

The Archives of Dakota Territory

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THE PROBLEM of dividing the records of the Territory of Dakota between the proposed new States of North and South Dakota was finally solved only by the drawing of lots.

On February 22, 1889, an act of Congress had provided for the division of Dakota Territory into the two States of North and South Dakota and for their admission, together with Montana and Washington, into the Union. Section 6 of the act directed that the constitutional conventions of North Dakota and South Dakota should appoint a joint commission of at least three members from each convention, to meet at Bismarck and make "an equitable division" between the two States of all Territorial property, including the public records. This joint commission, duly appointed, actually had 14 members, 7 from each convention. It first met on July 16, 1889, in the Territorial Capitol at Bismarck. Both commissions of seven had chairmen—E. W. Camp of Stutsman County for North Dakota and A. G. Kellam of Brule County for South Dakota. The latter was elected chairman pro tem, and the joint commission proceeded to form a "permanent organization." Under the procedure agreed upon, Camp and Kellam were to chair the meetings of the joint commission on alternate days; each commission appointed its own clerk; and every motion adopted would require a majority vote, not of the joint commission but of each separate commission.

It was soon evident that, on division of the archives, there were almost as many different opinions as there were members. The first issue discussed, on the first day of deliberations, was the extent of the joint commission's powers under the enabling act. Several of the members thought there was a conflict between sections 5 and 6 of the act. Section 5 stipulated that "the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States." Section 6 stated that the commission must agree on "the disposition of all public records."¹ Some mem-

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¹ 25 Stat. 678.

bers wanted to refer the problem to four of the lawyers in the group. Mr. Camp, however, perhaps reflecting a common prejudice of the period, did not believe that the members "who are not legal gentlemen have sufficient faith in the supereminent abilities of the gentlemen of the Commission who are legal gentlemen, to accede blindly to any interpretation they might put upon this bill."² He was apparently right in his judgment, for the whole membership continued to discuss the matter. It was during this discussion that John W. Scott of the North Dakota commission gave his very inclusive definition of "archives":

Now, what are public records? It seems to me there can be but one interpretation, and that is, any of the books, papers and records remaining and belonging to the Territory of Dakota in any of the offices of the Territory—in the Auditor's office, in the Treasurer's office, the Governor's office, in all the public offices. . . . They are the archives.³

No decision was reached during that session.

At the next session the importance of making a final decision on the division of the archives arose during a discussion of claims against the Territory and how they should be paid. What records would be needed? If the originals were in one State, how would the other State operate? If transcriptions were made, would they be valid? Who would pay for the transcriptions? Some thought that the records should be transcribed and the originals kept in a vault until the Territory was divided and each State had an official authorized to receive the records; others thought that all the records should be kept in one State but that the other State should have the right to have transcriptions made, with the cost of transcription to be borne by both States. Still others thought that the originals should be divided and that transcriptions should be made of any records necessary for the State that did not have records in the original.

After much discussion, some of it distinctly acrimonious, Kellam said of the resolution clarifying the commission's powers: "I want it done with deliberation," and he suggested that two or three gentlemen "formulate what seems to be the prevailing idea with reference to these records," and report it to the afternoon's session.⁴ A special committee was thereupon appointed and the meet-

² "Journal of the Proceedings of the Joint Commission" in *Official Report of the Proceedings and Debates of the First Constitutional Convention of North Dakota*, p. 667 (Bismarck, 1889).

³ *Ibid.*, p. 670.

⁴ *Ibid.*, p. 750.

ing adjourned over the weekend. As one member remarked, "We have a recess over Sunday. Want to see the prize fight."⁵

At the Monday morning session, on July 22, the special committee (Messrs. Kellam, Scott, and B. F. Spalding) presented the following resolution:

Resolved, That it is the sense of this Joint Commission that in execution of the duty imposed upon it by the Act of Congress, under which it was created, relating to the disposition of the public records, it should provide for copies of such records as will, in its judgment, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively in their several departments, and that an agreement be made by this Commission as to the disposition of both original and copies, and that such agreement shall be reported by the committees from North Dakota and South Dakota to their respective Conventions with the recommendation that the same be made a part of the Schedule and Ordinance, to be submitted with the proposed Constitution for ratification by the people of North Dakota and South Dakota respectively.⁶

This resolution was adopted. The members of the commission had reconciled their differences by agreeing that they were authorized to divide the archives, thus fulfilling section 6 of the enabling act; and by providing that their agreement would be submitted for ratification by the people of each State, thus fulfilling section 5.

A committee of two (E. W. Caldwell and Harvey Harris), one from each commission, was then appointed to examine and report to the joint commission what books and records would have to be transcribed and the probable cost of transcribing. The two members were excused from participation in the further deliberations of the commission.

On July 24 the committee made the following recommendations:⁷

GENTLEMEN: Your sub-committee appointed to suggest an agreement for disposition of the archives, records and books of the Territory, as provided in sections five and six of the Enabling Act, would respectfully recommend:

First. That certain records as herein indicated should be transcribed—the originals to be allotted to one of the States and the copies to the other, by such arrangement as may be arrived at by the Commission.

Second. That such books, files, etc., as refer particularly to either section shall be allotted to that section, where a division of said files is possible.

⁵ *Ibid.*, p. 751. The fight was between Ike Hayes, the "Black Eclipse" of Bismarck, and Frank Gill, the colored heavyweight of Fargo, for the championship of North Dakota. Hayes won by a knockout.

⁶ *Ibid.*, p. 754.

⁷ *Ibid.*, p. 840-842.

Third. That in case of files, correspondence, etc., which shall refer to the two sections in general; that such files, correspondence, etc., shall be grouped in convenient lots, and said groups to be selected from by the respective sections alternately; the first choice to be determined by lot.

Fourth. That where transcription is recommended, the expense thereof shall be divided equally between the two sections.

Fifth. The more particular details as to this agreement are given below:

RECORDS TO BE TRANSCRIBED.

Secretary's Office: Two volumes Railroad, Deeds, Mortgages and Leases, twenty-seven volumes Foreign and Domestic Incorporation Records, three Notarial Commission Records, one General Executive Record, one Record of Appointments, one Record of Elections.

Auditor's Office: Six volumes Appropriation Records (Ledgers), one Executive Record, one volume Insurance Record, 1889, Articles of Domestic and Foreign Insurance Companies.

Treasurer's Office: Three Cash Books, one Journal, two Ledgers, two old books—Journal and Cash Book and Ledger, one Bond Register.

Governor's Office: One Requisition Record; one Executive Record.

Adjutant General's Office: Record Books.

Supreme Court Records: Record Books.

TO BE DISTRIBUTED ACCORDING TO LOCALITY.

Secretary's Office: Election Returns, Constitutional Conventions and Local Option; Application and Bonds of Notarial Commissions; Enrolled Bills of Local Application; Applications for Pardons; Articles of Domestic Incorporation; Papers relating to Organization of Counties.

Auditor's Office: Vouchers of Local Application; One Bond Register, County Bonds, South Dakota.

Treasurer's Office: One Warrant Register, to go to North Dakota; Letters to be divided by Counties, and Vouchers and Receipts the same; Bonds, Coupons paid; Railroad Report of Gross Earnings; Canceled Bonds, South Dakota.

Public Examiner: Records to go to section where located.

Boards of Agriculture: Records.

Dental Examiners: Records.

Boards of Pharmacy: Records.

Governor's Office: Census returns; requisition papers.

Commissioner of Immigration: (Nothing.)

TO BE DIVIDED BY LOT.

SECRETARY'S OFFICE.

No. 1. Correspondence, including Letter Files and Letter Books.

No. 2. Bills introduced in Legislature to date, House and Council Journals and Bill Books.

No. 3. Enrolled Bills of General Application.

No. 4. Applications and Affidavits of Foreign Loan and Building Associations.

No. 5. Proclamations of Governors.

No. 6. Oaths of Office, Commissioners of Deeds.

No. 7. Oaths and Bonds of Territorial Officials.

No. 8. Articles—Foreign Corporations.

No. 9. Articles not Specified.

GOVERNOR'S OFFICE.

No. 8½. Two volumes Visitors' Registers.

No. 9½. Official Correspondence, Letter Files and Letter Books.

No. 10½. Lincoln Memorial.

No. 11½. Articles not specified.

AUDITOR'S OFFICE.

No. 10. Warrant Register.

No. 11. Warrant Stubs and Redeemed Warrants.

No. 12. Vouchers other than those of Local Origin.

No. 13. Six volumes Insurance Records.

No. 14. Letter Files and Letter Books.

No. 15. Abstract of Assessment Roll. (One copy is with Auditor and the other is with Treasurer.)

No. 16. Annual Statements and Correspondence with Insurance Companies.

No. 16½. Articles not specified.

TREASURER'S OFFICE.

No. 17. Two Warrant Registers with Auditor's Receipts.

No. 18. Five Letter Books.

No. 19. Stub Receipts given for Railroad and other funds paid in.

ATTORNEY GENERAL'S OFFICE.

No. 20. Letters and papers.

No. 21. Commissioner of Immigration. Letters and Papers.

VETERINARY SURGEON.

No. 22. Letters and Papers.

RAILROAD COMMISSIONERS.

No. 22½. Letters and Papers.

BOARD OF HEALTH.

No. 23. Letters and Papers.

ADJUTANT GENERAL'S OFFICE.

No. 24. Correspondence, etc.

There was much discussion of the report; some members still favored having one State keep all originals and giving the other State transcriptions. In the middle of the discussion Harris dis-

cussed the historical reasons for preserving the records. He commented that there would be some records necessary for the States to have in order to begin business, that there were some that each State would want, and

a large mass of stuff we have provided shall be separated by lot, each a block, of no value whatever, neither will be wanted by either State except as a matter of history. And when the historian in ages to come goes back into all these vouchers, he will take it [*sic*] out of a large volume of stuff. That is all it will ever be used for.⁸

There was still no agreement on the report or even on whether it should be referred once again to the committee. On Saturday, July 27, it was finally decided to postpone further action until the following Monday morning, at which time the committee on records was to report on "what books and papers it will be necessary to have copied in order that the two States may inaugurate their existence."⁹

The committee reported on July 30 that the records to be copied were those in the offices of the auditor and the treasurer. The question was then raised whether a division of the records should be made before those necessary for State operation had been copied. It then developed that South Dakota had no permanent capital and consequently no safe place in which to keep the records. It would be some time before such a place would be available.

Kellam next summarized the thinking of the commission as follows:

This Commission shall agree upon a division of all records, papers, files and books not already provided to be copied, in manner following, to-wit: All records and files pertaining exclusively to institutions in South Dakota shall be the property of South Dakota, and all records and files pertaining exclusively to institutions in North Dakota shall be the property of North Dakota. All other records, etc., not provided to be copied or divided as above shall be divided and grouped into two lots, as nearly of equal importance and value as possible, but so that the records of no office shall be divided by such grouping. Each State to have one of such two groups, to be determined by lot by this Commission. All records shall remain at the Capital of North Dakota. South Dakota may at any time take possession of such of the records, files, etc., as under this agreement becomes the property of South Dakota, giving North Dakota reasonable time to make copies or abstracts thereof. If either State requires copies or abstracts of the records which under this agreement go to the other State, the expense thereof shall be borne equally by the two States. It shall also be determined by lot which State shall take the originals and

⁸ *Ibid.*, p. 851.

⁹ *Ibid.*, p. 855. The motion was thus summed up by the chairman.

which the copies of such records as are arranged by this Commission to be copied.¹⁰

"Does that omit anything?" Kellam concluded; and Caldwell's response—"I don't believe it does"—appeared to be the consensus of the joint commission. At the next session Caldwell, chairman of the committee responsible for dividing the records into two lots, recommended that lot one should consist of the records in the office of the secretary and the office of the Governor and that the other should include the records of all the other public offices which had not previously been divided. The report was accepted, and the commission proceeded to set up the rules for the drawing. Two pieces of paper, one marked "North Dakota" and one marked "South Dakota," were to be put into a hat. Whichever name was drawn would have first choice. McClarren, the clerk of the South Dakota commission, put the slips in a hat. Hayden, clerk of the North Dakota commission, was blindfolded. From the hat he drew the slip marked "North Dakota," thus giving that State the first choice. E. W. Camp, chairman of the North Dakota commission, thereupon chose lot number one—the records of the secretary and the Governor.

The agreement thus arrived at by the joint commission was contained in its final report and was submitted to the Conventions of the two States. It was accepted without debate and appeared in the North Dakota schedule as section 21.

The State Historical Society of North Dakota now has the official correspondence, letter files, and letter books of the Territorial Governor; the records of the Territorial secretary, including letter files and letter books, proclamations of the Governors, oaths of office, oaths and bonds of Territorial officials; and vouchers of the Auditor's Office. There are a few miscellaneous records of other Territorial departments and institutions. Some records, such as corporation registers, are at present in the Office of the Secretary of State. It is not known whether those records designated for transcription were in fact transcribed.

Of the 12 days on which the joint commission met, parts of 6 were devoted to the knotty problem of what to do with the archives. No other matter seemed to present so many complications and differences of opinion. The joint commission adjourned on July 31, 1889, apparently well pleased with the results of its efforts to fulfill the obligations imposed by the enabling act.

¹⁰ *Ibid.*, p. 879.