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ISSN 0003-4827

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Recommended Citation

Herriott, Frank I. "Regulation of Trade and Morals By Iowa Town Councils Prior to 1858." *The Annals of Iowa* 5 (1901), 126-134.

Available at: <https://doi.org/10.17077/0003-4827.2707>

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REGULATION OF TRADE AND MORALS BY IOWA TOWN COUNCILS PRIOR TO 1858.

BY FRANK I. HERRIOTT.

Recently in examining the territorial laws of Iowa, I came upon the following interesting provision in the act incorporating the town of Fort Madison in Lee county, passed by the legislature in 1842 and approved by Gov. John Chambers on February 17, relative to the powers of the town council—contained in the laws of 1841-42, chapter 89, section 8:

The said mayor and aldermen shall have full power to pass all by-laws and ordinances . . . to license bakers and regulate the price and weight of bread, and to prohibit the baking of the same for sale, except by those licensed; and also to pass all such by-laws and ordinances, not inconsistent with the constitution and laws of the United States or of Iowa, as they shall deem necessary and proper for the health, safety, cleanliness, and convenience of said town and the citizens thereof.

The supervision and control of the business of making bread and the regulation of the selling price of the product by an Iowa community, and the same so empowered to do by an Iowa legislature, was rather socialistic. In the middle ages the cities of Europe under the influence of the church fathers and the doctrine of "just price," regulated, or attempted to regulate, the price of bread and, indeed, all commodities, activities and relations. And in the early history of our own country colonial authorities, particularly in Canada under the *ancien regime*, made strenuous efforts to control industry and regulate prices by decree and fiat. But to find a survival of the mediæval practice duly installed in the statutes of Iowa in the middle of the nineteenth century was scarcely to be anticipated.

Since first coming upon the provisions in the Fort Madison charter noted above, I have examined the charters or articles of incorporation of a number of Iowa towns granted by the territorial legislatures of Wisconsin and Iowa, both before and subsequent to the time Fort Madison obtained its amended charter in 1842, and also charters granted by the

general assembly prior to 1858, and I have been unable to discover similar provisions except in one instance, viz: in the charters given the town of Davenport. The provision does not occur in other articles of incorporation enacted at the same sessions, and the particular reason for its inclusion in those two charters is not apparent, at least, to the writer.

A comparison of the various territorial and early state charters with respect to the powers of boards of trustees or aldermen in the matter of the supervision, regulation and control of the industries and commercial activities within a community, shows that ample powers were given the local bodies, if not by specific grants of power, then by the terms of the "general welfare" clauses, under which they could regulate not only trade and commerce but morals as well.

In the charter of the city of Detroit, Michigan, as amended in 1824, the mayor, recorder and aldermen are empowered to "make by-laws and ordinances relative to the public markets within said city," but they are expressly prohibited "regulating or fixing the price of any article or commodity which may be brought for sale." The council could, however, pass ordinances "relative to the assize of bread [and] as to the weight of the loaf." They are further empowered to license and regulate taverns, and also "all keepers of victualling houses, ordinaries, groceries," and all "shop keepers and retailers of goods of foreign growth or manufacture." It was also competent for that body to "establish, keep and maintain one or more markets" according to convenience; and the mayor, by and with advice of the council, could under regulations "license one or more porters, cabmen, and watchmen."¹

On March 28, 1836, charters were granted to three towns of Michigan—Marshall, Adrian, and New Buffalo—by the Michigan legislature. In each case the president and trustees are given "power to ordain and establish by-laws, rules and regulations for the government" of their respective com-

¹ Laws of Michigan, Vol. II, p. 223-224, Secs. 11, 15 and 18.

munities, and power to "alter, repeal or re-ordain at pleasure" as "may be thought necessary for the good government and well being" of their villages.¹

The language of those charters was followed more or less closely later in the charters of several Iowa towns.

At the first session of the Wisconsin territorial legislature in 1836—at which time Iowa was a part of Wisconsin—a general act regulating the method of the incorporation of towns and specifying the powers and jurisdictional limits of the local authorities was passed, approved December 6, 1836.² The president and trustees of towns incorporating under the act are given authority "to make, ordain and establish and execute such ordinances, in writing not inconsistent with the constitution and laws of the United States and of this Territory, as they shall deem necessary, to prevent and remove nuisances, to restrain and prohibit gambling or other disorderly conduct, and to prevent the running of and indecent exhibition of horses within the bounds of such town; to provide for the licensing of public shows, to regulate and establish markets, to open ditches and to provide for the drawing off of water, to sink and keep in repair public wells," etc., etc. (Sec. 5.)

The city of Burlington, however, was not incorporated under the general act by the Wisconsin legislature, but was given a special charter, approved January 19, 1838. The town council was given the same general powers as just listed above. There was added authority to erect market houses and to regulate the markets as well as to license peddlers, merchants, grocers, draymen and exhibitions or shows.³ In 1845 Burlington was given a new and more extensive charter. Among its duties the council was required "to preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of said city and the inhabitants thereof." It was also given the power to regulate the

¹ Laws of Michigan, 1835-36, p. 176.

² Laws of Wisconsin, 1836, No. 17, p. 43.

³ Laws of Wisconsin, 1837-38, No. 84, p. 253, Sec. 3.

keeping and sale of gunpowder within the city, and the going and coming of steamboats and water craft and the dockage and the rates of landing of goods.¹

The town of Fort Madison was likewise given a special charter by the Wisconsin legislature in an act approved January 19, 1838. The section providing for the duties of the mayor and council is almost the same as that quoted from the Michigan acts.² The first charter granted by the Iowa legislature, viz: that given the town of Bloomington, afterwards Muscatine, follows the language of the Fort Madison charter.³ The same is true of the provisions of the charters granted the towns of Salem in Henry county,⁴ of Farmington in Van Buren county,⁵ of Iowa City,⁶ and of Mount Pleasant.⁷ We find no reference whatever to the regulation of the bread-making industry in the first charter of Fort Madison nor in any of the others just mentioned.

The city of Davenport was first incorporated in 1839. The corporate powers of the local authorities were comprehensive. The mayor, recorder and trustees were authorized to "make, ordain and publish" by-laws and ordinances such as "they may deem *necessary and proper for the promotion of morality* as well as for the good regulation, interest, safety, health, cleanliness and conveniences" of the town and citizens thereof.⁸ They were also directed "to sink and keep in order public wells, remove nuisances, and regulate markets."⁹ Two years later the legislature incorporated the same provisions, in nearly the same language, in the charter for the town of Nashville in Lee county. The clause respecting the maintenance of public wells, however, was omitted.¹⁰

¹ Laws of Iowa, 1844, Ch. 54, pp. 79-80.

² Laws of Wisconsin, 1837-38, No. 86, p. 290.

³ Laws of Iowa, 1838-39, p. 248.

⁴ Laws of Iowa, 1839-40, Ch. 52, Secs. 7 and 10.

⁵ Laws of Iowa, 1840-41, Ch. 44, Secs. 7 and 10.

⁶ Laws of Iowa, 1840-41, Ch. 39, Secs. 7 and 10.

⁷ Laws of Iowa, 1841-42, Ch. 9, Secs. 7 and 10.

⁸ Laws of Iowa, 1838-39, p. 266.

⁹ Laws of Iowa, 1838-39, p. 267.

¹⁰ Laws of Iowa, 1840-41, Ch. 80, Secs. 6 and 7.

At the session of 1841-42 the legislature passed four incorporating acts for the towns of Mount Pleasant, Davenport, Fort Madison and Keosauqua. Notwithstanding they were passed within a few days of each other, those of Fort Madison and Keosauqua on the same day, February 17, 1842, the provisions of the acts differ more or less as regards the express provisions respecting the regulation of trade. The charter of Mount Pleasant follows the wording of the first Fort Madison charter. The Keosauqua charter, although for a river town with considerable river traffic, was patterned generally after the Mount Pleasant act. The town council could establish and regulate markets, and license peddlers and merchants, and establish a ferry. But they were not empowered to regulate or promote the morals of their community except to the extent of prohibiting indecent shows. The two charters granted the towns of Davenport and Fort Madison, however, agree in all essential particulars. The sections containing the provisions defining the duties and powers of the mayor and aldermen are identical. With respect to traffic those authorities were authorized to regulate "the stationing, anchorage, landing, mooring or unloading of boats, vessels, rafts, and all other water craft;" to "license and regulate drays, carts, and other vehicles kept for public hire;" "to provide for licensing and regulating shows, theatricals and other amusements;" "to regulate and establish markets, and to rent out the stalls in the same;" and to "prohibit the selling of meats, poultry, fish and game, except at the public market;" "to sink and keep in repair public wells;" and to "license bakers and regulate the price and weight of bread, and to prohibit the baking of the same for sale except by those licensed."¹

We find the same dissimilarity as to the powers of the city councils, after the admission of Iowa to statehood, in the

¹ For charter of Fort Madison see Laws of 1841-42, Chap. 89, Sec. 8, and for charter of Davenport see Chap. 57, Sec. 8; for charter of Mt. Pleasant see Chap. 9, and of Keosauqua see Chap. 122.

wording of city charters, that characterized the charters authorized prior to 1846. Thus in the Dubuque charter, approved February 24, 1847, the city council can pass ordinances "to promote the prosperity, improve the morals, order, comfort and convenience of the citizens," as well as regulate ferries, rates of drayage, dockage, &c.¹ By the charter of Keokuk (approved December 13, 1848,) the council may take measures to "improve the morals" of the city;² and the council of Cedar Rapids by its charter (approved January 15, 1849,) may "promote morality."³ The new articles of incorporation given Fort Madison on January 25, 1848, continue to be more elaborate than the articles given other cities. The same provision regarding bread making appears.⁴ But while the city may establish and regulate markets, the council is prohibited passing any ordinance that will restrict farmers selling any quantity of the produce of their farms at any price they may see fit.⁵

In 1851 a new and elaborate charter was bestowed upon Davenport. Nearly all lines of business were made subject to regulation and license by the council. In addition to all those previously mentioned, there appears the following among others: "To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work; to provide for the inspection and weighing of hay and stonecoal, the measuring of charcoal, firewood and other fuel to be sold or used in the city, to provide for and regulate the inspection of tobacco, beef, pork, flour, meal, and whisky in barrels;" to regulate "the weight, quality and price of bread to be sold and used in the city."⁶

The code of 1851 contains a chapter under which towns

¹ Laws First G. A., Chap. 82, Sec. 12.

² Laws Second G. A., Chap. 3, Sec. 13.

³ Laws Second G. A., Chap. 87, Sec. 5.

⁴ Laws First G. A., Extra Session, Chap. 64, Sec. 8.

⁵ Laws First G. A., Extra Session, Chap. 64, Sec. 8.

⁶ Laws Third G. A., Chap. 55, Art. 5, Sec. 2. In 1855 the legislature passed a general law, applicable throughout the entire State, for the inspection by public inspect-

could organize but there are no such extended powers granted to town councils.¹ Special charters continued to be enacted by the legislature. Thus, on January 23, 1857, the city of Council Bluffs obtained a charter which resembles, to some extent, the Davenport charter in the enumeration of the powers of the city council, but it does not include the business of bread-making among the businesses to be regulated and controlled.²

Our brief examination of the charters first granted Iowa towns by the territorial and early State legislatures discloses a number of interesting matters. First, there was no systematic supervision of the acts passed by the territorial or State legislatures incorporating towns prior to the adoption of the constitution of 1857. There was no uniformity in the grants of power, each community following its own bent in drafting its charter. This evil was done away with by the constitution of 1857 (Art. 3, Sec. 30). Second, large discretion was accorded local authorities in the regulation of morals and in the promotion of morality. Third, there was a disposition, at least in the minds of the legislators, to regulate and determine the conditions of manufacture and of sale of many of the commodities or services considered necessary or more or less essential in early communities. The restriction as to use by private persons, and in most cases the complete supervision and management by the communal authorities of markets, docks and wharves, and the establishment of public wells, was general, at least were powers reserved to the communal authorities. The monopoly of sites essential to trade or health by private individuals was not granted except by

ors of shingles. The inspectors, however, were county officials appointed by the courts. See Laws Fifth G. A., Chap. 26. The provision was continued in the Revision of 1860 (Chap. 32) and in the Code of 1873 (Sections 2069-2074). By the latter the inspectors were appointed by the County Boards of Supervisors. While the Code of 1897 makes provision for the inspection of shingles and lumber (Sections 3030-3033) the subject was evidently considered of little importance as the provisions were compressed considerably and the appointment of such inspectors left to the discretion of the County Boards.

¹ See Code of 1851, Sec. 665.

² Laws Sixth G. A., Chap. 102, Sec. 13.

communal consent. Certain monopolies were given private persons, as in the case of draymen. The provision in the charters of Fort Madison and Davenport, restricting the sale of meats to the public markets, was probably for a two-fold object—first, to enable the town to obtain a small tax from dealers in the way of stall rentals, and second, to enable the authorities to inspect the meats offered for sale with the minimum of trouble.

The business of bread-making evidently was a business of some concern to the people of certain communities in the territorial days. The Michigan legislature authorized the authorities of Detroit, in 1824, to determine the size and weight of loaves, but not the price. In Davenport and Fort Madison the business must have been so conducted as to arouse public antagonism, for on no other grounds would that clause, already quoted, have been drafted and included in the charters, when no other towns in Iowa had similar enactments, so far as the statute books indicate. It is an interesting survival of a practice very common in England and Europe between the twelfth and sixteenth centuries.¹

A study of the laws of Iowa prior to 1857 shows that there was a marked tendency on the part of the people to subject many of the products of industry and commodities offered for sale to governmental supervision that nowadays would be left to the natural adjustment which ordinary supply and demand tends to secure. We do not now inspect hay, coal, flour, lumber, or shingles, or examine through official inspectors each and every transaction in the sale or transfer of these commodities in the market. It is assumed that the buyer will protect himself from imposition, and that the "higgling and haggling" of the market will secure natural equity between buyer and seller. This assumption is

¹ At the writer's request the editor of *THE ANNALS* wrote to one of the first settlers of Fort Madison, Mr. Washington Galland, of Montrose, to ascertain the extent to which the early authorities actually regulated the manufacture and sale of bread. In his letter in reply Mr. Galland says: "On inquiry of some of the oldest resident bakers, and diligent search among the ordinances, I do not find that this power was ever exercised by the city authorities as authorized in its charter."

not always true, as the increasing tendency towards a government inspection of foodstuffs indicates. And while we may feel surprise at the minute inspection of nearly every article of trade which seemed to be favored in the Davenport charter the principal of supervision of industry and trade with a view to securing and maintaining sanitary conditions or purity or durability of goods, full and honest measurement, is unquestionably coming into more popular favor. As to the regulation of the price of many of the staple articles of trade, like bread, while it is not now done, there is no more objection to doing so than there is to the regulation of cab and street car fares, which is invariably done.

THERE are now twenty newspapers published in Iowa, which is an increase of seven since *The Statesman* was started a little more than a year ago. Of the twenty, nine are democratic, eight whig, one liberty, one agricultural and one religious. The press is rapidly finding its way into the great west, as the vast increase in this State in the last year indicates. There are twice as many now as there were in April 1847, which is doubling in seventeen months. Can any other state in the Union boast of as rapid an increase?—*Iowa Statesman, Fort Madison, September 23, 1848.*

THE great beauty of location and surrounding scenery at Iowa City, are not the only favors bestowed upon it by nature, as it is every day becoming more evident. When we read the account of the arrival of the first steamer at that city, we thought some mysterious spirit had been hovering over that city, and inspired the pen of him whose good fortune it was to first proclaim to the world the navigation of Iowa river, and we are now confirmed in the opinion that there is a mysterious something thereabouts, which inspires those whom it pleases with thoughts beautifully sublime beyond conception.—*Bloomington Herald, Aug. 2, 1844.*

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