

STATEHOOD - NORTH DAKOTA

by O.S.S.

Reliable writers on the history of North Dakota are of the opinion that several Indian tribes, the Mandan, Hidatsa and Arikara, were agricultural people. They cultivated corn, beans, potatoes, squash, pumpkin, tobacco along and near the Missouri River. They lived in somewhat permanent earth lodge villages. The Sioux were more warlike and did not reside in permanent places. They migrated over the entire northwest from the Great Lakes to the Missouri River and as far south as Texas. The Chippewa Indians originally came from Wisconsin and Minnesota. They resided in large numbers in the Turtle Mountains. There is reliable proof that at one time the Cheyennes resided near Lisbon and Fort Yates and that the Assiniboin tribe lived for a brief period in the western and northwestern part of the state. We may freely admit that active Indian life existed on the plains of the Dakotas several centuries before the discovery of America in 1492.

The Spanish, French and English competed for the territory now known as North Dakota. The Coronado expedition of 1541 reached the prairies of Kansas and subsequent Spanish traders reached the trading grounds between the Cannonball and Heart Rivers. Legally speaking, Spain had control of this territory for over 100 years even though Spain did not maintain garrisons in this country to govern it.

The French explorers opened up the territory of the Great Lakes, the Mississippi valley and finally the territory along the Missouri River. Pierre Verendrye was a Canadian born Frenchman. In 1731 he, with his three sons and his nephew and a large crew, started westward from Montreal

to the Great Lakes, Pigeon River, Rainey Lake, and Lake of the Woods. At the present site of International Falls he established Fort Pierre and at the present site of Warroad he established Fort St. Charles. On the Red River of the North, he established Fort Rouge near the present city of Winnipeg. In time they reached the Pembina and the Turtle Mountains and finally established a site near the present city of Minot. A portion of his party reached as far west as Sanish in Mountrail County. Some writers claim the Verendrye party reached a Mandan Indian village on the Heart River. This was in the year ~~about 1738-1739~~. It may be reported that two of his sons carried an expedition over the territory now known as South Dakota. There was found in 1913, within the city limits of Fort Pierre, South Dakota, a lead plate which was made in France in 1741. One side is the name of Louis XV, year 1741 and the name of Pierre Verendrye, on the reverse side - an inscription was scratched to the effect that the plate was deposited by Chevalier de La Verendrye on March 30, 1743. In the course of time, many Frenchmen and French Canadians settled along the Red River, in the Pembina and Turtle Mountains, and along the Missouri River.

In 1784, one David Thompson, an employee of the Hudson Bay Company arrived at Churchill on the Hudson Bay. He worked there for one year and in 1785 he was assigned to the York factory 150 miles away. There he acquired a knowledge of surveying. During the thirteen years of service with the Hudson Bay Company, he traveled over 9,000 miles visiting the several fur trading posts of the Hudson Bay Company. In 1797, he was hired by the Northwest Fur Company of Montreal, a competitor of the Hudson Bay Company to make a survey. He was ordered to "(1) determine the position of the

49th parallel, which, under the Treaty of 1783 with the United States was to be the boundary between Canada and the United States; (2) to visit the Mandan Indians on the Missouri; (3) to search for fossil bones of large animals; and (4) to determine the location of all the trading posts of the Northwest Company.

On this perilous trip during mid winter of 1797, he followed the Assiniboine River to where the Souris River joins it and down the Souris River skirting the west edge of the Turtle Mountains, thence to the site near Minot and then southwest to the Missouri near the mouth of the Knife River. It is of interest to note that David Thompson's guide and interpreter was one Rene Jessaume, who seven years later became the interpreter for Le~~wis~~ and Clarke in 1804-1805, when they wintered at the Mandan villages. David Thompson's narrative portrays to us the life, habits and custom of the several Indian tribes in this territory. Because of his knowledge of land geography and land surveying of this part of the United States and part of Canada, he served for ten years as the British representative to locate the boundary line between Canada and the United States from St. Regis, Quebec to the Lake of the Woods.

The first trading post in the Red River valley was erected by the Northwest Company in 1790, under the leadership of Peter Grant - near the present site of St. Vincent, Minnesota. In 1797, the Northwest Company under Charles Jean Baptiste Chaboillez erected a post near the present site of Pembina. In 1801, Alexander Henry of the Northwest Company built a post on the north side of the Pembina near its mouth. The Hudson Bay Company, the same year erected a post just opposite it on the Minnesota side of the Red

River. Likewise the XY Company erected a post at the mouth of the Pembina. These three Companies carried on intensive competition for furs from the Indians. Alexander Henry established a post on the Park River and on the Goose River, near the present town site of Caledonia, but gave them up because of the Sioux Indians. In time, he established a post near the present site of Grand Forks. He was in business on the Red River until 1808, when he left his Pembina post and located first on the Saschatewan River and finally to the west coast - near the mouth of the Columbia River.

The United States secured title to that part of North Dakota, which is drained by the Red River and the Souris River by the Treaty ^{with England} of October 20, 1818. ~~with England.~~ The greater portion of North Dakota was secured by the United States from France under the Louisiana Purchase. All of the territory draining into the Mississippi was part of the Louisiana Purchase. President Jefferson, prior to the purchase of the Louisiana Territory, in order to secure reliable information as to this territory, to establish friendly relations with the plain Indians and to secure the "Oregon territory" for the United States" sent Captain Meriwether Lewis and Lt. William Clarke on an expedition westward. President Jefferson secured a passport for the exploring party from the French Ambassador, but by April 30, 1803, the Louisiana territory was purchased from France, hence there was no immediate need for the passport. Lower Louisiana (Territory of Orleans) was formally transferred to the United States on December 20, 1803. The formal transfer of the remaining portion of the Louisiana territory took place in St. Louis on March 10, 1804 - when the first Spanish flag was hauled down and then the French flag was hoisted and remained for a brief period. Finally, it was hauled down and the United States flag was hoisted. This ceremony constituted

the formal transfer of the Louisiana territory to the United States.

Lewis and Clark departed from their Camp, which was fourteen miles north from St. Louis on May 14, 1804. By October 13, they crossed the present South Dakota - North Dakota line. On October 14, the party camped near Fort Yates. On October 21, they passed the mouth of the Heart River and reached the present site of Mandan-Bismarck on the 27th. The Lewis and Clark completed erecting Fort Mandan - on December 24, 1804 - which was near the present town site of Deopolis. The present town of Fort Clarke is six miles south of the old Fort Mandan. During the winter stay of this expeditionary force, Lewis and Clarke became acquainted with the several Indian tribes of the Dakotas and of the country in general.

In 1812, Congress provided that lower Louisiana (territory of Orleans) should be called the Territory of Louisiana, and that the rest of the purchase shall be called the Territory of Missouri. As stated before, by the Treaty of October 20, 1818, with England, the territory south of the 49th parallel whose waters drained into the Hudson Bay was ceded to the United States. From 1818 to 1834, all of what is now the state of North Dakota was part of the Missouri Territory.

In 1834, by Congressional Act, all of the land east of the Missouri became part of the Territory of Michigan, and all land west of the Missouri River remained as part of the Missouri Territory. In 1836, the Territory of Michigan was given its present boundaries and in 1837 it was admitted into the Union. The remaining portion was made into Wisconsin Territory. Again in 1838, Congress gave to Wisconsin its present boundary. Congress created the Territory of Iowa of the remainder of the land east of the Missouri River. In 1846, Iowa became a state and the land east of the Missouri River became

part of the Minnesota Territory. When the Nebraska Territory was established in 1854, the lands west of the Missouri River was an integral part of this new territory. Minnesota was given its present boundary in 1858. The part of the land east of the Missouri River was not included in any state or territory from 1858 to 1861. However, Congress on March 2, 1861, created the Dakota Territory, which included all the Dakotas, a great portion of Montana and part of Wyoming. This was too large for administrative purposes. On May 26, 1864 the Territory of Montana was created with its present boundary and on July 25, 1868 the Territory of Wyoming was created with its present boundary. These two acts reduced the size of the Dakota Territory to the present boundaries of North and South Dakota.

The first territorial officers of the Dakota Territory of 1861 were appointed by President Lincoln. They were the following:

Governor - William Jayne of Illinois
Secretary - John Hutchinson of Minnesota
United States Attorney - William A. Gleason of Maryland
United States Marshall - William F. Schaffer of Missouri
Surveyor General - George D. Hall of Michigan
Chief Justice - Philemon Bliss of Ohio
Associate Justice - S. P. Williston of Pennsylvania
Associate Justice - J. S. Williams of Tennessee.

The Governor, by executive order, divided the territory into six council and eight representative districts for purpose of allocating the elected members to the territorial legislature. The legislature consisted of the Council and the House. By executive order the territory was divided into Judicial Districts on July 30, 1861. Yankton was made the temporary capital. The first territorial

assembly was elected September 16, 1861 and convened at Yankton on March 17, 1862. There were ten members in the Council and thirteen in the House. At the first session, the territorial legislature adopted a Seal for the Territory of Dakota, which was somewhat similar in design as our present Seal. John B. S. Todd was elected on September 16, 1861 as delegate to Congress.

The Governors during the territorial days were as follows:

1. William Jayne - 1861-1863
2. Newton Edmunds - 1863-1866
3. Andrew J. Faulk - 1866-1869
4. John A. Burbank - 1869-1874
5. John L. Remington - 1874-1878
6. William A. Howard - 1878-1880
7. Nehemiah G. Ordway - 1880-1884
8. Gilbert F. Pierre - 1884-1887
9. Louis K. Church - 1887-1889
10. Arthur C. Melette - 1889-

Chief Justices

1. Philemon Bliss - 1861-1864
2. Ora Bartlett - 1865-1869
3. George W. French - 1869-1873
4. Peter C. Shannon - 1873-1881
5. A. J. Edgerton - 1881-1885
6. Bartlett Tripp - 1885-1889

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The Sibley Expedition of 1862 and 1863 is of great historic interest to all readers of the Dakota Territory. The Sully Expedition to Dakota in 1864 is equally of importance. These two expeditions were for the purpose of protecting the hunters and trappers, the pioneer settlers, and the emigrants going to the gold fields of Montana. Time does not permit me to comment on military services rendered ~~by~~ General Custer and his attempt to carry out the terms of the Treaty of 1868, which reserved the greater portion of the Black Hills and surrounding territory for the Indians.

The territorial assembly held fifteen sessions in Yankton - the territorial capital. At the fifteenth session, the assembly established a University at Grand Forks, an insane asylum at Jamestown, and a penitentiary at Bismarck. For years the problem of dividing the territory was a leading issue. In 1871, 1872, 1874 and 1877, the territorial assembly had petitioned Congress for the division of the territory on the 46th parallel of latitude. In 1873, Senator Ramsey of Minnesota introduced a bill in the United States Senate for a territory for the north half, to be called Pembina. This bill was defeated. In 1875, Senator Windom of Minnesota introduced a bill for the creation of the Territory of North Dakota. This was favorably reported from the committee on territories in the Senate and passed by the Senate. The committee on territories in the House refused to report it.

In the territorial legislative session of 1883, a legislative act authorized and empowered a commission of nine persons to remove the capital from Yankton, and locate it at a more convenient place. A majority of the commission were from that part of the territory now constituting the State of South Dakota. In June 1883, the commission selected Bismarck ^{as the territorial capital} by a vote of

five to four ~~as the territorial capital~~ Since the Organiz Act, which created the territory of Dakota, provided that the seat of government should be selected by the governor and the legislative assembly, a quo warranto proceeding against the commission was instituted to oust them from office because "the Legislature could not lawfully delegate the right and power to a commission to remove the capital and locate it elsewhere." The district court at Yankton (Judge Edgerton) on August 27, 1883, sustained the motion of the district attorney and ousted and excluded the nine defendants from the office of commissioners. On appeal to the Territorial Supreme Court the judgment of the District Court was reversed, holding in effect that the Commissioners were lawfully appointed and were entitled to exercise their duties in selecting another capital. The removal of the capital to Bismarck created a unity among the people in the northern portion of the territory and created discontent to the south of us, which finally lead to the division in 1889.

The sixteenth, seventeenth and eighteenth sessions of the territorial assembly were held in Bismarck during the years 1885, 1887 and 1889 respectively.

In January 1889, the territorial legislative assembly provided for a constitutional convention of the northern portion of the territory. A memorial of this action was sent to Congress. Congress accepted the resolution and on February 22, 1899 passed the Enabling Act - which provided for the statehood of North Dakota, South Dakota, Washington and Montana.

The Enabling Act of February 22, 1899 imposed several conditions upon the newly proposed states:

1. that religious freedom should be recognized;
2. that the state disclaimed all title to Indian lands and that lands of non-residents should not be taxed at a higher rate than resident's land;

3. that the territorial debts should be equitably adjusted
between the two states;
4. that the public schools should be open to all children and
free from sectarian control.

Governor Mellette called an election on May 14, 1889, for the purpose of electing seventy-five delegates to the constitutional convention. "Of the 75 delegates, 52 were born in the United States, 10 in Canada, and 13 in Europe. Sixty-five of the delegates were under forty years of age. Frederick B. Fatcher of Stutsman County was elected president and J. G. Hamilton of Grand Forks was appointed clerk. Other Grand Forks County men were Richard Bennett, William Budge, Charles Crothers, Alexander Griggs, Arne P. Haugan, Martin V. Linwell and J. H. Matthews. *Of the sixty four delegates, twenty two were masons.*

The original constitution of North Dakota contained 217 sections grouped in twenty articles. Since 1889, fifty-four amendments have been added. At the election held October 1, 1889, the proposed constitution was adopted by a vote of 27,441 to 8,107. On November 2, 1889 President Benjamin Harrison declared North Dakota to be a member of the Union.

The Preamble of the North Dakota Constitution is of interest to all Masons. Its language is as follows: "We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this Constitution." Also of interest to us as Masons is Article I, which contains twenty-four sections dealing with the natural rights of man. This Article carries the label of Declaration of Rights. Section four of this Article provides that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state. . ."

Article 8 carries the title of Education. Section 147 emphasizes the Masonic concept of education. It provides that "A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."

The last sentence in Section 152 which provides that "No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school" expressed another Masonic concept as to the education and the separation of state and church.

When we realize that the present North Dakota Constitution is seven times as long as the United States Constitution, there is some merit in the criticism that our Constitution is partly legislative in character and not strictly organic or fundamental. The framers of the North Dakota Constitution attempted in good faith to check some of the political or governmental evils which had developed in some of the eastern states. Article 2 Section 69 enumerates thirty-five distinct subjects on which the legislature is prohibited to pass special laws. Section 70 of Article 2 provides that "in all other cases where a general law can be made applicable, no special law shall be enacted." The framers of our Constitution knew that "special legislation" was a source of political corruption in many states. Corrupt practice in election was more prevalent in the good old days - than it is now. The Australian system or the secret ballot was adopted in Australia about 1855. England adopted this method.

The Commonwealth of Massachusetts was first to enact into law the Australian system. Article 5 Section 129 provides that "all elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law."

Under the Enabling Act of 1889, the federal government granted to this state upon admission to the Union - for the support of common schools, sections 16 and 36 in every township in the state. This amounted to some 2,418,291 acres. Congress granted also 668,080 acres for other purposes, of those 498,080 acres were apportioned by Congress. The remaining 170,000 acres were granted to the state "for such educational and charitable purposes as the legislature may determine." This apportionment was made by the Constitution under Article 9. Section 155 of Article 9 in conformity to the requirements of the Enabling Act define under what terms and conditions school land may be sold. This section was amended in 1908 and also in 1939.

Article 15, Section 202 deals with the problem of future amendment. The original section provided that an amendment proposal must be approved by two successive legislative assemblies and then ratified by a majority of the vote of the people. Normally, it would take about three years to amend the Constitution. In 1913 this section (202) was amended so as to provide for amendments to the Constitution by means of an initiative petition filed with the Secretary of State, six months previous to a general election. It is debateable whether the flexibility and ease of amending the Constitution does not make the Constitution more legislative in character than organic or constitutional.

Another unique feature of our Constitution was that originally under Sections 215 and 216, thirteen public institutions of the state were permanently located in certain towns. At the time the Constitution was drafted and adopted only three of these institutions were in existence. The reason for such a

constitutional policy was due to the land grants by the federal government to the state for public buildings at the state capital, penitentiary, charitable institutions, university, agricultural college and other similar institutions. Perhaps the state could have administered these institutions more economically if the location of the then non-existent institutions had been left for future legislative decisions.

Whatever minor defects these may be in the North Dakota Constitution, it is as a whole, a progressive document. The framers attempted in good faith to avoid many of the political evils that ^{were} ~~was~~ prevalent in the older states.

The first legislative session began on November 19, 1889 and continued for 120 legislative days. United States senators were then elected by the state legislatures in accordance to the United States Constitution, Article I Section 3. Gilbert A. Pier~~ce~~ and Lyman R. Casey were the first two senators elected by the North Dakota legislature. H. C. Hansbrough of Devils Lake was the first Congressman from this state. The three judges on the North Dakota Supreme Court were Guy C. H. Corliss, Chief Justice, from Grand Forks, Joseph M. Bartholomew and Alfred Wallen. Being an agricultural state, a majority of the laws of the first session dealt with the problem of agriculture. The function and duties of the Commissioner of Agriculture and Labor were carefully defined. A bill dealing with the use of brands and earmarks on ^{livestock} ~~live stock~~ was passed. The common law rule was changed, so that it became lawful for a person to purchase on credit seed grain and to make a contract that the seller would have a crop lien which was first on the crop produced. The prevailing abuses of railroad transportation, such as preferential rates, pooling, discrimination and rebates were made illegal. The "warehouse Acts" provided that any building used

for the buying and selling of grain to be "a public warehouse" and subject to be regulated by law as to storage, insuring and handling charges.

The first legislative assembly enacted a school law, which provided for organization of school districts, method of apportioning funds, and levying of local taxes. The school law provided for a State Superintendent of schools, the County Superintendent of Schools, and the Board of the individual districts. Besides enacting legislation for the establishment of the several institutions as enumerated in Sections 215 and 216 of the North Dakota Constitution, the legislature created the "Board of University and School Lands," which consisted of the Superintendent of Public Instruction, the Governor, Attorney-General, Secretary of State and State Auditor. To carry out Article 20 of the Constitution, the first legislative assembly enacted the first prohibition law of North Dakota. The legal status of prohibition during the first ten years of statehood was somewhat precarious because of the interpretation given by the federal courts as to the meaning of interstate commerce. The defeat in the House of Senate Bill # 167 - known as the Louisiana Lottery Bill, created political interest not only to the people of the state but to the entire nation.

The first legislative session did constructive work and carried out with credit the mandatory provisions of the new Constitution. After the first session, all regular legislative sessions are limited by law to sixty legislative days. *15 Senators were members and 25 members of the House were members*

There are several factors for the rapid growth and settlement of North Dakota. These will only be enumerated:

1. The Homestead Act of 1862 and subsequent enactments provided for the disposition of public lands to homemakers without requiring any compensation except the mere act of residence, cultivation and improvement. Any person who is the head of a family or who has reached the age of 21 and who is a citizen ^{with the intention of becoming} to become a citizen and who is not the owner of more than 160 acres of land may apply for not exceeding 160 acres, and upon residing there and improving the same may within a specified time obtain a patent to it.
2. The Constitution of the Northern Pacific in 1873.
3. Immigration in large numbers from Canada, England, Scotland and Ireland, Germany, and the Scandinavian countries.
4. Large number of emigrants who had passed through the Dakota to search for gold in Montana and Idaho, returned to the territory for settlement.

Originally, the name "Dakota" means in the language of the Sioux, confederation of tribes. The word as used by the Indians, is said to connote the idea of tribes on the front or frontiersmen. Truly the immigrants from Europe and the emigrants from other states to Dakota Territory and to North Dakota were frontiersmen. They have built on this frontier, homes, schools, churches, cities and villages. They established a government according to the patterns of other states, yet at the same time they attempted to improve both the state and local government. They incorporated within the frame work, the

Constitution of North Dakota, the fundamental Anglo-American concept of economic and political freedom. Through the schools, press, and other social agencies, the diverse group of people have been united in a common enterprise.

There is nothing in the history of the Dakota Territory or that of North Dakota, that the early settlers and pioneers were more rational and more intent of doing things for the social good than we are today. There is nothing to indicate that they were more honorable, more moral, more ethical in their personal and business behavior than the people of this generation. They were children and people of their own age and time. Having no opportunity to become members of the property class in their native lands, or having better opportunities to secure greater wealth in a virgin territory, they earnestly sought this rich virgin land.

Land had real economic value in those early days. The virgin soil yielded an abundant harvest. The natural fertility has been ~~(unscientifically)~~ exploited ^{in an unscientific manner} for several decades, so that the present generation must carry on constructive pioneer work in soil conservation and restoring the fertility of our land. Scientific management of our lands must be carried on instead of exhausting our natural resources. The people of today to succeed will have to engage in pioneer work of equal degree, although of a different kind than the early pioneers. The early history of the Dakota not only teaches us to admire and respect the pioneers, with all their qualities - both good and bad - and it should aid us to avoid some of their errors. Perhaps we may profit by their mistakes.

I distinctly recall a statement made by a late Grand Forks speaker ^{who} when ~~he~~ commented on some of the early pioneers. He said that they accomplished more than they had planned and that the results of their activities were better than the motives that governed their actions. We are grateful that these pioneers, many of whom were Masons erected permanent landmarks as to our civil and political liberties. Our duty is to be as loyal to our obligations as they were to theirs.

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