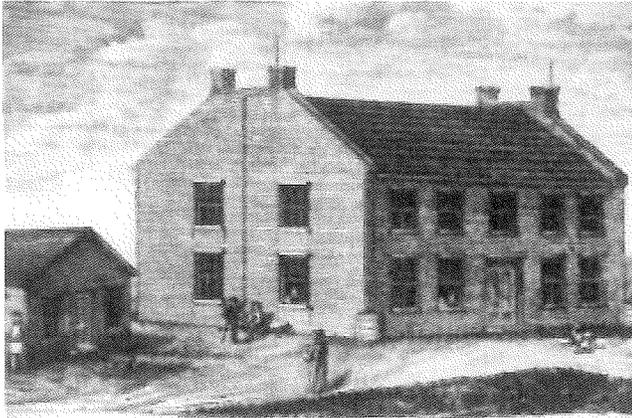


Jim McKee: Nebraska Territory's first Legislature heavy on Iowans, ranged from 'indifferent' to 'bad'



SEPTEMBER 28, 2014 5:00 AM • BY JIM MCKEE / COLUMN

As soon as the Nebraska Territory came into being in 1854, a government had to be created literally from a blank page into a functioning one with all sorts of laws, officers and entities. To avoid confusion and anarchy, the Legislature, which was largely composed of Iowans and officers who came from a mixture of “Eastern” states, needed to agree on what was best for the new territory. At first chaotic, the then two-house Legislature and two territorial governors ultimately laid the basis for

today’s state government, but the path was far from smooth.

Because permanent settlement in Nebraska was illegal until the territory was created in 1854, the vast majority of the first settlers were Iowans who had been looking across the Missouri River in anticipation, many of whom were strictly interested in enhancing the process of Iowa and even Council Bluffs specifically. When Gov. Francis Burt of South Carolina, who had been appointed by President Franklin Pierce, died a few days into his term of office, the 26-year-old secretary of state, Thomas Cuming of Michigan and Keokuk, Iowa, became acting governor. Cuming quickly took a census and divided the territory into legislative districts that supported his choice of Omaha City as the capital.

Omaha City’s population was in the neighborhood of 150 and had only one substantial building. The city’s first masonry building was built of Iowa bricks ferried across the river and was a simple two-story, 30-by-40-foot structure that faces east, sitting on Ninth Street between Farnam and Douglas streets. The building, erected and owned by the Council Bluffs & Nebraska Ferry Co., was offered to the territory as a Capitol “without a cost of a single dollar.” On the north side of the first floor was the governor’s office with the House of Representatives’ hall on the south. Most of the second floor housed the Senate or Council’s hall.

The balance of President Pierce’s appointments included district attorney Experience Estabrook, three judges and marshal Mark Izard, all listed as being from other states. To be elected to the 26-member House or 13-member Senate, the legislators were required to be either residents of Nebraska or to signify their intention to become one. President of the Council Joseph L. Sharp was, for example, nominally from Richardson County but, in fact, was a resident of Coonville, Iowa, and never did become a Nebraska resident. One legislator was 19 years old and, in fact, many never lived in Nebraska, and some proved to be merely passing through on their way west. Virtually all arrived armed with pistols, knives and long guns, which the sergeant-at-arms attempted to remove before they entered the chambers.

Acting Gov. Cuming announced the first legislative session would convene Jan. 16, 1855, at 10 a.m. At the appointed hour, Cuming first delivered an opening statement of his goals for the session, including his choice of the Platte River basin as the route for a telegraph and railroad to the Pacific Ocean, then commenced administering the oath of office to the members. Hiram Bennett promptly invited Cuming to leave, saying he had no business or authority there. When several members refused the oath from him, judges Ferguson and Harden picked up the job and quickly completed it. Much of the first meeting was then consumed by arguments over the site of the capital at Omaha, but Cuming and Omaha City easily carried the day. President Pierce then appointed Mark Izard as the second territorial governor, meaning Cuming served for only about five months.

Ultimately the session got down to business, enacting Iowa's civil and criminal codes almost in total, unanimously endorsed the Nebraska-Kansas bill, passed property exemption laws, created free school laws and, though it effectively abrogated U.S. statutes, passed legislation favoring claim clubs, which fortunately never was tested in the courts. Numerous corporations were formed, including Nesuma for the production of salt from the springs near Salt Creek, 37 bridges, ferries and railroads as well as two universities. Eight county boundaries were also created, including the short-lived Forney County, though none retain those boundaries today. They also managed to pass a bill prohibiting the sale or manufacture of alcohol, though it later was contended there was even a saloon in the second Capitol's basement.

The New York Times called the first Legislature men at "school-boy desks, some seated on the top of desks, some with their feet perched on the top of their neighbors' chair or desk, some whittling." The Bellevue Palladium opined "the first legislative session was a game of scramble ... as for the rest of the legislature ... that which was not merely indifferent must be rated as bad."

Although there were physical scuffles, no blood was shed and all in all that first session probably was no better or worse than any other fledgling territorial legislature, and a basis effectively was laid for the more thoughtful and reasonable laws that followed through the years.