



## Nebraska's First Territorial Legislature

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## Nebraska's First Territorial Legislature

By DAVID M. JOHNSTON of Richardson County



Upon the death of Governor Francis Burt, first executive of that empire wilderness called Nebraska Territory, the secretary of state, Thomas B. Cuming, became acting governor. At once he proceeded to the task of a census preliminary to his election proclamation. That election was held December 12, 1854, naming one delegate to Congress and thirty-nine members to the legislature—twenty-six for the house and thirteen for the council.

There were four candidates who hoped to represent the new territory in Congress: Bird B. Chapman of Ohio, Hadley O. Johnson of Iowa, N. B. Giddings of Missouri, and myself of St. Joseph. In November I procured a mule, saddle, bridle and pair of spurs, and, thus equipped, started out to seek my political fortune.

Here the issue was the location of the capital. Two points were candidates for this honor, and the waters of the Platte separated the interests and the votes of the contestants. As but few voters were living in the territory at this time, the canvass by common consent was transferred to the populous settlements on the east bank of the Missouri River, in the states of Iowa and Missouri.

My journey along that bank of the big river was a lonely one, but I was cheered and animated by the pleasing fancies that pictured in the near future the reward of solid greatness and congressional honors.

I crossed the Missouri at a place called Bennet's Ford and for the first time entered the new territory. Around me spread the silent forest stripped of its foliage, and the grass at my feet bore the sombre tint of decay. I had traveled but a short distance when I heard the sound of voices from a ravine a few rods away. For a moment my mind threw off the gloom that had settled upon it and the prospect of making my first stump speech seemed at hand.

Imagine my surprise and disgust when I found my audience to be a score of Indians holding a feast over the remains of a slaughtered hog. Then I discovered my mistake in not having acquired some knowledge of the Indian dialect before venturing into the new country.

However, I pushed forward on my patient and jaded mule for old Fort Kearny, the headquarters of the territory south of the Platte. As I ascended the bluffs overlooking the Missouri, my heart thrilled at the sight of a log cabin and it did not take me long to reach it. The woman of the house invited me in, whereupon I found about a dozen Indians seated

on the floor and eyeing with close attention the cook stove in the center of the room. Its cheerful fire was very grateful to my chilled limbs, and a big pan filled with frying meat sent forth a most appetizing odor. The woman, young and sandy-haired, was kneading bread at a small table with her back to the stove. Presently an Indian slipped up, stole a piece of the hot meat, hid it under his blanket, and vanished outside. Other Indians followed suit until the unsuspecting eye of the involuntary hostess caught one of them in the very act, with his hand on the meat. In a moment she was in a storm of passion and, springing toward them, ordered them out of the house.

This was a trying time for me, as it gave new energy to my half-smothered fears for my life. At once my mind was filled with horrible pictures of Indian barbarities. But the brave little woman, armed with a broom, stood her ground firmly and called on me to help her. I put on a brave front. With stern look and voice choked with fear I pronounced the only Indian word I knew—“*Puck-a-chee!*”\* To my great astonishment and relief the thieves left the house and its valiant defenders and retired to their camp a short distance away.

After eating dinner with my hospitable hostess I continued my journey to old Fort Kearny and arrived there without further adventure. I spent the night with Major Downs (who had been in the regular army) in the old block house which he had converted into a hotel. This with the dismantled fort and five or six other buildings constituted the town, which under the name of Nebraska City had recently been started by S. F. Nuckolls and some others. Next morning I met a few friends, showed them my letters, and revealed to them the object of my visit.

My next stopping place was Omaha, selected by the Governor for the meeting of the first legislature of the Territory. Omaha at this time was simply a name. There were but one or two houses, but the townsite was beautifully located and the town soon commenced growing rapidly. I spent that first night on the townsite, being kindly entertained by one of the proprietors—a Mr. Goodwill. His home was a dugout which he called “Hole-in-the-Ground No. 6.” We sat up till a late hour over the fascinating games of euchre and old sledge.

The next morning I started back to Fort Kearny and the southern part of the Territory. In the southeastern section (since called Richardson County) I found a few settlers on Muddy Creek, and there selected a claim for my future home. This was a most beautiful and attractive country, well watered and wooded, with a soil unsurpassed in fertility and supporting heavy and luxuriant grasses.

After seeing the voters in Richardson County, about thirty in all, I crossed the river to try my hand at electioneering in Missouri and Iowa. Here I met with splendid success, for I had enough votes promised me to beat all my competitors in the race, and the voters promised to be on hand on the day of election.

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\* “Get out of this!”

But how uncertain are all the affairs of human life! On my way back to the new country I found the Missouri too dangerous to cross. It was full almost to the bank, and logs, trees and ice floated down in wild confusion. No skiff or boat could be found to take me across. Standing on the east bank of the swollen stream, my patient mule beside me, for the first time I saw in the distance the horrible picture of defeat.

However, in a few days I was able to cross and to see a few friends in Richardson County, then started back toward Nebraska City and again found myself water-bound by a freshet in the Nemaha. My long absence was construed into withdrawal from the race, and with this rumor my hope of Congress expired.

This was but a few days before the election, and my friends on Muddy Creek put me on the track for the legislature and I was elected. My victory was greeted with applause and celebrated in the old-fashioned way by a big dance. A boy on a fleet horse with two empty jugs and fifty cents was dispatched to Missouri and instructed to return with all possible haste. A log cabin twelve by fifteen feet at the edge of a beautiful grove on the bank of the Muddy was the scene of festivities. One corner of the room was reserved by the judges of election for counting the vote; the remainder was devoted to the dance, and blazing logs in the fireplace furnished both heat and light. Seven couples marched and danced to the animating music of the violin. The harmony was not interrupted until our boy returned with the jugs, and then only long enough to sample their contents. The revelry continued until a late hour, its pleasures being terminated finally by the exhaustion of our supplies.

The images of those eventful days are still bright on the canvas of memory and furnish food for both amusement and reflection. Tho more than fifty years have passed, the joy I felt at my election will never be forgotten.

This distinguished honor healed, in great measure, the wounds of my defeat for Congress, and I cheerfully obeyed the call of the Governor to take my seat in the first Nebraska Legislature. It met at Omaha January 16, 1855, with a full House and Council, and nearly every state in the Union was represented in that body.

Our meetings were held in a small brick building of two stories with an office for the Governor on the first floor. By this time Omaha consisted of less than a dozen buildings, the greater number of which were saloons. Houses were going up all the time and the place was a scene of bustle and activity. The hotel—the Douglas House, with Mr. Wells as landlord—was besieged by impatient legislators before it was completed, and in spite of the cold his unplastered rooms were soon filled. Here Governor Cuming and his wife had rooms, the best in the house.

The burning issue before us was the location of the capital of the new Territory. Nebraska City south of the Platte and Omaha on the north were contending for the prize with great zeal but not with equal

success, for after a hard struggle Omaha was victorious and started on the road to prosperity and greatness.

As very few members of the legislature had been in the Territory more than a week prior to the election, it was amusing to hear them in the heat of debate address one another as "the gentleman from New York," "the gentleman from Iowa," and so on.

The Governor had divided the territory along the river into counties and had given a name to each. The members claimed to live in those counties and to represent them in the legislature. No serious difficulty arose from this fact, for by general consent the question of settlement was not raised in any other way than as above stated.

Among those who came to claim their seats in the legislature was J. Sterling Morton, then a young man. His wife accompanied him to Omaha, but his seat was contested. I prosecuted his claim before the legislature but was unsuccessful. Mr. Morton was compelled to retire, tho he and Mrs. Morton remained in Omaha during most of the session. I claimed that the legislature had the right to go back of the returns and count the votes in the disputed territory, but that body did not uphold my view.

The first law suit in Nebraska Territory was before a Justice of the Peace, and came about in this way:

The landlord of the Douglas House, Mr. Wells, had been robbed of half a cheese and two men were charged with the crime. At this time there was no law in the Territory to punish petit larceny or stealing of any kind, nor was there any law creating the office of justice of the peace—nor, indeed, any other office excepting those named in the Act of Congress creating the Territory.

The Governor had been frequently urged by a political friend living in Iowa to appoint him as justice of the peace in Omaha. Partly as a joke and partly to free himself of his friend's importunities, the Governor at last consented and made the desired appointment. Then, armed with the statutes of his home state, the Iowan opened an office in the "city" of Omaha and announced himself ready for litigation. It was not long in coming. The landlord who had been robbed of his cheese filed a complaint before the new Justice stating the fact, and a warrant for arrest of the two suspects was issued to a constable who was appointed like the Justice.

The defendants were arrested and brought before His Honor for trial. They employed as attorney a member of the legislature (myself) to defend them, and the owner of the cheese appeared for the Territory. When the case was called for trial the defendants demanded a jury. Here His Honor met with some difficulty, for the judicial mind was not clear on that point; but, consulting the Iowa statutes on jury trials, he granted their request and a jury was ordered. Then another difficulty was presented, still more serious than the first. As but few people were in the country at that time, and as no statute had been passed prescribing the

qualifications of a juror in any case, the question had become very difficult to determine.

It was agreed finally to select the jury from among the members of the legislature; accordingly they were sworn with all due solemnity under the laws of Iowa and the trial proceeded, being held in the office of the Douglas House. The landlord, who was both prosecuting attorney and plaintiff, introduced his evidence and proved beyond all doubt that the crime took place as charged. Then for the first time the defendants challenged the authority of the Governor to appoint a justice of the peace, and denied his right to try them.

The Justice had maintained the dignity of his court up to this time with great propriety, but this was too much for His Honor to bear and he flew into a most unjudicial rage. An apology from the defendants' counsel somewhat appeased his anger, the motion was overruled and his jurisdiction sustained.

The defendants thru their counsel then asked for a subpoena for the Governor, and here another difficulty arose as to whether a justice of the peace could issue a subpoena for His Excellency to attend his court. After some discussion the writ was issued and the Governor was on hand to give testimony in the case. He testified that he thought he had no right to appoint His Honor as justice of the peace and had complied with his friend's request against his own judgment.

Notwithstanding all this evidence the Justice held that he had a right to try the case and sent it to the jury, who, after hearing the arguments of counsel, retired to their room and after a short time returned a verdict of "Not Guilty."

It was now the turn of the prosecuting witness and landlord to fly into a rage, which he did, and furiously ordered the jury out of his house. This was a trying time for the jury, most of whom were living at that hotel and there was no other boarding house in the town large enough to accommodate them. Finally, by the persuasion of some friends, the landlord agreed to let them stay. Thus ended the first lawsuit in Nebraska.

It was whispered that some members of the legislature had no constituents in the counties they claimed to represent. A report was current that one member took a few men in a two-horse wagon and drove some ten or fifteen miles into the Territory, then stopped and held the election in the wagon, not knowing whether or not he was even within the county he claimed to represent. However, no one challenged his right to the seat and he made an excellent member.

The country was full of emigrants and speculators. It will be recalled that many members owned or had an interest in townsites which existed on paper and nowhere else, and these they were exceedingly anxious to sell to strangers. One legislator, to help sell his shares and advertise his site, got up a turkey roast and invited the Governor and his lady and a few other friends (including myself) to his boarding house to share the

treat. He claimed that the turkey was killed on his townsite, and we all agreed to praise his turkey and boom his townsite to the best of our ability. When the dinner was served quite a number of strangers were present at the long table. Presently the Governor remarked, "General, this turkey is excellent. Where did it come from?" The General replied, "It was killed on the townsite by one of my constituents and presented to me." The fact is that the turkey was killed in Iowa and sent to him by a friend in order to help him sell his town shares.

One member of the House had a seat near a west window which gave him a good view of what was going on in the town. A new saloon was opened nearly every day, and the custom was to treat at the opening. When this member from his post of observation saw the proprietor come out and hang up his signal that he was ready for business (this signal being usually a red flannel shirt, there being neither signs nor sign painter in Omaha), he would say, "Mr. Speaker, I move we adjourn for a recess." Of course the motion was seconded without delay and most of the members hastened out to enjoy the hospitality of the new saloon. In a few minutes all resumed their seats and were ready for business.

While a great many amusing things happened during the session of the First Legislature of Nebraska, yet it passed a wise code of laws and laid the foundation for the future prosperity of our great state.

Occasionally the legislative halls were brightened by fair visitors from Council Bluffs and from the nearby Presbyterian Mission of Bellevue. Mrs. Cuming, wife of the Governor, was a beautiful and charming woman, and even at this distance of time I can recall the delightful evenings spent with a few choice friends in her parlor at the hotel.

The passing of more than half a century has obliterated from my mind many of the minor incidents of those early days, and so I will let this close my recollections of the first session of the Legislature of Nebraska Territory and of the City of Omaha, then in embryo, but now a metropolis of the Great Northwest.

(Written down by his daughter, Eliza Johnston Wiggin, January 23, 1908.)