

REVENUE LEGISLATION

A Review of the Territorial Revenue Legislation of 1855

The question of patching up our present revenue law will occupy considerable time during the coming session of the legislature. Nobody believes that any serious attempt will be made to pass a complete act making any radical changes in the system now in vogue.

A brief review of former revenue legislation in Nebraska may prove profitable and interesting at this time, perhaps enabling us to trace the evolutionary steps by which we have arrived at the present state of affairs.

Under the organic act of May 30, 1854, creating Nebraska Territory, the United States government undertook to bear the major portion of the expenses of territorial government. The governor, secretary of the territory, three justices of the supreme court, and certain other officers were to be appointed by the president. The governor's salary was fixed at \$2,500 per year, and the judges and secretary received \$2,000 each. In addition to this, the United States agreed to pay the legislative expenses—or at least what was considered sufficient to support one session each year. The members were to receive \$3 per day and mileage at the rate of \$3 for each 20 miles traveled in going and coming. The presiding officer was to receive an additional \$3 per day while presiding. Four employees were allowed each house—a chief clerk, assistant clerk, and doorkeeper. The chief clerk received \$4 per day and the others \$2. For the first session the council (corresponding to our present senate) was to consist of 13 members, and the house of representatives, 26; thereafter the representation in the house might be increased to meet the growth of population, but never to exceed 39 members.

In addition to the salaries mentioned, the United States agreed to provide public building for territorial government, pay for printing the laws, provide a library, and pay certain incidental expenses. No other officers were to be paid out of the United States treasury.

It is interesting to note that in the organic act was laid the foundation of our present splendid school system. Section 16 provided: "That when the lands of the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections number sixteen and thirty-six in each township in said territory shall be and the same are hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same." At that time Nebraska was of enormous magnitude, extending from the Missouri river along the 40th parallel to the east boundary of Utah; along the summit of the Rocky mountains to the 49th parallel; thence east along that parallel to the western boundary of Minnesota; thence southward to the Missouri river, and along that river to the place of beginning—an empire including the Dakotas, Wyoming, Montana, and part of Colorado, as well as present Nebraska.

The first regular territorial assembly was held at Omaha City, January 16 to March 16, 1855, being called together by Acting Governor T. B. Cuming, secretary of the territory, on account of the death of the first territorial governor (Burt), whose successor (Izard) had not yet arrived in the territory. "Up to the coming of the last mail," Governor Cuming assured the assembly in his message, he had hoped that Governor Burt's successor would arrive; consequently, the acting governor had limited his message to a few recommendations of a general character. A hint is given that "you

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State of Ohio, City of Toledo, Lucas County.—ss.

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Sworn to before me and subscribed in my presence, this 6th day of December, A. D., 1886.

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have the benefit of an ample fund of experience treasured by neighboring states; and it appears that the assembly acted upon this, for a considerable portion of the Iowa code was adopted, both as to civil and criminal laws. The natural result of this was a fair beginning for the young territory, but the laws did not fit together very well; there were many omissions, contradictions and inaccuracies which the second session took up and corrected.

The revenue legislation proper enacted at this session consists of two acts, one to provide territorial revenue and the other to provide county revenue. In addition to these the acts defining the duties of sheriff, probate judge, and territorial auditor and treasurer must be considered; also the act establishing the common school system, which is substantially the same in principle as the present laws, so far as concerns local taxation.

In the scheme of taxation outlined, the sheriff was the county assessor, being assisted by his deputies; he was also tax collector. The judge of probate was the grand "poohbah" of the county—he was county judge, county board, and county clerk rolled into one. He was the "accounting officer and general agent of the county." It was his duty to audit all claims, and draw and seal the warrants; to audit the treasurer's accounts and those of the collectors; to determine the amount of tax to be levied, to levy it, and to cause it to be collected. The county treasurer and the sheriff were mere clerks to the probate judge, so far as the revenues were concerned. Although charged with weighty responsibilities, the probate judge was by no means an autocrat. Provision was made by law for a referendum vote of "the people of his county" to determine whether money should be borrowed to erect public buildings, construct roads and bridges, etc.; also to provide for a heavier levy of taxes than the statutes warranted; and "any other local or police regulation not inconsistent with the laws of the territory."

The county revenue act limited the levy "for ordinary county revenue, including the support of the poor," to not exceed "five mills on a dollar." But where a referendum vote had been taken, "the rate of tax shall in no case be more than 1 per cent on the county valuation."

The territorial revenue act made a two-mill limit for territorial purposes but the language is somewhat ambiguous as to how the levy should be made. The auditor was required to "deduct from the gross amount of taxes therein levied or charged in said assessment rolls (previously certified to him by the various judges of probate) not exceeding two mills on a dollar." Whether the total levy for county and territorial purposes could be twelve mills or ten in a county where the referendum had been invoked, is not clear from the text. The word "deduct" seems to imply a sort of appropriation of part of the county levy for territorial purposes.

The auditor's duties were then much the same as today. He was the general accountant; he made settlements with county treasurers; he audited and paid claims by warrant (or certificate, where no appropriation had been made); and generally superintended the "financial concerns of the territory." The first auditor, treasurer, and librarian, were appointed by the governor, but were to be elected biennially afterward, the appointees' terms to end January 1, 1857. The auditor's salary was fixed at \$200 per year; the treasurer received \$150 and certain fees; and the librarian, \$100, but as he also acted as superintendent of schools he received an additional \$200 for acting in that capacity.

Part of the Iowa code adopted provided that the sheriff while acting as assessor should be allowed \$2 per day, but the statutes seem to be silent as to the compensation of the judge of probate while acting as fiscal officer. Perhaps these omissions hastened the

act of the second session in which 52 chapters were passed in an omnibus bill "for revising, consolidating and preparing a general code for the territory of Nebraska."

Sixteen city charters were passed, twelve of them almost identical in language and provisions. Those incorporating Tekamah, Burt county; Brownville, Nemaha; and Elizabeth, in Dodge and Loup, contained no provision regarding the limit of taxation for municipal purposes. That for Margaritta, Lancaster, granted the same provisions made for Nebraska City. In twelve of the city charters, a maximum of one-half of one per cent (or 5 mills) was fixed for municipal taxation. These charters were for the incorporation of the following cities: Carlisle, Green county; Plattsmouth, Cass; Chester, Lancaster; Bellevue, Sarpy; Lawrence, York; Nebraska City, "Ottoe;" Florence, Douglas; Fontanelle, Dodge; Wyoming, "Ottoe;" DeSoto, Washington; Kearney City, Buffalo; and Jalapa City.

County boundaries were established for 24 counties, as follows (those in capitals have since been dropped out of the list): Dodge, Cass, Gage, Loup, GREENE, York, Lancaster, Buffalo, Douglas, "Ottoe," Washington, Richardson, Nemaha, BLACKBIRD, Dakota, Burt, Pawnee, Clay, Cuming, McNEALE, Saline, JACKSON, Johnston, IZARD.

A citizen dwelling in one of the cities above mentioned could figure upon the maximum tax which could be levied upon his property about as follows:

	Mills.
For city purposes.....	5
For school purposes.....	15
For county purposes.....	10
For territorial purposes.....	2

Total 32

The statutes provided that territorial taxes should be paid in "specie or territorial warrants;" and where special county taxes were to be levied in accordance with a referendum vote they were to be paid in cash. Otherwise, it would seem that taxes might lawfully be paid in some other way—the statutes being silent as to this. One thing students of Nebraska taxation should note is the fact that in that early day the rate of taxation was very much lower than at present. The records do not reveal what the standard of assessment was, but it is probable that actual value was used at first.

Omitting all the "trimmings" which might be added to provide for a sinking fund, streets and sidewalks, etc., the bare maximum today in a city of the second class, less than 5,000 inhabitants, would be 57½ mills, or nearly double the rate of 1855:

	Mills.
For city purposes.....	10
For school purposes.....	25
For county purposes.....	15
For state purposes.....	7.5

Total 57.5

Of course, one must not figure the taxes in 1855 solely according to the 32-mill limit provided by the statutes. The first session incorporated 38 ferry and bridge companies arming them with powers to tax the people. For example, the Blackbird Town and Ferry Co. was given a ten-year exclusive franchise to operate a ferry between Blackbird City, in Burt county, across the Missouri river to the Iowa shore, the franchise covering the river one and one-half miles north and four miles south of Blackbird. The owners of the ferry, B. Y. Shelley, Addison Cochran, J. P. Cassidy, and associates, were permitted to levy the following tax upon travel and transportation: "For two horses, mules, or oxen, and wagon, \$1; for each additional pair of horses, mules, or oxen, 25c; for each horse or mule and buggy, 75c; for each led horse or mule, 20c; for loose cattle, per head, 10c; for sheep and hogs, per head, 5c; for each footman, 10c; for

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Provision was also made for the survey and establishment of ten territorial roads. The acts usually named two or three commissioners with power to locate and establish the roads; they were allowed two to three dollars per day for their services and "all other reasonable and necessary expense," to be paid by the counties through which the road passed. These ten territorial roads were as follows: Omaha City to Cedar Island; Plattsmouth to Archer (in Richardson county); Platte river to Dakota; Pawnee to Nebraska Center; Brownville to the Big Blue river; Tekamah to Pawnee; Florence to Fontanelle; Nebraska City to Grand Island; Bellevue to Catherine; and from DeSoto to Pawnee.

In addition to these provisions, two railroad companies were incorporated: The Platte Valley and Pacific, to be built with a single or double track "from the Missouri river to Omaha City, Bellevue, and Florence... up the north side of Platte river and the north side of the south fork, uniting at such point west as the said corporation shall fix upon, and thence to the west line of the territory." Provision was made "that the property of the corporation shall be liable to taxation, but not unless the net proceeds exceed 10 per cent per annum"