, and all compensation and damages allowed by this section shall be collected by the treasurer as the other taxes are collected, and the compensation paid out when collected, on an order from the register of deeds or township clerk to the parties entitled thereto, and the damages, when collected, shall be placed into the county or township fund, to compensate the county or township for the damage previously paid, as required by section ten of this act. (*Id.* § 16.)

*§ 17. **Appeals.** Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners or township board, made in the proceedings and entered upon their record, determining either the following manner, viz.: Whether said ditch will be conducive to public health, convenience, or welfare; whether the route thereof is practicable; whether the assessments made for the construction of the ditch are in proportion to the benefits to be derived therefrom; the

amount of damages allowed to any one person or persons, or corporations; and the appellant shall file with the register of deeds or township board an appeal bond, with at least two freehold sureties, to be approved by the register of deeds or township clerk, and the clerk of district court, conditioned that he will prosecute such appeal, and pay all costs that may be adjudged against him in the district court: *provided*, that such appeal bond shall be filed within thirty days after such final order or judgment of the board of commissioners is made, and after the lapse of such thirty days no appeal can be taken. And if an appeal be taken, the register of deeds or township clerk shall withhold his notices to the viewers or reviewers to make their final report, and he shall, within twenty days after the appeal bond is filed, make a complete transcript of the proceedings had before the board of commissioners or board of supervisors, and of such appeal bond, and certify the same, together with all the papers filed in his office pertaining to such proposed work, to the clerk of the district court. (*Id.* § 17.)

*§ 18. **When more than one party appeals—duty of judge.** If more than one party appeal, the judge of the district court shall order the cases to be consolidated and tried together, and the rights of each party shall be separately determined by the jury in its verdict. (*Id.* § 18.)

*§ 19. **Sale of work to the lowest bidder.** As soon as the final report of the viewers or reviewers is filed, the register of deeds or township clerk shall sell the jobs of digging and constructing each share or allotment separately, of the entire work, and he shall give notice for three consecutive weeks, by posting three written copies of such notice in three public places in the vicinity of the proposed work, and one at the door of the court house in said county, of the time and the place he will sell, to the lowest responsible bidder or bidders, each and every share and allotment thereof, commencing at the one including the outlet, and thence in succession up stream to the one including the source, and no bid shall be entertained which exceeds more than twenty per cent. over and above the estimated cost of the construction in any case; and the register of deeds or township clerk shall contract with the party to whom a share or allotment is sold, requiring him to construct such share or allotment in the time and manner set forth in the report of the viewers or reviewers on which the ditches are established, and shall take from him a bond with two freehold sureties, payable to the territory, for not less than double the amount for which the same is sold, to be by him approved, conditioned that he will faithfully perform and fulfill his contract, and pay all damages which may accrue by reason of the failure to complete the job within the time required in the contract therefor. (*Id.* § 19.)

*§ 20. **Reselling.** A job [failing] to be completed within the time fixed in the contract and bond, shall be resold by the register of deeds or township clerk to the lowest responsible bidder, but shall not be sold for a sum exceeding twenty per cent. of the estimated value of such work, nor a second time to the same party. A contract and bond shall be entered into as hereinbefore provided, but the auditor may, for a good cause shown, give full time to any contractor, not exceeding sixty days, and the register of deeds or township clerk shall fix a time for the completion of work resold, not exceeding sixty days from the date of the bond, and no contractor shall be prosecuted on his bond until the section below is completed. (*Id.* § 20.)

*§ 21. **Inspection of work.** It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same, and if he find that it is completed according to contract he shall accept it, and give to the contractor a certificate of acceptance stating that said job, share, or allotment is completed according to the specifications of said ditch;

and if any share or allotment has been sold to a person not the owner of the land assessed therefor, he shall in addition state the amount due the contractor for constructing the same, from the owner of the said land, which certificate shall be a lien upon the land assessed for such share or allotment, and shall be due and payable immediately by the owner of the land, which shall be a lien upon the land assessed for such share or allotment, and shall be due and payable immediately by the owner of the land. Such certificate, if not paid on demand shall draw interest until paid, and if the allotment sold belongs to a non-resident of the county or the township, the register of deeds or township clerk shall state such fact when he offers it for sale, and when the county surveyor accepts it, and issues his certificate of acceptance, he shall file with the register of deeds or township clerk a copy thereof, whereupon said register of deeds or township clerk shall charge the amount mentioned in said certificate on the tax duplicate against the land assessed, with such allotment, to be collected as other taxes are collected, together with six per cent. for the holder of the certificate after the same becomes delinquent, and when collected it shall be paid to the [person] holding the certificate on an order of the register of deeds or township clerk. (*Id.* § 21.)

*§ 22. **Repairs and cleaning drains and ditches.** Every person or corporation through whose lands any public ditch is constructed, shall be required to keep the same open, free, and clear of all obstructions upon his or its premises by him or it placed thereon, and in case of a failure to do so shall be liable to pay all reasonable and necessary expenses of removing such obstruction. A person or corporation aggrieved by any such obstruction [may] make a sworn statement of the facts to the county surveyor, who shall proceed to examine the premises and inquire into the truth of the statement, and if he finds the statement to be true he shall immediately notify the owner of the land on which such obstruction exists to remove the same within a reasonable time, not exceeding twenty days; and if the owner so notified fail to remove the obstruction the surveyor shall at once cause the same to be removed at the expense of such owner, and certify such expense to the register of deeds or township clerk, who shall place the same, together with all fees and other expenses in the case, on the tax duplicate as an assessment upon the lands of such person or corporation, and the same shall be a lien upon such lands and shall be collected as other taxes. (*Id.* § 22.)

*§ 23. **Same.** After the construction of such work, the town supervisor of such township in which the same is, or any part thereof, shall keep the same or such part thereof in proper repair, and free from obstructions, so as to answer its purpose, and pay for the same out of general township fund; and to raise the necessary money to reimburse that fund, he shall apportion and assess the costs thereof upon the lands which will be benefited by such repairs or removal of obstruction, according to such benefits in his judgment. He shall make a statement of such assessment and deliver the same to the register of deeds or township clerk, who shall put same upon the succeeding tax duplicate, and it shall be a lien upon the lands and be collected in same manner as territory, townships, and county taxes. The provisions of this section shall also apply to all works constructed for the purpose of drainage under any law now or heretofore in full force in this territory. If he shall be of the opinion that such assessment or any part thereof ought to be charged to lands in other townships, the supervisors thereof shall, on request, meet with him at any time and place by him appointed, and they shall jointly make such assessments and certificates to the register of deeds or township clerks of the proper counties or township. A majority of such supervisors as attend any such meeting, shall have power to act and decide any question, and to make the assessments and certificates, and upon failure of any township supervisor to perform the work required of him by this section, after

ten days' notice in writing to him by any person interested, he shall be liable with his sureties on his official bond for all damages caused by such failure to perform his duty, to be recovered by the person or persons so damaged. He shall *so* [also] be *deem* [deemed] guilty of a misdemeanor, and on conviction thereof fined not less than ten or more than fifty dollars. (*Id.* § 23.)

*§ 24. **When ditch crosses two or more townships or counties.** Whenever the route of a proposed ditch, drain, or water-course extends into two or more counties, or two or more townships, the [petition] shall be signed by one or more of the land-owners in each county or township whose land will *will* be liable to be assessed for the construction of such ditch, and filed with the register of deeds or the clerk of the townships of the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the board of commissioners or board of supervisors, and thereupon the register of deeds or township clerks of such county or townships shall transcribe and transmit to the register of deeds of each other county, or the township clerk of each township interested, a certain copy of such petition; and it shall be the duty of the board of commissioners of each county, or the board of supervisors of each township interested in the proposed work, at their first regular meeting after such petition is filed, to appoint three disinterested resident freeholders of their respective counties or townships as viewers, in like manner as provided for the appointment of viewers on a ditch in one county or township, to meet and act conjointly at such time and place as the board of commissioners of the county or township where the petition is filed may designate, and such joint viewers shall have the same powers and perform the same duties as provided in this act for the viewers on a ditch in one county or township, and they shall file a report of their proceedings with the register of deeds of each county interested, at least four weeks before the next regular session of the board of commissioners or board of supervisors, whereupon the register of deeds of each county, or the township clerk of each township, shall give notice for three consecutive weeks in the manner provided for ditches in but one county or township, of the pendency of such petition, and the time set for the hearing thereof. (*Id.* § 24.)

*§ 25. **Proceedings in case of joint ditch.** The board of commissioners of the counties, or the board of supervisors of the townships interested in a joint ditch, shall, at the time set for the hearing of said petition, proceed to establish the same in the manner specified for ditches in but one county or township, and in all matters pertaining to such joint ditch the boards of commissioners or board of supervisors shall act in the same manner, so far as applicable, as required by this act establishing ditches in but one county or township, and they shall act conjointly; and when such ditch is established the viewers shall be notified, as before provided in this act, to make their final report, and upon the filing of such final report the shares or allotments of such ditch shall be sold and constructed as hereinbefore provided for ditches in but one county or township, except that the register of deeds of the counties or the clerk of the townships interested shall act together as one body in performing their duties. (*Id.* § 25.)

*§ 26. **Repairs of joint ditches.** Such joint ditch shall be cleaned and repaired or enlarged in like manner as for ditches, *but* in one county or township, by the joint action of the public officers of the counties or townships interested. (*Id.* § 26.)

*§ 27. **Remonstrance in case of joint ditch.** It shall be lawful for any person or corporation affected by a proposed ditch extending into more than one county or township, to file a remonstrance with the register of deeds of the county *in which*, or the township clerk of the township in which, he resides, at least five days before the regular meeting of the board of county

commissioners or the township board, when the petition is to be heard; and when such remonstrance has been filed, and a bond for costs, as provided for ditches in but one county or township, the register of deeds shall immediately, or township clerk shall immediately, transcribe and transmit a copy of such remonstrance and bond to the register of deeds of the other counties, or township clerk of other townships, interested, and then, in like manner as hereinbefore provided, the boards of commissioners or board of supervisors shall appoint reviewers who shall meet and act together and perform their duties as provided for reviewers in one county or township, and file a report of their proceedings with their respective boards of commissioners, or boards of supervisors, at or before their next regular meetings, and upon the filing of such report the boards shall, if the viewers report the proposed work of public benefit or utility, establish the same; and it shall be constructed, cleaned, and repaired or enlarged by the joint action of the proper officers in the different counties or townships, as though it *may* had been established on the report of the viewers and without remonstrance; and it shall be the duty of the register of deeds of the county, or the clerk of the township in which the time and place for the meeting of viewers or reviewers is fixed, to notify the register of deeds of the other counties, or clerks of other townships interested, of such time and place for the joint viewers or reviewers to meet. (*Id.* § 27.)

*§ 28. **Highway or railway benefited to pay proportion of costs.** When any ditch, established under this act, drains either in whole or in part any public or corporate road or railroad, or benefits any of such roads, so that the road-bed or graveled track of any such road will be made better by the construction of such ditch, the viewers or reviewers shall apportion to the county or township or townships, if a county [or] territorial road, to the company, if a corporate road or railroad, *or railroad*, such portion of the costs and expenses thereof as to private individuals, and require them to pay said costs and perform said labor in like manner as individuals. (*Id.* § 28.)

*§ 29. **Penalty for obstructing drain, etc.** If any person shall willfully obstruct any public ditch, or shall willfully divert the water from its proper channel, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five or more than fifty dollars, and shall also be liable for any and all damage occurring to any person or persons or corporations by such act. (*Id.* § 29.)

*§ 30. **Sheriff to serve orders.** The orders issued by the register of deeds or township clerks to viewers or reviewers shall be served by the sheriff or town constable, and shall be paid by the county or township for such services the same fees as he is allowed by law for similar services. (*Id.* § 30.)

*§ 31. **Compensation.** The surveyor or engineer shall be allowed the sum of three dollars per day for each day he is necessarily engaged in performing the duties required of him by this act, which sum shall be paid to him quarterly annually out of the county or township treasury, upon his filing before the board of commissioners or board of supervisors an itemized account of his services, verified by his oath, and the cost of publishing the notices of jobs to be let by the register of deeds or township clerk, and all blanks and stationery required by him in the performance of his duties, shall be paid by the county or township. The viewers and reviewers shall each be allowed two dollars per day for each and every day they are necessarily engaged in viewing and reviewing and ditching and making up and filing their reports, which sum shall be paid to them out of the county or township treasury. Each chainman, axman, rodman, and all other hands necessary to the prompt execution of the work of locating a public ditch shall be allowed one

dollar and fifty cents per day for the time actually employed in, to be paid as hereinafter provided. (*Id.* § 31.)

*§ 32. **Majority of viewers competent to act.** A majority of the viewers or reviewers shall be competent to perform the duties required of them by this act, provided that for ditches extending into more than one county or township there shall be present and acting a majority from each county or township interested. (*Id.* § 32.)

*§ 33. **Definition of certain terms.** The terms "regular session" and "regular meeting" of the board of commissioners or board of supervisors, as used in this act, shall be held to include only the regular session of such board, commencing on the first Tuesday of January and on the fourth Monday of July in each year, and the word "ditch," as used in this act, shall be held to include a drain or water-course, and the petition for any public ditch may include any side, lateral, spur, or branch ditch necessary to secure the object of the improvement. (*Id.* § 33.)

*§ 34. **Assessment to be a lien.** The amount of assessment made by the viewers, and confirmed by the board of commissioners or board of supervisors, shall be a lien upon all land so assessed from the date of the order of the board of commissioners or board of supervisors establishing the ditch, drain, or water-course, and such order, together with the report of the viewers on which ditch is established, shall [be] notice to all the world of the existence of such lien, and this act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands, and the amounts due to contractors holding the viewers' certificate of acceptance shall not be defeated by reason of any defect in the proceedings occurring prior to the order of the board of commissioners or board of supervisors establishing the ditch, but such order or judgment of the said board shall be conclusive that all prior proceedings were regular and according to law. (*Id.* § 34.)

*§ 35. **Counties exempted.** This act shall not apply to the counties of Yankton and Lincoln. (*Id.* § 35.)

*§ 36. **When bonds may be issued—election.** Whenever ten or more actual *bona fide* residents of any of the organized towns in this territory, or that may hereafter be organized, shall present a written petition to the board of supervisors of their respective towns, praying for the ditching, draining, grading, or surveying the township or any major portion thereof, the said board of supervisors shall estimate the cost of such improvements, and if they, the said board of supervisors, shall find the cost of said work, as contemplated in the petition, shall exceed for the necessary machinery, implements, labor, etc., the sum of one thousand dollars, or that to meet said expense by a direct taxation upon the taxable property of said township would be excessive and burdensome in any one year, then said board shall be authorized and it shall be their duty to submit to the voters of the township the question of the issue of the bonds of said town at a special or regular election, giving at least twenty days' notice thereof, and specifying in the notices the specific purposes for which said election has been called, and the amount of bonds to be issued, which said notices shall be posted in at least five public places in said township. (*Sess. Laws 1883, c. 76, § 1.*)

*§ 37. **Ballots.** The ballots to be used at such election shall have printed or written, or partly printed and partly written, "For Township Bonds," or "Against Township Bonds." And if a majority of the legal voters of such township present and voting shall be in favor of, and the majority of the ballots so cast shall be for, township bonds, then said board of supervisors shall issue the bonds of the township. (*Id.* § 2.)

*§ 38. **Description of bonds.** The bonds so issued, as provided for in section two of this act, shall be known as town improvement bonds of township, (giving the name or number of the town,) and shall have coupons attached and numbers; which said bonds shall run for a time not exceeding ten years, and to draw a rate of interest not exceeding eight per centum, payable annually, and that said bonds shall not be disposed of for less than their par value. (*Id.* § 3.)

*§ 39. **Bond tax.** The board of supervisors shall provide for the levy of sufficient taxes to provide for a sinking fund to pay said bonds when they shall become due, and also for a sufficient tax to pay the interest upon said bonds annually. (*Id.* § 4.)

*§ 40. **Moneys, how disposed of.** The money derived from the sale of said bonds shall be paid to the township treasurer of such township, and shall be used, under the direction of the board of supervisors, only on the construction of the work and for the necessary machinery for which the bonds were issued, and for no other purpose, and shall be paid only by the treasurer upon the order of the chairman of the board of supervisors, when countersigned by the township clerk, and any violation of this section shall be a misdemeanor. (*Id.* § 5.)

*§ 41. **Record of bonds, etc.** The bonds, before being sold, shall be signed by the chairman of the board of supervisors and town clerk, and countersigned by the township treasurer, and both the treasurer and clerk of the township shall keep a true record of said bonds, showing the date of issue, to whom issued, the amount and number of each bond, date of maturity, and rate of interest, and the amount realized from the sale of the same. (*Id.* § 6.)

*§ 42. **Contracts.** All grading, ditching, levees, or embankments, constructed under the provisions of this act, shall be by contract, and let to the lowest responsible bidder, after due public notice, and the person to whom the contract shall be let shall be required, before he shall enter into the contract, to enter into suitable bonds, with two sureties, to be approved by the board of supervisors, for the faithful performance of his contract, etc. (*Id.* § 7.)

*§ 43. **Act, how construed.** Nothing in this act shall be construed so as to allow the said board of supervisors the right to run across or go upon private property without first securing the permission of the owner or owners of said property, other than that of section lines; neither shall it be construed so as to allow a ditch to terminate so as to cause water to flood private property, but all such ditches must be complete and empty into a ravine, cooley, water-course, river, or stream. (*Id.* § 8.)

*§ 44. **Limit of township indebtedness.** The amount of indebtedness including outstanding bonds, in any township shall not exceed five per cent. of the assessed valuation of said township as shown by the last assessment prior to the issuing of said bonds on the incurring of such indebtedness. (*Id.* § 9.)

*§ 45. **Employment of engineer.** The board of supervisors may, if they shall deem it necessary to, employ a competent engineer, to take a level of the townships for the purposes of finding the natural fall of the land. (*Id.* § 10.)

CHAPTER LVII.

COUNTY AUDITOR.

*§ 1. **Auditor to be elected.** There shall be elected in the counties of Pembina, Walsh, Grand Forks, Lincoln, Traill, Cass, and Richland a county auditor, who shall hold his office for two years from the first Monday in March succeeding his election, and until his successor is elected and qualified, and shall keep his office at the county seat. (*Sp. Laws 1883, c. 1, § 1.*)

*§ 2. **Bond and oath.** Each county auditor, previous to entering upon the duties of his office, shall give bond to the people of the territory of Dakota, with two or more sureties, to be approved by the board of county commissioners, in such penal sum, not less than two thousand dollars nor more than twenty thousand dollars, as the said commissioners require, conditioned for the faithful performance of the duties of his office, and shall also take and subscribe the oath required by law, to be indorsed upon the said bond, which bond so indorsed shall be filed and recorded in the office of the register of deeds. (*Id. § 2.*)

*§ 3. **Proceedings against county auditor for malfeasance in office.** If any county auditor fails to make settlement, or pay over all moneys with which he stands charged at the time and in the manner prescribed by law, or misapplies any money which comes into his possession in the discharge of his official duties, the county commissioners shall commence an action against such auditor and his sureties in the district court of said county, or other court of competent jurisdiction, and he shall be proceeded against as now provided by law for proceeding against other county officers. In case of suspension, under the provisions of this section, such auditor, if restored to office, shall not be deprived of his salary during the time of suspension, and his reasonable expenses in defending himself upon such hearing shall be paid by the county. If upon the trial of such action such auditor is adjudged guilty of any neglect of duty, or offense charged, the office shall be deemed to be vacant. (*Id. § 3.*)

*§ 4. **Actions on auditors' bond.** An action may be brought against the county auditor and his sureties in the name of the territory of Dakota, and for their use, or for the use of any county or person injured by the misconduct in office of the auditor, or by the omission of any duty required of him by law. (*Id. § 4.*)

*§ 5. **Effect of failure to qualify.** If any person elected to the office of county auditor shall not give bond and take the oath aforesaid, on or before the first Monday of March next after his election, it shall be deemed a refusal to serve. (*Id. § 5.*)

*§ 6. **Vacancy, how filled.** When from any cause a vacancy happens in the office of county auditor, the board of county commissioners shall appoint some suitable person to fill such vacancy, and the person so appointed shall give bond and take and subscribe the oath aforesaid, and shall hold his office until the next annual election, and until his successor is elected and qualified. (*Id. § 6.*)

*§ 7. **Temporary disability provided for.** When any county auditor, having no deputy, is unable, by reason of sickness or any other cause, to perform the duties of his office within the time specified by law for their performance, or when both the auditor and his deputy are so disabled by sickness or otherwise, the board of county commissioners shall appoint some suit.

able person to do and perform the duties of county auditor during such disability, and may require of the person so appointed such bond and security for the faithful discharge of the duties of the office as they deem expedient. (*Id.* § 7.)

*§ 8. **Who ineligible.** No county commissioner, county surveyor, or county treasurer is eligible to the office of county auditor. (*Id.* § 8.)

*§ 9. **May appoint deputy.** County auditors are authorized to appoint deputy auditors by a certificate in writing, who shall, before entering upon the duties of their office, take and subscribe the oath required by law, which oath shall be indorsed on the certificate of appointment and filed in the office of the register of deeds. Such deputies are authorized to sign all papers and do all other things which county auditors themselves may do. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at any time. They shall require bonds of their deputies in such amounts and with such sureties as they may deem proper. (*Id.* § 9.)

*§ 10. **Shall be clerk of board.** The county auditor shall, by virtue of his office, be clerk of the board of county commissioners of his county, and keep an accurate record of their official proceedings, and carefully preserve all the documents, book, records, maps, and other papers required to be deposited or kept in his office, and prepare a financial statement of the county, annually, unless otherwise ordered by the board of county commissioners. (*Id.* § 10.)

*§ 11. **Shall deliver money, books, papers, etc., to successors.** On going out of office he shall deliver up to his successor in office all the moneys, books, records, maps, documents, papers, vouchers, and other property in his hands belonging to the county; and, in case of the death of any county auditor, his personal representatives shall in like manner deliver up all such books, moneys, records, maps, documents, and other property. (*Id.* § 11.)

*§ 12. **Shall keep an account with treasurer.** He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with the auditor any receipt given by the treasurer for money paid into the treasury, the auditor shall file such receipt in his office and charge the treasurer with the amount thereof. (*Id.* § 12.)

*§ 13. **Claims, how allowed—money, how disbursed.** No claim against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the chairman of the board, attested by the county auditor, except it is authorized to be fixed by some other person or tribunal, in which case the sum shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the same: *provided*, that no public money shall be disbursed by the county commissioners, or any of them, but the same shall be disbursed by *by* the county treasurer upon the warrant of the chairman of the board of county commissioners, attested by the county auditor, specifying the name of the party entitled to the same, on what account and upon whose allowance, if not fixed by law; and all such orders shall be progressively numbered, and the numbers, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall at the time of issuing the same be entered in a book to be kept by the auditor for the purpose. (*Id.* § 13.)

*§ 14. **Salary for auditors—allowance for clerk hire.** The salary of the county auditor shall be regulated by the value of the property in their respective counties, as fixed by the territorial board of equalization for the preceding year, as follows: In counties where the amount of taxable property

does not exceed the sum of one and one-half million dollars they shall be entitled to receive five mills on each dollar of the first one hundred thousand dollars, and one mill on each dollar of all amounts in excess of said last-named sum, and less than two hundred thousand dollars, and one-tenth of one mill on each dollar on all amounts in excess of said last-named sum. In counties where the value of taxable property for the preceeding year, as fixed by the said board of equalization, exceeds the sum of one and one-half million dollars, the county auditor shall be entitled to receive five mills on each dollar of the first one hundred thousand dollars, and one-third of one mill on each dollar in excess of said sum and less than two million dollars, and one-fifth of one mill on each dollar of all sums in excess thereof. In all counties where the valuation of taxable property exceeds one million dollars the county auditor shall be allowed for clerk hire one-fifth of one mill on each dollar of such amount of *such amount* of taxable property not exceeding five million dollars, and on all sums in excess of five million dollars one-twentieth of one mill on each dollar thereafter: *provided*, that no county auditor shall receive more than fifteen hundred dollars for his personal services in counties where the valuation does not exceed four million dollars, nor more than two thousand dollars in counties where the valuation exceeds four million dollars and does not exceed six million dollars, nor more than twenty-five hundred dollars in counties where such valuation exceeds eight million dollars and does not exceed ten million dollars, nor more than three thousand dollars where such valuation exceeds ten million dollars. And all moneys received as fees or percentage in excess of the amounts provided for in this act shall be paid by the auditor at the end of each year into the revenue fund of the county: *and provided, further*, that in the county of Lincoln nothing shall be allowed said auditor for clerk hire. (*Id.* § 14.)

*§ 15. **Clerk hire, how paid.** The allowance for clerk hire in all cases shall be for actual services rendered, and shall be paid monthly to such clerk or clerks by the treasurer of the county, upon the order of the county auditor, accompanied by his certificate that such services have been rendered; and in no case shall the county auditor be allowed to receive clerk hire unless such services have been rendered. (*Id.* § 15.)

*§ 16. **County clerk construed to mean county auditor.** Whenever the term "county clerk" occurs in any of the existing laws of the territory of Dakota it shall be deemed and held synonymous with and construed to mean county auditor. (*Id.* § 16.)

*§ 17. **Certain officers to make appointment.** For the purpose of carrying the provisions of this act into immediate effect, the chairman of the board of county commissioners, the judge of probate, and register of deeds, in each of said counties, are hereby authorized, and it shall be the duty of such officers at a special meeting to be held therefor on the second Monday in April after the passage and approval of this act, to appoint a county auditor for their respective counties, who shall qualify as in this act provided, and shall hold their office until the general or annual election in eighteen hundred and eighty-three, or until his successor shall be elected and qualified. (*Id.* § 17.)

*§ 18. **Repealed.** All acts or parts of acts in conflict with the provisions of this act are hereby repealed. (*Id.* § 18.)

CHAPTER LVIII.

REFORM SCHOOL.

*§ 1. **Location.** A reform school shall be permanently located at Plankinton, in Aurora county, Dakota, and be maintained for the reformation of such boys and girls under the age of eighteen years who may be committed to it as hereinafter provided. (*Sp. Laws* 1883, c. 25, § 1.)

*§ 2. **Trustees.** There shall be a board of trustees, whose name and style shall be "The Board of Trustees of the Dakota Reform School," which shall consist of three persons, who shall be nominated by the governor and confirmed by the legislative council, and who shall hold office for the term of two years, and until their successors are chosen and qualified; and such trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and the organic act of this territory, and faithfully discharge the duties required of them by law. (*Id.* § 2.)

*§ 3. **Compensation.** The members of said board shall receive no compensation except the sum of three dollars per day while engaged in the transaction of the business of said board, and their actual traveling expenses; the amount due each trustee to be certified by the president and secretary of the board. (*Id.* § 3.)

*§ 4. **Officers and duties.** Said board of trustees shall, from their board, appoint a president, secretary, and treasurer, and shall take charge of the general interests of the institution; shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the laws of this territory; to see that its affairs are conducted in accordance with the requirements of law, and that strict discipline is maintained therein; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties; to exercise a vigilant supervision over the institution, its officers and inmates, and determine the salaries to be paid to the officers, and order their removal upon good cause; and shall also require the treasurer to execute a bond to the territory of Dakota, in a sufficient amount, to be approved by the legislative council, and filed in the office of the secretary of the territory. (*Id.* § 4.)

*§ 5. **Instruction of inmates.** They shall cause the boys and girls under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor, either mechanical, manufacturing, or agricultural, as is best suited to their age, strength, disposition, and capacity, and as may seem best adapted to secure the reformation and future benefit of such boys and girls. (*Id.* § 5.)

*§ 6. **Power of trustees to apprentice inmates.** The trustees, with the consent in writing of their parents or guardians, as the case may be, or in case they have no parents or guardians, may bind out boys and girls committed to the school until they attain their majority, or for any less time, stipulated in the indentures, for the needful amount of education, and from time to time, as the rightful guardians of the boys and girls, ascertain whether the duties and obligations of the person to whom the boy or girl is bound are faithfully performed, and if not, cancel the indenture and receive the boy or girl into the school again. (*Id.* § 6.)

***§ 7. Examination of records.** When there shall be twenty or more boys in the school, one or more of the trustees shall visit the school once in every month, and examine the boys and girls in their school-room and labor, and inspect the register and accounts of the superintendent. A record shall be kept of these visits in the books of the superintendent. Once in every year, or oftener if the trustees think it necessary, they shall examine the school in all its departments, including the accounts, vouchers, and documents of the superintendent, and prepare a report on the condition of the institution on the first Monday in November preceding the meeting of the legislative assembly, which, together with a full report of the superintendent, and a list of the officers and employes, and their salaries, with an estimate of the value of the personal property belonging to the school, shall be laid before the legislative assembly. (*Id.* § 7.)

***§ 8. Who to have charge.** The superintendent, with such subordinate officers as the trustees may appoint, shall have the charge and custody of the boys and girls; he shall discipline, govern, instruct, employ, and use his best endeavors to reform the inmates in such manner as, while preserving their health, will secure the promotion, as far as possible, of moral, religious, and industrious habits, and regular, thorough progress, and improvement in their studies, trades, and employment. (*Id.* § 8.)

***§ 9. Bond and responsibility of superintendent.** He shall, before entering upon his duties, give a bond [to] the territory, with sureties [for] the amount, and sureties, to be satisfactory to the board of trustees, conditioned that he shall faithfully perform all his duties, and account for all money received by him as superintendent, which bond shall be filed in the office of [the] secretary of the territory; he shall have charge of all the property of the institution within the precincts thereof; he shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution, and in such manner as the trustees may require, for all money received by him. His books and documents relating to the school shall, at all times, be open to the inspection of the trustees. He shall keep a register containing the name, age, and circumstances connected with the early history of each boy and girl, and shall add such facts as shall come to his knowledge relating to his or her history while at the institution and after leaving it. (*Id.* § 9.)

***§ 10. Power of district court.** When a boy or girl under the age of eighteen years shall, in any court of record, be found guilty of any crime excepting murder, the said court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state reform school pursuant to the provisions of this chapter, and a copy of said order duly certified by the clerk, under the seal of said court, shall be sufficient warrant for carrying said boy or girl to the school, and for his or her commitment to the custody of the superintendent thereof. (*Id.* § 10.)

***§ 11. Duty of justice in certain cases.** When a boy or girl under the age of eighteen shall be convicted before a justice of the peace, or other inferior courts, of any crime, or of being a disorderly person, it shall be lawful for the magistrate, before whom he or she may be convicted, to forthwith send such boy or girl, together with all the papers filed in his office on the subject, under the control of some officer, to a judge of a court of record, who shall then issue an order to the parent or guardian of said boy or girl, or such person as may have him or her in charge, or with whom he or she has last resided, or one known to be nearly to him or her, or, if he or she be alone and friendless, then to such person as said judge may appoint to act

as guardian, for the purposes of the case, requiring him or her to appear at a time and place stated in said order, to show cause why said boy or girl should not be committed to the reform school for reformation and instruction. (*Id.* § 11.)

*§ 12. **Order, how served.** Said order shall be served by the sheriff or other officer, by delivering a copy thereof, personally, to the party to whom it is addressed, or leaving it with some person of full age, at the place of residence or business of said party, and immediate return shall be made to said judge of the time and manner of such service. The fees of the sheriff or other officer, under this chapter, shall be the same as now allowed by law for like services. (*Id.* § 12.)

*§ 13. **Proceedings before justice.** At the time and place mentioned in said order, or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then, in his or her presence, or, if he or she shall fail, to appear then, in the presence of some suitable person whom the said judge shall appoint as guardian for the purposes of case, it shall and may be lawful for said judge to proceed to take the voluntary examination of said boy or girl, and to hear the statements of the party appearing for him or her, and such testimony in relation to the case as may be produced; and if, upon such examination and hearing, the said judge shall be satisfied that the boy or girl is a fit subject for the state reform school, he may commit him or her to said school by warrant. (*Id.* § 13.)

*§ 14. **Same.** The judge shall certify in the warrant the place in which the boy or girl resided at the time of his or her arrest, also his or her age, as near as can be ascertained, and command the said officer to take the said boy or girl and deliver him or her, without delay, to the superintendent of said school, or other person in charge thereof, at the place where the same is established; and such certificate, for the purpose of this chapter, shall be conclusive evidence of his or her residence or age. Accompanying this warrant the judge shall transmit to the superintendent, by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or girl as the judge is able to ascertain. (*Id.* § 14.)

*§ 15. **Discretionary power of justice.** If the judge is of the opinion that the boy or girl is not a fit subject for the school, or if said boy or girl shall appeal from the decision of the court in which the conviction was had, he shall remand him or her to the custody of the officer who had him or her in charge, to be returned to the magistrate before whom the conviction was had, to be dealt with according to law. (*Id.* § 15.)

*§ 16. **When parent or guardian makes complaint.** If any parent or guardian shall make complaint to a judge of a court of record that any boy or girl, the child or ward of such parent or guardian, is habitually vagrant or disorderly, or incorrigible, it shall and may be lawful for said judge to issue a warrant to have the sheriff or constable to cause said boy or girl to be brought before him at such time and place as he may appoint, when and where said judge shall examine the parties, and if in his judgment the boy or girl is a fit subject for the reform school, he may issue an order, with the consent of said parent or guardian indorsed thereon, to be executed by a sheriff or constable, committing said boy or girl to the custody of the superintendent of said school, for reformation and instruction, till he shall attain the age of majority: *provided*, that security for the payment of the expenses of said complaint, commitment, and carrying boy or girl to the reform school, and the expenses of board at such school, may, in the discretion of said judge, be required of said parent or guardian. (*Id.* § 16.)

*§ 17. **Term of commitment.** No boy or girl shall be committed to said reform school for a longer term than until he or she attain the age of majority, but the said trustees by their order may, at any time after one year's service, discharge a boy or girl from said school as a reward of good conduct in the school and upon satisfactory evidence of reformation. (*Id.* § 17.)

*§ 18. **Same.** Any boy or girl committed to the state reform school shall be there kept, disciplined, instructed, employed, and governed under the direction of the trustees until he or she arrives at the age of majority, or is bound out, reformed, or *or* legally discharged. The binding out or discharge of a boy or girl as reformed, or having arrived at the age of majority, shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed. (*Id.* § 18.)

*§ 19. **Disposition of incorrigible inmate.** If any boy or girl convicted of a felony, committed to the reform school, shall prove unruly or incorrigible, or if his or her presence shall be manifestly and persistently dangerous to the welfare of the school, the trustees shall have power to order his or her removal to the county from which he or she came, and delivery to the jailer of the said county, and proceedings against him or her shall [be] resumed as if no warrant or order committing him or her to the reform school had been made. (*Id.* § 19.)

*§ 20. **Penalty for aiding escape, etc.** Every person who unlawfully aids or assists any boy or girl lawfully committed to the reform school in escaping or attempting to escape therefrom, or knowingly conceals such boy or girl after his or her escape, shall be punished by fine not exceeding one thousand dollars, and imprisonment in the penitentiary not exceeding five years. (*Id.* § 20.)

CHAPTER LIX.

STENOGRAPHER.

*§ 1. **Judge may appoint.** The judges of the district courts in each judicial district may appoint, whenever in his judgment it will expedite public business, and tend to the more economical administration of justice, a shorthand reporter, who shall be well skilled in the art and competent to perform the duties required of him. (*Sess. Laws 1879, c. 52, § 1.*)

*§ 2. **Duty of reporter.** It shall be the duty of such reporter, under the direction of the court, to take down in short-hand the oral testimony of witnesses, the rulings of the court, the oral instructions of the judge, if any such oral instructions are given, the objections made and exceptions taken during the trial in all criminal cases, and in civil cases when either of the parties or the judge direct it; and also such other matter as the court shall order; and for each day actually and necessarily employed in the performance of such duties he shall receive such sum as may be fixed by the judge, not exceeding ten dollars per day, to be audited and paid by the county or subdivision wherein such services shall be rendered, upon the order of the judge. (*Id.* § 2.)

*§ 3. **Reporter to make transcript—compensation.** The judge may, on the application of either party in a criminal case, direct such reporter to make out and file with the clerk of the court a transcript of his short-hand

notes in long hand, when the same is needed in such cause, and he shall receive as a compensation therefor such sum as may be fixed by the judge, not exceeding fifteen cents for each one hundred words, to be audited and paid as provided in section two. (*Id.* § 3.)

*§ 4. **Same—reporter's fee to be taxable costs.** Such reporter shall, on the request of either party in a civil or criminal case, make out such transcript, and deliver the same to the party desiring it, on payment of his fees therefor by such party, at the rate per folio as provided in section three, and the amount allowed such reporter for transcripts required in the case shall be taxable costs. (*Id.* § 4.)

*§ 5. **Reporter to attend courts in several counties.** Such reporter shall proceed from county to county, or subdivision, where the district courts are held, when required thereunto by such district judge, and be in attendance upon such district court to perform such duties as shall be required of him. (*Id.* § 5.)

*§ 6. **Tenure and oath.** Such reporters shall hold their offices until removed by the judges of the district court for which they are appointed, for misconduct, incapacity, or inattention to duty, and shall take and subscribe an oath to support the constitution of the United States and the organic act of the territory, and to honestly, faithfully, and impartially perform the duties of their said office, which oath shall be filed with the clerk of the court in that county where the district court shall by law exercise the jurisdiction which pertains to district and circuit courts of the United States. (*Id.* § 6.)

*§ 7. Act not to apply to the counties of Bon Homme, Clay, Lincoln, and Union, in the Second judicial district. (*Repealed Sess. Laws 1881, c. 127, § 1.*)

CHAPTER LX.

REPORTER OF SUPREME COURT.

*§ 1. **First volume declared authentic.** The first volume of reports of the decisions of the supreme court of the territory, prepared for publication by Granville G. Bennett, be and the same is hereby declared to be authentic, and shall be considered and received in all the courts of this territory as *prima facie* evidence of the decisions of the supreme court so far as it purports to give the same, as fully and to the same extent as if their publication had been authorized and directed by specific legislative enactment under the supervision of an official reporter. (*Sess. Laws 1879, c. 56, § 1.*)

*§ 2. **Supreme court to appoint reporter.** The supreme court shall appoint a person of known integrity, experience, and learning in the law, reporter of the decisions thereof, and said reporter shall hold his office for the term of four years, unless sooner removed by the court, who shall be deemed an officer of said court for said purpose. (*Id.* § 2.)

*§ 3. **Bond and oath of reporter.** Said reporter shall give bond to the territory, with at least two sufficient sureties, to be approved by the chief justice of the supreme court, in the sum of one thousand dollars, upon condition for the faithful performance of his official duties, and shall further take and subscribe an oath of affirmation, to be filed with his bond in the

office of the clerk of said court, that he will support, protect, and defend the constitution of the United States and the act organizing the territory of Dakota, and that he will perform the duties of his said office with correctness, impartiality, and fidelity, and that the volumes of reports printed under his charge shall, in every respect, comply with the provisions of this act. (*Id.* § 3.)

*§ 4. **Reporter to receive records of causes.** It shall be lawful for the reporter to receive, at the close of each term of the supreme court, the records of all causes decided at such term, with the opinions therein, and retain the same for such reasonable time as he may require to prepare the report thereof, when they shall be returned to and remain in the office of the clerk. (*Id.* § 4.)

*§ 5. **Reports to be published.** As often as the material shall be sufficient to constitute a volume of five hundred and fifty pages, it shall be the duty of the reporter to cause the same to be printed and published in a manner, form, and style, and as neat and substantial, as the first volume of Dakota Reports, provided that not more than one volume annually shall be published. And the reporter shall be entitled to obtain and hold the copyright of his reports. (*Id.* § 5.)

*§ 6. **Territory not responsible for publication, etc.** The territory shall in no event be pecuniarily responsible for any cost incurred in the preparation and publication of such reports, nor shall the reporter be entitled to any fee or remuneration to be paid from the territorial treasury. (*Id.* § 6.)