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# Some Aspects of Territorial and State Legislative Control of the Municipal Government of Omaha (1857-1875)

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SOME ASPECTS OF TERRITORIAL  
AND STATE LEGISLATIVE CONTROL OF THE  
MUNICIPAL GOVERNMENT OF OMAHA (1857-1875)

By

Irene S. Zika

A thesis submitted in partial fulfilment of the  
requirements for the degree of Master of  
Arts in the University of Omaha

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## INTRODUCTION

A rapidly increasing urban population and a serious difference of opinion as to the method of controlling municipalities has given increasing importance to the problem of city government. Since legal opinion has, almost without exception, placed cities under the control of state legislatures, the study of the government of any municipality may well begin with an examination of the role the legislature has played in its regulation. The study of the laws of a community is of value for the indirect light they throw on existing political, economic, and social conditions. A knowledge of the laws governing a municipality is an effectual aid in the correct evaluation of source material, especially that found in newspapers.

This study is concerned with a discussion of the structure and powers of the municipal government of the city of Omaha under territorial and state regulation from 1857 to 1875. An attempt will be made to answer the following questions.

To what extent did the legislature control the government of Omaha?

Were there any trends discernible in the types of laws enacted or in the degrees of powers granted?

What changes were made in the framework of the municipal government?

What was the effect of the constitution of 1866 on legislative action?

Was there any evidence that the legislature acted at times in behalf of private interests rather than for the public good?

The period, 1857-1875, was chosen for study because it marks the interval beginning with the original incorporation of Omaha and ending with the adoption of the Nebraska constitution of 1875 which prohibited all special legislation relating to cities. Being concerned only with legislative action this investigation does not include a study of the administration or enforcement of state laws in Omaha. Information regarding the interpretation of the laws, too incomplete to merit space in the body of this report, was placed in the foot-notes to add interest to a rather uninteresting and complicated subject-matter.

Omaha charters and charter amendments, special laws concerning Omaha, and general state election and taxation laws in force during the period, 1857-1875, were analyzed, and developments and changes in the framework of the municipal government and in the powers of the city authorities were noted. After an introductory statement dealing with the extent of the powers of state legislatures over municipalities the main body of this report is divided into two parts; the first dealing with the municipal government of Omaha under the territorial rule, and the second with city regulation under Nebraska's first state constitution.

# I

## THE RELATION OF THE STATE AND TERRITORIAL LEGISLATURE TO THE MUNICIPALITY AND METHODS OF MUNICIPAL CONTROL

In this study the term, city, is used in its political sense. It may be defined as a local governmental organization which, having met certain municipal population requirements, is chartered as a municipal corporation in accordance with state law.<sup>1</sup>

Since the national government received no delegated powers relating to cities, the Constitution does not prohibit states from exercising more or less full control over them.<sup>2</sup> However some national restrictions do exist. No state or territorial legislature can grant powers which it does not itself possess,<sup>3</sup> powers which belong to the national government or those which conflict with the Constitution.<sup>4</sup>

The following quotations express forcefully and well the exact legal status of a municipality. "As concerns the legal position of cities the decisions of the courts are very definite. Whether there shall be cities or not is for the legislature alone to decide . . . . The boundaries of cities,

<sup>1</sup> Harold Zink, Government of Cities in the United States (New York, 1939), 1.

<sup>2</sup> Ibid., 37.

<sup>3</sup> Thomas Harrison Reed, Municipal Government in the United States, Revised Edition (New York, 1934), 35.

<sup>4</sup> Zink, Government of Cities, 37, 38.



their powers and the forms of their government may be established and changed by the legislature . . . . If there are no constitutional provisions to the contrary their control is wellnigh unlimited.<sup>5</sup>

Municipal corporations owe their origin to and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitations on this right so far as the corporations themselves are concerned. They are, so to phrase it, mere tenants at will of the legislature.<sup>6</sup>

Influenced by varying distributions of populations, economic conditions, tradition, and political bias of the states themselves,<sup>7</sup> the different state legislatures adopted no fixed policy in regard to the cities but dealt with each problem in opportunist fashion as it rose.<sup>8</sup> State legislatures created cities one by one and gave each a special charter, then proceeded year by year to add amendments to those charters.<sup>9</sup> Local elections, taxation, public improvements, the form of city

<sup>5</sup>William Anderson, American City Government (New York, 1925), 47, 48.

<sup>6</sup>Ibid., 48. The United States Supreme Court quoting from Judge Dillon's opinion in the City of Clinton v. Cedar Rapids and Missouri River Railroad Company (1868) 24 Iowa 455.

<sup>7</sup>Ibid., 40.

<sup>8</sup>William Bennett Monroe, The Government of American Cities (New York, 1915), 36.

<sup>9</sup>Zink, Government of Cities, 42.

government, the duties of various officers and the procedures of the several departments were regulated by state law-makers. Private interests were granted special privileges or franchises for supplying cities with water or gas or horse car systems.<sup>10</sup> "Legislative meddling with municipal affairs probably reached its highest point in the older states between about 1850 and 1880, and in the newer states at a later period. It still flourishes in many places despite all attempts to suppress it."<sup>11</sup>

Attempts to curb the control of the legislature over municipalities were made during the decade, 1870-1880. Nebraska in particular was influenced for a time<sup>12</sup> by the decision of Judge Dooley of the Michigan supreme court in the case of the People ex rel Le Roy v. Hurbut (1871) 24 Michigan 44, in which he declared "local government is a matter of absolute right and the state cannot take it away."<sup>13</sup> This doctrine was upheld in the Nebraska supreme court in the case of Attorney General v. Moore 55 Nebraska 480, but later in 1901 the court reversed its position in Redell v. Moore 63 Nebraska 219, saying the city was a creature of the legislature, having no rights except those bestowed upon it by the legislature, which could, at any

<sup>10</sup>Anderson, American City Government, 43.

<sup>11</sup>Ibid., 45.

<sup>12</sup>Charles M. Kneier, City Government in the United States (New York, 1934), 50, quoting H.L. McBain, Doctrine of an Inherent Right of Local Self-Government, 13-15.

<sup>13</sup>Anderson, American City Government, 46.

time it saw fit, take them away.<sup>14</sup>

States of the United States, except for Louisiana, provide that cities shall be a part of the counties in which they are located.<sup>15</sup> The Douglas County authorities and the municipal government of Omaha have been given from time to time varying degrees of power in the field of taxation, regulation of elections and in the administration of justice within the city of Omaha, thus forming a joint agency to carry out the will of the state.

"The charter of a city is the written instrument authorized or granted by the state, by virtue of which the city is given its corporate existence, its powers, and a certain form of government."<sup>16</sup> A city charter may be a special formal grant of the legislature for a certain city or it may consist of a general law applying to cities of a certain classified type.<sup>17</sup> In a broad sense the charter includes the original grant, subsequent amendments, general laws on municipal affairs, general laws affecting the entire state in the absence of any exceptions made in the case of municipalities, special laws applying to individual cities, provisions of the state constitution dealing with cities, and court decisions interpreting the laws. Ordinarily a charter specially granted, contains the name of the city, provisions of incorporation, boundaries, general descrip-

<sup>14</sup>Kneier, City Government, 50.

<sup>15</sup>Zink, Government of Cities, 96.

<sup>16</sup>Anderson, American City Government, 107.

<sup>17</sup>Zink, Government of Cities, 112.

tion of powers granted, the framework of the city government, provisions for the creation of administrative departments, and regulations as to taxation, appropriations, and indebtedness.<sup>18</sup> The legislature controls the city: by its charter which may be special or general; by laws which may be special, applying to an individual city, or general, applying to cities of a certain class; by general laws affecting the whole state and therefore applicable to municipalities in the absence of any ruling to the contrary.

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<sup>18</sup>Ibid., 114, 115.

## II

### LEGISLATIVE CONTROL OF THE MUNICIPAL GOVERNMENT OF OMAHA 1857-1867

#### CORPORATE POWERS

The first special charter granting Omaha a municipal government was passed on February 2, 1857 by the territorial legislature of Nebraska.<sup>19</sup> The city was "made a body corporate and politic . . . invested with all the powers and attributes of a municipal corporation . . . [to] sue and be sued, plead and be impleaded, complain and defend in any court of record . . . [to] have a common seal, take, hold, purchase, lease, convey, and dispose of any real, personal, or mixed estate for use of said corporation."<sup>20</sup> These corporate powers remained in force until 1869.<sup>21</sup>

#### BOUNDARIES

The territorial legislature fixed the boundaries of Omaha in the charter of 1857, altered them in the charter of 1858, and again by amendment in 1861. The charter of 1865 retained the 1861 lines<sup>22</sup> but another amendment changed them in 1867 just a few weeks before the constitution of 1866 went into effect.

<sup>19</sup>John P. Bartlett, ed., The Revised Ordinance of the City of Omaha: also the City Charter, Former Charters of the City and Amendments thereto: together with all State Laws Relating to the City (Omaha, 1872), 214. Hereinafter referred to as Bartlett, Revised Ordinances.

<sup>20</sup>Nebraska Session Laws (1857), 193.

<sup>21</sup>Bartlett, Revised Ordinances, 214, 223, 233.

<sup>22</sup>Ibid., 230.

## FRAMEWORK OF GOVERNMENT

In 1857, the mayor and a board of nine aldermen comprised the legislative authority for Omaha. Other elective officers included a recorder, an assessor, a treasurer, and a marshal. They were to be elected annually for a term of one year, and were required to take an oath to support the Constitution of the United States and the laws of the territory of Nebraska in the faithful performance of their duties. Any legal voter of the city and a resident thereof for one year next preceding the election was qualified to hold office. The treasurer, recorder, assessor, and marshal were required to give bond to be approved by the council and filed with the mayor. The charter of 1858 reduced the city council to a board of six aldermen and dropped the recorder from the list of elective officials.<sup>23</sup>

### ELECTIVE OFFICERS OTHER THAN THE COUNCIL: The Mayor

According to the charters granted to Omaha previous to the constitution of 1866 the mayor was to sign and seal commissions, licenses, and permits granted by the city council. He was presiding officer of the city council with the power to cast a decisive vote in case of a tie. As conservator of the peace he was the chief law enforcement officer and ex officio a justice of the peace with exclusive original jurisdiction over violation

<sup>23</sup>Ibid., 234.

of city ordinances and offenses against territorial law committed within the city limits. His civil jurisdiction was limited to the city as that of justices of the peace was limited to townships and he was not to be disqualified as a judge by any proceedings being in the name or on behalf of the city. His compensation was limited to the fees he received when acting as justice of the peace until 1865 when he was granted a salary of five hundred dollars a year.

#### The Recorder

To the recorder was given the duty of keeping a journal of the proceedings of the city council, of countersigning ordinances, and of making out the tax list. He was to perform any other duties assigned to him by ordinance. His fees were not to exceed those allowed county or township officers for similar services. The office of recorder was changed to "Clerk of the Council" in 1858 and the position was made appointive.<sup>24</sup>

#### The Treasurer and the Assessor

The duties of the treasurer and the assessor were controlled by the council. The assessor was allowed such fees as were received by county or township officers for like services. Nothing was mentioned in any of the charters about compensation for the treasurer.

<sup>24</sup>Victor Rosewater in his "Municipal Government in Nebraska," Nebraska State Historical Society's Proceedings and Collections, Second Series, Volume I., said that the office of city clerk had been the buffet of legislative deference to charter committees, being elective in 1857, appointive from 1858 to 1871, elective between 1871 and 1877, and appointive from 1878 until 1883 when it was made elective again.

### The Marshal

The marshal under the first special charter was conservator of the peace, chief executive officer of the mayor's court, and collector of taxes. He had the same authority in the city as the sheriff had in the county with the privilege of appointing and discharging deputies, subject to the approval of the council. He could execute processes in any part of the county for offenses against the city and territory, for which he received the same fees as a constable. He was authorized to collect taxes by levy and sale if necessary and he had the same power as the proper county official to execute and deliver to the purchaser a deed in sale of property at auction for taxes.<sup>25</sup> In the charter of 1858 his duties as collector were given to a separate official appointed by the council.<sup>26</sup>

### THE COUNCIL: Organization

The charter of 1857 specified that the city council should be composed of nine aldermen. Subsequent charters reduced the number to six. A majority of the council constituted a quorum, and the mayor, when present, was the presiding officer with the power of casting a vote in case of a tie. In his absence a member of the council was appointed temporary presiding officer. The council was the judge of the qualifications and election of its own members. It could hold meetings as it saw fit with the one stipulation, that they must be pub-

<sup>25</sup> Nebraska Session Laws (1857), 194, 197.

<sup>26</sup> Bartlett, Revised Ordinances, 225.



lic, and it had the power to compel the attendance of its members. The charters authorized the council to determine the rules of its own proceedings and required that a true record thereof be kept, open to the inspection of any citizen. The council was empowered to fill vacancies in its membership until the next election. No member of the council was eligible to any office, nor could he be interested directly or indirectly in any contract, job, or work to be performed by the city. The charter of 1856 stated that no alderman should receive any pay or fee for ordinary services; however, in 1865 he was allowed a salary not to exceed one hundred dollars a year.<sup>27</sup>

#### Legislative Functions

As the legislative authority of the city the council could pass ordinances under its own rules. These were signed by the mayor, attested by the city clerk, and recorded in a book kept for that purpose. Before going into effect ordinances were to be published for ten days in one or more newspapers printed in the city.<sup>28</sup>

#### Appointment of Officials

The charter of 1857 states,

The Council may appoint in such manner as it determines during its pleasure, Street Commissioner, Clerk of the Market, City Supervisors, Health Officers, and such other officers as it may deem

<sup>27</sup> Ibid., 237.

<sup>28</sup> Ibid., 217.

advisable, and may prescribe their duties, powers, and qualifications, and may prescribe for the election of any such officers by the citizens<sup>29</sup>

The next year the new charter added the city clerk and the collector to the list of appointive officers with the restriction that they give bond and take an oath of office. It was not until 1865 that the council was authorized to allow fees for city officials not provided for in the charter. The council could fill vacancies in any of the elective offices by appointment but were required to name one of their own number to fill the vacancy caused by the absence or disability of the mayor. In the charter of 1856 the council by a two-thirds majority vote of the entire membership was given the authority to suspend any elected officer by impeachment for malfeasance in office, which suspension would constitute a vacancy. The council was empowered to prescribe duties for any elective or appointive official not inconsistent with the law.

### General Welfare

To insure the general welfare the council was " . . . invested with authority to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, and drunkenness, and indecent behavior in public places and in general to provide for the safety and prosperity and good order of the city, and the health, morals, comfort and convenience of the inhabitants . . ."<sup>30</sup> More specifically

<sup>29</sup>Ibid., 218.  
<sup>30</sup>Ibid., 218.

the charter went on to state that the council might organize fire companies and provide them with fire engines, hose and other apparatus; license and prohibit billiard tables, ball and ten pin alleys and saloons; license and regulate the retailing of intoxicating liquors; regulate the keeping and sale of gunpowder; govern the system of cartage and drayage and issue licenses for hacks and omnibuses; grant ferry licenses within the corporate limits of the city; order the drainage or filling of lots containing stagnant water; prohibit hogs and other animals from running at large; license and prohibit all shows and theatrical performances, scientific exhibitions excepted. In 1865 the council was given control of all goods sold at auction within the city.

#### Financial Control

In the original grant the council was empowered to pay a salary to the recorder, the marshal, and the assessor. In 1856 the collector was added to the list. In 1865 the mayor and aldermen could receive a salary the limits of which were specified by the charter. The charter of 1865 granted the council additional power over salaries by permitting it to " . . . allow such fees for the services of city officers not provided for in this act as it shall deem right."<sup>31</sup>

The council was given licensing power over certain occupations and exhibitions and was allowed to impose a fine not to exceed one hundred dollars for each violation of a city or-

<sup>31</sup> Ibid., 237.

dinance. Special assessments could be levied against real property for the construction and repair of adjoining sidewalks and for the draining of stagnant water.

In 1857 the council was authorized to levy and collect taxes not exceeding one-half of one per cent on all taxable property within the city "according to the laws of the territory."<sup>32</sup> In the charter of 1858 the council was given fuller power over taxation. They could levy the taxes "as they may prescribe by ordinance."<sup>33</sup> In the amendment to the charter in 1864 the council retained power over the type of property taxed but was limited by the legislature as to the amount levied. The amendment read as follows: "The Council is authorized to levy and collect taxes not to exceed five mills on the dollar valuation on all real and personal property subject to taxation under the general laws in said city for the purpose of defraying the current expenses of said city."<sup>34</sup> In this same amendment the council was further authorized to levy a special tax of two mills on the assessment return for any one year for the purpose of improving streets, repairing and building bridges and establishing fire companies. This tax was payable only in United States money or its equivalent. The charter of 1865 limited the council to the taxation of such property as was permissible under the laws of the territory.

<sup>32</sup>Ibid., 220.

<sup>33</sup>Ibid., 228.

<sup>34</sup>Ibid., 231, 232.

The charters ordered the council to provide for the keeping of public money and the manner of disbursing it. All claims against the city were to be audited. The council was to publish annually a complete statement of the financial condition of the city. The charter of 1865 specified the day on which the statement was to appear in print with a provision that it be signed by the mayor, the clerk, and a majority of the council.<sup>35</sup>

#### Administrative Functions

The city council was given title to and authorized to have full control of the streets, alleys, public grounds, wharves, squares, parks, and commons of the city. Exclusive authority was granted to the council to establish the grade of all streets and alleys but provision was made for changing the grade upon the petition of the owners of two-thirds of the value of the property on both sides of the street. The council had the right to cause sidewalks to be constructed on city property and to require owners of lots to pave and repair sidewalks adjoining their property. In 1864, in an amendment to the charter of 1858, the council was granted power to order the street commissioner to build sidewalks when the property owners requested to do so neglected to comply. The cost of such construction was to be a perpetual lien against the property. After thirty days notice in a newspaper the street commissioner could sell the lots involved to pay

<sup>35</sup>Ibid., 242.

the cost of sidewalk construction under such regulation as the council might prescribe. Property thus sold was subject to redemption for six months by payment in lawful money of the selling price of the property with interest not to exceed fifty per cent per year. The charter of 1865 limited the selling price of property sold to pay for the construction of sidewalks to the amount of the assessment against it and costs. Redemption was provided for within six months after the sale by the payment of the assessment, all costs, and interest at the rate of forty per cent per year on the total amount.

In 1865 the council was given more specific powers over streets, alleys, and public squares.

The Council shall have power and authority to purchase, lay out, establish, open, inclose, improve, abolish and dispose of, and keep in repair, all public squares or grounds, and to lay out, open, alter, abolish, widen, extend and establish grades, pave, improve and keep in repair streets, lanes, avenues, and alleys within the limits of said city.<sup>36</sup>

Since the above powers implied the right of eminent domain this section went on to state that no private property should be taken for any purpose contemplated in this act without due notice and compensation to the owner. The council superseded the county road supervisor within the corporate limits of the city and could order the residents of the city, subject by law of the territory, to do work on the roads and highways, to do or cause to be done the same kind of work on the streets of the city.

<sup>36</sup>

Ibid., 242.

## ADMINISTRATION OF JUSTICE

In 1857 the mayor's court was granted jurisdiction over offenses against territorial law committed within the city limits and exclusive jurisdiction over violations of city ordinances. The civil jurisdiction of the court was limited to the city as that of justices was to townships.<sup>37</sup> Appeals to the district court were allowed in the same circumstances as in a justice court. The laws of the territory applicable when carrying into effect a judgment of a justice of the peace were to apply to judgments in cases of violation of city ordinances. The marshal, the chief executive officer of the mayor's court, exercised powers and duties like those of a sheriff and a constable in the county. The city council was authorized to impose a fine of any amount, not exceeding one hundred dollars, or a sentence of imprisonment, up to fifteen days in the county jail at the expense of the city, for a violation of a city ordinance. In 1858 the penalty was increased to ninety days imprisonment, which could include hard labor, at the mayor's discretion. The charter of 1865 gave justices of the peace of the precincts in which Omaha was located the title of "conservators of the peace" within the city and they were given concurrent jurisdiction with the mayor for all violations of city ordinances. They

<sup>37</sup>The word "townships" was undoubtedly an error. The jurisdiction of justices of the peace was to be coextensive with their counties. "Code of Nebraska", Chapter III, Section 1, Nebraska Session Laws (1857). Subsequent charters corrected the error replacing "townships" with "counties".

were to receive only such fees as were allowable by territorial law. No money was to be paid to them from the city treasury.

#### ELECTIONS

In 1855 any free white male of twenty-one who had been an inhabitant of the territory for forty days and of the county for twenty days could vote.<sup>38</sup> In 1856 the law was changed to include those who had filed their declarations of intention of becoming citizens.<sup>39</sup> The charter of 1857 specified that any legal voter of the territory, a resident of Omaha for sixty days next preceding a city election was a citizen of the city and was entitled to vote at the elections therein. The election of city officials was to be conducted in a manner similar to township elections. Voters who were challenged could qualify by oath as in township elections.

The first election under the charter of 1857 was called by the probate judge of Douglas County. The polls were to open between the hours of eight and ten in the morning and to close at four in the afternoon. Returns from the first election were to be made to the county clerk who was to notify the respective candidates of their election. Proclamations of future elections were to be made by the mayor ten days before the date set by the council, giving the time, place, and officials to be elected. Returns were to be sent

<sup>38</sup>Nebraska Session Laws (1855), 175.

<sup>39</sup>Nebraska Session Laws (1856), 50.



to the president of the council who would cause an abstract of the vote to be recorded in a book kept for that purpose. Election laws remained the same in the charters of 1857, 1858, and 1865.

In 1861 the offices of the judges and clerks of election were made elective instead of appointive.<sup>40</sup> Their duties were to open the ballot boxes for inspection, take the ballots from the voters and deposit them, and to maintain order during the election.<sup>41</sup> In 1864 the judges of election were ordered to place a number on each ballot corresponding to the number given each voter at the time of voting. No judge was to disclose the names of candidates voted on by any voter under penalty of a one hundred dollar fine.<sup>42</sup>

#### TAXATION

The charter of 1857 provided that the marshal, the official collector of taxes, give twenty days' notice of the assessment and levy of taxes, and the rate thereof, together with a general description of the property taxed, in a newspaper printed in the city. During this period any person aggrieved by the assessment could appear before the council for correction of any injustice. After the twenty-day period the recorder was to make

<sup>40</sup>Judges of election had been appointed by the probate judge of the county and they in turn appointed their clerks. Nebraska Session Laws (1855), 175. However in 1860 the judges of election were appointed by the city council, two for each ward. Council Proceedings, February 16, 1860.

<sup>41</sup>Nebraska Session Laws (1861), 67.

<sup>42</sup>Nebraska Session Laws (1864), 111.

out the tax list. The marshal, with a written authorization from the mayor was to collect the taxes by levy and sale if necessary. Taxes on real property were declared a lien and if they remained unpaid for six months after publication of the notice of the tax the property could be sold. It was provided that tax sales were to be at auction, thirty days' prior notice having been published. The property was to be awarded to the highest bidder who was defined as the one who paid the amount due for the least quantity of land. The marshal was authorized to execute and deliver to the purchaser a deed in the name of the territory which had the same value as the deed given by the proper county official for the purchase of land for state taxes. Except for minor changes these regulations remained in force until 1864 when the charter of 1858 was amended.

This amendment stated that the council was to hold at least three meetings as a board of equalization, giving one week's public notice in advance. It provided that the council could, at its discretion, remit the penalty in cases where persons refused to render a list of property held, or to be sworn thereto, if a satisfactory excuse could be given. In citing the above list the law-makers were evidently referring to the territorial law which provided for the method of assessing real and personal property.<sup>43</sup>

<sup>43</sup>The method by which assessments were made at that time is in Nebraska Session Laws (1857), 151-152.

No provision was made in the charters for redemption of property sold for taxes, except in cases of special assessments, so undoubtedly territorial law regulating action in such contingencies, applied.<sup>44</sup> In 1858 a law was passed stating that whenever a collector of city tax was unable to make the tax by distress and sale of personal property, the collector must send the delinquent tax list to the county treasurer, who would take charge of the sale of land and credit the city for the amount of taxes so collected.<sup>45</sup> This provision was included in the charter of 1865.<sup>46</sup>

#### SPECIAL LAWS APPLYING TO OMAHA

Several special laws directly concerning Omaha were passed during this period. A few confirmed individual titles to real estate,<sup>47</sup> fire companies were incorporated,<sup>48</sup> and the council was permitted to provide for a city prison.<sup>49</sup> In 1866 an act was passed authorizing and directing the council to issue bonds to fund the warrants of the "City of Omaha". Ten year coupon bonds bearing seven per cent interest were to be exchanged for all outstanding city warrants except those issued in lieu of

<sup>44</sup>Land sold for taxes was subject to redemption by the payment of the selling price, fees, costs, and any subsequent taxes paid, with interest at twenty-five per cent per year. Nebraska Session Laws (1857), 157-158. In 1858 the interest rate was raised to fifty per cent. Nebraska Session Laws, 241. Later in 1860 it was reduced to forty per cent. Nebraska Session Laws, 119.

<sup>45</sup>Nebraska Session Laws (1858), 242.

<sup>46</sup>Bartlett, Revised Ordinances, 240.

<sup>47</sup>Nebraska Session Laws (1858), 48, 305.

<sup>48</sup>Bartlett, Revised Ordinances, 160-162.

<sup>49</sup>Ibid., 165.

"Omaha City Scrip". These bonds were to be redeemed by a special two and one-fourth mill levy to be paid in lawful money of the United States or in coupons from the bonds. The City treasurer was authorized to give priority in canceling the bonds to those purchasers who offered to surrender them at the lowest price. Persons found guilty of fraud in connection with warrant or bond transactions were subject to penalties of a fine ranging from five hundred to five thousand dollars and imprisonment from six months to three years. City officials wilfully and knowingly failing to perform the duties required by this act were subject to a fine of from fifty to five hundred dollars or imprisonment of from ten to sixty days or both. The city council was prohibited from issuing warrants in excess of three-fourths of the amount of tax levied for any current year, exclusive of the special tax provided for in this act. The aggregate amount of warrants issued during the year was rationed according to three months periods. Any amount issued in excess of that specified by law could be collected by civil action from the official who signed the warrant. This law also provided for the improvement of streets if the owners of two-thirds of the assessed value of abutting real property petitioned for it. Special assessments were to be levied ratably against each lot by the city clerk to cover the cost.<sup>50</sup>

<sup>50</sup> Ibid., 176-182.

Five special laws relating to Omaha were passed in February, 1867 just a few weeks before the first state constitution went into effect. The first law, approved on February 8, changed the boundaries.<sup>51</sup> The other four, passed on February 18, dealt with a variety of subjects. The Omaha Horse Railway was incorporated and given the exclusive right for fifty years "to build . . . and operate horse railways within the city of Omaha and five miles adjacent thereto . . ." <sup>52</sup> At the end of the fifty year period the road and all equipment were to revert to Omaha. The second act required the payment of judgments recovered against municipal corporations, by the levy of special taxes if necessary. If the officials responsible for levying the taxes failed to do so they would become personally liable for the payment of the judgments.<sup>53</sup> Another law provided for the payment of certain bonds issued by the city of Omaha. It required the city council to levy and collect annually a tax sufficient to pay the interest and principal on bonds issued for the benefit of the Cedar Rapids and Missouri River Railroad Company. Any official wilfully failing to comply with the provisions of this act was liable to a fine of from fifty to five hundred dollars or imprisonment in the county jail from thirty to ninety days.<sup>54</sup> The last act empowered the city of Omaha to raise any amount of money up to one hundred thousand dollars to be expended at the discretion of the city council in securing a railroad

<sup>51</sup>Nebraska Session Laws (1867), 43.

<sup>52</sup>Bartlett, Revised Ordinances, 168-171.

<sup>53</sup>Ibid., 171-173.

<sup>54</sup>Ibid., 185-187.

80.  
bridge across the Missouri River at Omaha. This money was to be raised by a tax specially levied and collected, with special rules applying to the sale and redemption of property on which the tax remained uncollected. The city collector was chargeable with the whole amount of the tax and was empowered to collect it by forced sale if necessary.<sup>55</sup>

#### THE CONSTITUTION OF 1866

The movement for statehood in Nebraska arose from the political issues of the Civil War. Nebraska was strongly Republican and there was a call for more Republican senators and congressmen in Washington.<sup>56</sup> On April 19, 1864 Congress passed an enabling act permitting the people of Nebraska to form a constitution and a state government.<sup>57</sup> The constitution of 1866 was drafted in great haste by a legislative committee and rushed through both houses of the territorial legislature. It was the barest framework of government, providing for the fewest possible offices at the lowest salaries and with most meager functions in order to forestall objections to the increased expense.<sup>58</sup> Opposed by the Democratic Party and by the more general desire to avoid increased taxation the constitution was ratified by the people by a very narrow margin on June 3, 1866.<sup>59</sup> Congress accepted the new constitution on one "fundamental condition, that within the

<sup>55</sup>Ibid., 182-185.

<sup>56</sup>Nebraska Blue Book (1938), 126.

<sup>57</sup>Nebraska Blue Book (1901-1902), 40.

<sup>58</sup>Nebraska Blue Book (1938), 126.

<sup>59</sup>For adoption of the constitution, 3938. Against, 3838.  
Nebraska Blue Book (1899-1900), 105.

State of Nebraska there shall be no denial of the elective franchise, or of any right to any person, by reason of race or color, excepting Indians not taxed . . . ."<sup>60</sup> A special session of the territorial legislature complied with the provisions imposed by the national law-making body, and on March 1, 1867, President Johnson proclaimed Nebraska a state.

The constitution of 1866 was inadequate from the beginning and agitation for a new constitution<sup>61</sup> began almost immediately.<sup>62</sup> However it did away with the pernicious system of granting special charters to cities and directed the legislature to provide for the organization of cities and villages by general laws only.<sup>63</sup> The constitution required the legislature to restrict municipal power of taxation, assessment, borrowing money, contracting debts, and loaning credit so as to prevent the abuse of such power. However it should be noted that the denial to the state legislature of the power of passing special acts conferring corporate powers on cities and villages did not prevent the enacting of special laws of other types relating to municipal corporations.

<sup>60</sup>Ibid., 43.

<sup>61</sup>Another constitution drafted in 1871 was rejected by the people because of a provision taxing church property exceeding five thousand dollars in value, and a decree that the railroad right of way should revert to its former owners when no longer used for railroad transportation. A third reason why the constitution was rejected was a clause prohibiting local aid to railroads. Nebraska Blue Book (1938), 127; Rudolph A. Knudsen, Regulation of Railroad Rates in Nebraska, 1867-1906, unpublished thesis (Lincoln, 1937), 2.

<sup>62</sup>Addison E. Sheldon, ed., Nebraska Constitutions of 1866, 1871, and 1875 (Lincoln, 1920), 3.

<sup>63</sup>Rosewater, loc. cit., 77.

### III

## LEGISLATIVE CONTROL OF THE MUNICIPAL GOVERNMENT OF OMAHA 1867-1875

### THE CHARTERS OF THIS PERIOD

Among the legislative purposes enumerated in the call for a special session of the new state legislature in the spring of 1867 was that of providing for the organization of cities and incorporated villages; but nothing was accomplished under this heading until the first general municipal incorporation act became law in 1869.<sup>1</sup> "Since 1869 there has been almost continuous amendment by the legislature of Nebraska municipal charters as laid down in the general act of incorporation."<sup>2</sup> Following the trend of state legislation of the times,<sup>3</sup> the charters grew longer and more detailed. There was a constant increase in the number of specifically mentioned powers accompanied by a corresponding number of minute restrictions and limitations on the exercise of these powers.<sup>4</sup>

The general acts of incorporation for municipalities passed subsequent to the constitution of 1866 defined cities of various classes and governed them accordingly. But many of the advantages of general incorporation were lost by changes in laws defining the classes of cities, since these changes

<sup>1</sup>Rosewater, loc. cit., 78.

<sup>2</sup>Addison E. Sheldon and William E. Hannon, Nebraska Municipalities (Lincoln, 1914), 9.

<sup>3</sup>Anderson, American City Government, 121, 122.

<sup>4</sup>Rosewater, loc. cit., 85.



were "made solely for the purpose of either including or shutting out particular cities, and to that extent were invasions of the constitutional decree against special legislation."<sup>5</sup>

The city of Omaha was well satisfied with the charter of 1865, having had a part in its formation.<sup>6</sup> After the constitution of 1866 had been adopted the city council offered the following resolution:

Be it resolved by the City Council of the City of Omaha; That we are opposed to any radical change being made by the legislature of this Territory in the provisions of the charter of this City (except in extending its boundaries) believing said charter confers ample powers and privileges upon the City to enable it to protect its citizens in their rights of person and property and to carry forward such works of internal improvement as from time to time shall be deemed beneficial to the interests of the citizens of said City and advance its growth and prosperity and most respectfully but earnestly request the members of the Legislature from this County to use their best endeavor to prevent the passage of such laws as shall work any such changes as is [sic] above alluded to."<sup>7</sup>

Nevertheless a new charter was approved on February 8, 1869 by the legislature and it was evidently accepted with some dismay by the city of Omaha. The question of its validity was discussed in council meeting. Judge Sahler addressed the council by request and assured the members that the law was binding upon the city.<sup>8</sup>

<sup>5</sup>Such changes were made in 1869, 1871, and in 1873 of the period covered by this investigation. Later changes listed by Rosewater occurred in 1881, 1883, 1885, 1887 and 1889. Ibid., 80.

<sup>6</sup>Council Proceedings, December 14, 1864; December 28, 1864; January 4, 1865.

<sup>7</sup>Ibid., January 23, 1867.

<sup>8</sup>Ibid., February 18, 1869.

The charter of 1869, reported to be an almost verbatim copy of the law upon the subject in Ohio,<sup>9</sup> was an amateurish, repetitious, ill-organized piece of work. Among the corporate powers listed was that of providing for the weighing of hay, coal, and other articles offered for sale in the city; yet definite powers and restrictions regarding the control of city finances were omitted.<sup>10</sup> A long list of corporate powers was delegated to the municipal government, then practically the same list was repeated and classified as belonging to the city council. The city was forced to resort to state courts to collect delinquent taxes. The appraisal and acquisition of private property to be condemned for public use was also a subject of court procedure and decision.

It was thought necessary to revise the city ordinances to make them conform with the new charter.

In July, 1869 the judiciary committee of the city council recommended that a committee of three lawyers be appointed to compile and codify the ordinances of the city, and to point out which ones were illegal.<sup>11</sup> The charter had been in effect

<sup>9</sup>Omaha Weekly Herald, January 15, 1869. It was later discovered that the charter was not a copy of that of Cleveland, after which it was supposed to be patterned.

<sup>10</sup>During the period between the ratification of this charter and the amendments taking effect in 1870 the council levied taxes and collected them in accordance with the provisions of the charter of 1865. Council Proceedings, passim.

<sup>11</sup>Council Proceedings, July 13, 1869.

only a few months when the district court was asked to decide whether the city council or the mayor had the right to appoint policemen.<sup>12</sup> Evidently the court decided in favor of the council for they continued to elect the members of the police force.<sup>13</sup> The editor of the Omaha Weekly Herald called the charter the "most confused, confounded jumble that ever took the shape of municipal law."<sup>14</sup>

In October the council appointed a committee of three of its members to suggest amendments to the charter in the proposed special session and to ask the governor to place amending the charter on the agenda in his proclamation.<sup>15</sup> The following February the committee reported on the necessary amendments. The committee included in their report a memorandum to the effect that there were other amendments that ought to be made, but they suggested that the incorporation of them in their reports and their adoption by the city council would probably endanger their passage. So the council directed that a copy of the proposed amendments be sent to a representative with the request that he procure their adoption.<sup>16</sup> The charter of 1869 was extensively amended in the legislature of 1870.

However agitation for a new charter was begun. By unanimous consent Judge Hescall addressed the council on the subject

<sup>12</sup>Omaha Weekly Herald, June 16, 1869.

<sup>13</sup>Council Proceedings, 1869, passim.

<sup>14</sup>Omaha Weekly Herald, June 16, 1869.

<sup>15</sup>Council Proceedings, October 29, 1869.

<sup>16</sup>Council Proceedings, February 2, 1870. The amendments were not listed in the council proceedings.

of the new charter to be submitted at the next regular meeting of the legislature. A resolution was made to meet with members-elect of the legislature to consider the proposed charter.<sup>17</sup> The charter was drawn up by the city solicitor<sup>18</sup> and considered section by section in several special meetings of the city council. After the charter was shaped to the satisfaction of the council steps were taken to secure its passage. The council appointed a committee to go to Lincoln to lobby for the act, and sent copies of the bill to Omaha's representatives with a request that they try to secure its approval by the legislature.<sup>19</sup>

The charter of 1871 was adopted largely in the form suggested by the council, but it was amended four days after it went into effect. The next year in October the editor of an Omaha newspaper stated that the charter was insufficient with reference to the compulsory process by which special taxes for the construction of sidewalks could be collected, and suggested that it be amended. A few days later the council authorized the mayor to employ attorneys to prepare a new charter to be submitted to the council before the legislature met.<sup>20</sup> In 1873 the legislature approved another charter and in 1875 amended

<sup>17</sup>Ibid., December 27, 1870.

<sup>18</sup>He was J. P. Bartlett, editor of the book to which so much reference is made in this study.

<sup>19</sup>Council Proceedings, January 13, 1871.

<sup>20</sup>Ibid., October 29, 1872.

to such an extent that it was called the charter of 1875 in authorized publications. Neither the council proceedings or the city newspapers made any important comment on the charters after 1872.

#### CLASSIFICATION OF CITIES

According to the charter of 1869 cities of the first class were defined as those "which at the last Federal census had, or now have, three thousand<sup>21</sup> qualified voters under the provisions of the election laws of the state as shown by the registry of qualified voters".<sup>22</sup> The charter then went on to state that "Whenever it shall appear to the satisfaction of the governor that any city within this state contains the number of qualified voters he shall issue his proclamation announcing that said city is entitled to all the rights and privileges, and subject to all the restrictions and limitations of this act, the same as if specifically named therein."<sup>23</sup> Having ascertained that Omaha possessed more than three thousand registered voters in the October, 1868 elections, Governor Butler, on February 10, 1869, proclaimed Omaha a city of the first class.<sup>24</sup>

The charter of 1871 defined cities of the first class as all those previously classified as such and all cities of

<sup>21</sup>According to the Federal census of 1860 Omaha had an entire population of only 1883 inhabitants.

<sup>22</sup>Bartlett, Revised Ordinances, 243.

<sup>23</sup>Ibid., 280.

<sup>24</sup>Omaha Weekly Herald, February 24, 1869.

more than fifteen thousand inhabitants.<sup>25</sup> The population of any city containing the required number was to be ascertained by the mayor and council and certified to the governor. The governor thereupon was to declare by proclamation that such city was subject to the provisions of the incorporation act of 1871 governing first class cities.<sup>26</sup> The charters of 1873 and 1875 made no changes in these provisions.

#### CORPORATE POWERS

The charter of 1869 devoted approximately thirty-five hundred words to a detailed and specific enumeration of the corporate powers of cities of the first class. These included the substance of what had been listed in the previous charters as powers of the city council, with additional privileges and restrictions. The corporate authority of Omaha under this act was vested in all the officers of the city whether mentioned by the act or created under its provisions. However the city council was empowered to retain all corporate powers not delegated, either by the charter or by city ordinance, to some other official.<sup>27</sup>

<sup>25</sup> Omaha's population in 1870 was 16,083. Ninth Census of the United States.

<sup>26</sup> The charter of 1871 defined second class cities as those with a population of from 1500 to 15,000. They were subject to a different set of regulations.

<sup>27</sup> Bartlett, Revised Ordinances, 258.

The charter first listed the same broad corporate powers that had been conferred by previous charters. These were followed by an additional grant which defied interpretation," . . . to exercise such other powers and have such privileges as are incident to municipal corporations of a like character or degree not inconsistent with this Act or the general laws of the state."<sup>28</sup> The following were listed as corporate powers: to prevent injury or annoyance within the limits of the corporation from anything dangerous, offensive or unhealthy, and to cause nuisances to be abated; to regulate the building of houses and to make building regulations for fire prevention; to provide and protect a water supply up to five miles beyond the city limits; to regulate the burial of the dead and places of interment; to restrain animals from running at large; to regulate theatrical exhibitions or shows, except lectures on historic, scientific, or literary subjects; to regulate auction sales; to regulate transportation within the city; to regulate and prohibit taverns, saloons, houses and places for habitual resort; to establish and regulate markets; to provide for the measuring of hay, wood, and coal; to suppress and restrain disorderly houses or houses of ill-fame; to authorize the destruction of gambling devices; to levy special assessments for public improvements or for paying for the land

<sup>28</sup>Ibid., 243.

appropriated for public use; to construct sewers and drains; to control all public grounds belonging to the city; to drain or fill up land within the city on which there was stagnant water, and to remove any putrid matter, the cost of these operations to be assessed against the owner of such land and recovered if necessary by a suit at law; to provide for the lighting of any railway within the city limits (the type of ordinance to be passed and the procedure to be followed if the railroad failed to comply being specified); to acquire private property for public use through court procedure; to enforce ordinances by fines up to fifty dollars for each offense, or one hundred dollars for each repetition thereof, or ten dollars a day when the violation was by nature continuous, or imprisonment at not to exceed thirty days at hard labor at the discretion of the council; to make and publish ordinances to carry out the powers and duties conferred by the charter, these ordinances to be as the council deemed "necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of such corporations and the inhabitants thereof".<sup>29</sup> Printed copies of these ordinances, published by authority of the corporation, were to be received as evidence for any purpose for which the original ordinance would be received.

Such is the barest summary of the hodge podge of corporate powers granted in the charter of 1869. Detailed steps to be followed were outlined for nearly every foreseeable type of eventuality.

<sup>29</sup> Ibid., 254.



This was especially true of procedure in district court for collecting delinquent special taxes, for appraising property to be acquired for public use, and for compelling railroads to pay for the lights required for the right of way. Mention of the power to tax real and personal property for general purposes or to pay the outstanding bonded indebtedness was omitted, not only from the corporate powers but from the entire charter.<sup>30</sup>

The list of corporate powers in the charter of 1871 resembled that of the earlier charters. The power to possess and use a common seal was omitted and the wording of the comprehensive grant of power (perhaps it should be called the incomprehensible grant) was changed to "do all other acts in relation to the property and concern of the city necessary to the exercise of its corporate or administrative powers and to exercise other powers as may be conferred by law".<sup>31</sup> These provisions were repeated in the charters of 1873 and 1875, and the exercise of corporate powers became the prerogative of the mayor and council solely

#### BOUNDARIES AND DIVISIONS

The numbers, divisions, and boundaries of the wards of cities of the first class were to remain as fixed by law at the date of the approval of the charter of 1869. The city

<sup>30</sup>This omission was corrected by amendment in 1870.

<sup>31</sup>Bartlett, Revised Ordinances, 3.

council was given entire control of them with power to create additional wards, define boundaries, or alter them as they saw fit. An amendment made in 1870 declared that the corporate limits of the city as established by law were to remain the same as though the amendment had not been passed.<sup>32</sup> It stipulated however that no additions were to have any validity unless the streets, alleys, and avenues therein were laid out to correspond in width and direction, and to be continuations of those in the city.<sup>33</sup>

The charter of 1871 cleared up some of this confusion. It gave specific directions as to how additions to the city could be made. Owners of plots of land within the city or contiguous to it were to lay out not only streets and alleys but lots and blocks. An accurate map of the proposed addition with an attached survey was to be recorded legally by some officer authorized to take acknowledgments. After being approved by the mayor and the council the plot was to be considered the equivalent of a deed in fee simple from the owner to the city. The charter of 1873 was still more definite. It provided that the plot be acknowledged before a register of deeds thus making the plot a deed in fee simple from the owners to the city of all the streets, alleys, parks, and commons in the addition, the rest of the land of course remaining in the hands of the owner for private sale.

<sup>32</sup>Ibid., 291.

<sup>33</sup>Ibid., 266.

All cities of the first class were divided into six wards by the charter of 1871.<sup>34</sup> An amendment passed a few days later decreed that the precinct lines were to correspond with the ward lines and be coextensive with them. When the mayor and council divided a ward into election districts the Board of County Commissioners was given the power to change the precincts accordingly. The charter of 1873 provided that each ward was to constitute an election district. (Note that while the charter of 1871 implied this it did not directly say so.) When any ward contained over eight hundred legal voters the council could divide it into two election districts. The precinct lines, the ward lines and the election district boundaries were to coincide.

#### FRAMEWORK OF GOVERNMENT

According to the charter of 1869 the municipal government of Omaha was vested in a mayor, a board of trustees to be called the city council, a marshal, a city civil engineer, a treasurer, a police judge, and a city solicitor who was also to be the prosecuting attorney of the public court. They were to hold office for two years and their duties were to be as prescribed in the charter and by ordinance. The appointment of a city clerk by the council was mandatory. All city officials were to take an oath to support the Constitution of the United States and that of Nebraska, and also an oath or affirm-

<sup>34</sup> Omaha had been divided into six wards by action of the city council on May 15, 1869. A. J. Hall, pub., Early and Authentic History of Omaha, 1857-1870. (Omaha Daily Republican n.d.), 55.

ation of office. The bonding and compensation of the officers were placed under the control of the council, except that the compensation of the council was limited to a dollar for each member for every regular or special meeting. A further restriction specified that the compensation of no city officer was to be increased or diminished during the term for which he was elected or appointed. The salary of an appointive officer could only be affected by abolishing the office.

The charter of 1871 changed the list of elective officers, omitting the city solicitor and adding the city clerk and a street commissioner. The term of all elective officers was reduced to one year. Salaries were prescribed for all elective officers who were allowed no further compensation. Any officer violating any of the provisions of this act or any member of the council voting for an increase of allowance over that provided for in the charter was deemed to be guilty of a misdemeanor and liable to a fine of not over one thousand dollars, imprisonment up to one year in the county jail, and removal from office. A further restriction held that no officer of the city was to be interested in any contract or work done by the city, nor was any officer to receive any valuable consideration or promise for his influence or vote, under penalty of a fine of between one hundred and one thousand dollars, one-half of which was to go to the informer and the balance to be paid into the city treasury.

The charter of 1873 ruled that to be eligible to a city office an individual must be a qualified voter in the city at the time of his election or appointment. It provided that all city officials were to be bonded, no officer being permitted to offer security for the bond of another. In 1875 the street commissioner and the civil engineer were dropped from the list of elective officers and the term of the remaining officials was increased to two years.

**ELECTED OFFICERS OTHER THAN THE COUNCIL: The Mayor**

The mayor, according to the charter of 1869, was to be elected biennially in cities of the first class. He must be a qualified voter and a resident of the city. As chief executive officer he was required: to keep an office, to have charge of the corporate seal of the city, to sign all commissions, licenses and permits granted by the council, and such other documents as might by ordinance require his signature; to supervise the conduct of all the officers of the city and cause their violations of law to be punished or reported to the proper tribunal for correction. As conservator of the peace he had charge of the enforcement of the ordinances of the city and could exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace. He also was supervisor of the police force. The council could fill by majority vote the vacancy caused by his absence, death, or disability.

An amendment to the charter in 1870 provided that a vacancy in the mayor's office was to be filled by the president of the council until the mayor could resume his duties or until a successor could be elected and qualified. Another amendment gave the mayor power to call special meetings of the council.

The charter of 1871 granted the mayor additional powers. He could require any officer to exhibit his accounts and records, and make a report in writing to the council on any subject pertaining to his office. With the consent of the council the mayor could appoint or remove from office all officers other than those provided for in the charter. As conservator of the peace he could appoint with the consent of the council any number of special police and dismiss them at pleasure. He was authorized to call on every male inhabitant of the city over eighteen years of age and under fifty to aid in enforcing the ordinances of the city. Any person refusing to obey the call was subject to a fine of not more than one hundred dollars. The mayor had power to call out the militia within the city to aid in the suppression of riots. Jurisdiction over all places within five miles of the city limits for the enforcement of any health or quarantine law could be invested in him by ordinance.

The mayor was required to give information to the council concerning the welfare of the city and to recommend such measures as he thought necessary to the "finances, the police, health, security, ornament, comfort and general prosperity of the city."<sup>35</sup> His veto power which extended to that of specific items in appropriation bills could be checked by a two-thirds vote of the legal number of councilmen.

Further control over the finances of the city was granted to the mayor in that he was required to sign all orders and drafts on the treasury. With the consent of the council he could remit fines and grant reprieves and pardons for all offenses against the city ordinances.

An amendment to the charter of 1871 shortly after its approval provided that the mayor could suspend the enforcement of any judgment rendered by the police judge for offenses against ordinances until the next meeting of the council. The status of the president of the council while acting as mayor pro tem was changed by this amendment. He was given all the mayor's rights and privileges even to receiving the salary due the mayor (the amount was to be deducted from the mayor's compensation). If the vacancy was permanent a special election was to be held, ten days notice of which was to be given by proclamation.

<sup>35</sup>Bartlett, Revised Ordinances, 286.

The charter of 1873 limited the mayor's jurisdiction for enforcement of health regulations to three miles beyond the city limits. Veto procedure was outlined. To veto a measure the mayor must return the ordinance to the council at the next meeting with his objections in writing.<sup>36</sup> The manner and terms by which the mayor might rescind any fines imposed by the police judge were to be regulated by ordinance.

#### The Marshal

The charter of 1869 granted the marshal powers, duties, and fees like those of a sheriff and a constable, except that he was not to receive more than twenty-five cents for each arrest. He was given power to arrest persons in the act of violating city ordinances or the laws of the state. His attendance was required in police court to execute orders and processes and to keep order. To aid him in the performance of his duties he could appoint one or more deputies for whose acts and compensation he was responsible. He was given charge of the city prison. All fines, penalties, and costs collected by him were to be paid to the clerk of the police court.

The charter of 1871 placed the marshal under the supervision of the mayor. The marshal was required to file a complaint on oath in writing against any person he arrested without a warrant and the defendant could be tried for that offense only.



In 1873 the marshal was named the principal ministerial officer of the corporation and given supervision and control of the police force of the city, subject only to the orders of the mayor. All orders of the mayor relating to the police force were to be transmitted through the marshal or the officer in charge of the police force. Fees, as compensation for the marshal, were abolished and he was given an increased salary sufficient to provide for himself and any deputy.

#### The Clerk

The clerk was appointed by the council from the qualified voters of the city in 1869, no term being specified by the charter. He was to have custody of the ordinances of the city, to keep a regular and complete journal of the proceedings of the council, and to perform such other duties as might be required by ordinance. He certified the printed and original copies of city ordinances and proceedings, and furnished transcripts of the same for such fees as would be given to the clerk of the district court for copies of court records. His fees as notary public were the same as those allowed county officers for such services.

It was his duty to publish for four consecutive weeks the determination of the council to make improvements on any street, alley, or highway, describing the character of the improvement. Any claims for damages due to such improvement were to be filed with him. In case of a suit against the city as a result of

damages caused by special improvements, the court was to furnish the amount of damages to the clerk. It can be inferred that the clerk was to pay the damages to the aggrieved property owner although the charter did not specify this. The clerk was empowered to levy an assessment on all real estate sufficiently large to cover the interest and redemption on all bonds authorized by the charter of 1869. This is the only mention of the general assessment of all real estate in the charter. The city clerk received the returns from all elections and he was required to open and count them within ten days after the election. He was to be assisted in this operation by the mayor, or a justice of the peace in case of the mayor's absence or disqualification by reason of being a candidate. The law stated that the clerk was to make out an abstract of the returns, ascertain the candidates elected, make out certificates of election, and proceed in all respects as was required by law of the county clerk in county and state elections.

In an amendment in 1870 the time allotted to the clerk for making out the election returns was shortened to four days. His term of office was fixed at two years but he could be removed by a majority vote of the council for malfeasance in office or neglect of duty.

In 1871 the office of city clerk was made elective and his term of office was reduced to one year. He was empowered

to receive any process affecting the city in the absence of the mayor and president of the council. He was required to authenticate city warrants by his signature and the seal of the city, and to keep a record of them. He had custody of the monthly report of the treasurer and kept a file of the paid warrants. Protests of property owners against street improvements, and appraisals of property damage caused by street improvements were to be filed with the city clerk. He issued certificates showing the tax due on any piece of land benefited by special improvements, the amount due being based on the report of the city engineer. He was required to make out the city assessment roll, from the assessment roll of the county, of all property liable to taxation.

The charter of 1873 provided that the clerk also make out the tax list and deliver a duplicate to the treasurer. The clerk was also required to endorse distress warrants on delinquent tax lists to empower the city treasurer to collect delinquent taxes by distress and sale of personal property, and to authorize the county treasurer to collect delinquent taxes by the sale of real estate.

#### The Treasurer

The duties of the treasurer received only incidental mention in the charter of 1869. He was to receive the taxes collected by the county treasurer and those collected for paying

the bonds authorized in the charter. In 1871 he was named collector of taxes and a bond of not less than one hundred thousand dollars was required. The method of keeping tax records was to be prescribed by the council within the limits specified by the charter. Separate accounts of each fund or appropriation and debts belonging thereto were to be maintained. Duplicate receipts for the payment of money into the city treasury were to be issued, one being given to the person paying the money and the other to be filed with the city clerk. Monthly reports giving a statement of all money received and on what account, together with all warrants redeemed were to be made to the council. Annually the treasurer was to make a full and detailed statement of all the receipts and expenditures of the preceding fiscal year showing the balance in the treasury.

The charter stipulated that the treasurer was to keep all city money distinct from his own money, and he was prohibited from using city money or warrants for his own purposes under penalty of immediate removal from office. Concerning the collection of special assessments he was directed: to give notice in the official paper of the city when the penalty for special assessments levied for highway improvements would accrue; to determine the proper share of the special assessment to be paid by individuals who were joint owners of a single piece of ground; to see that special taxes were kept in a separate fund and used only for the payment of the improvement.

A general law relating to all treasurers of governmental units in the state was passed by the legislature just after the charter of 1871 went into effect. It prescribed their duties more definitely, specified certain methods of book-keeping, stipulated that warrants were to be paid in the order of their presentation, and provided measures to enforce the proper performance of these duties.

In 1873 the treasurer was made liable for all taxes and assessments not collected by him by reason of neglect of duty. He was authorized to receive the tax list from the clerk and correct errors and omissions. The charter of 1873 stated that the "powers and duties of the city treasurer be the same in respect to the collection of city taxes as those of the county treasurers in relation to the collection of county taxes."<sup>37</sup> This statement is confusing because the city treasurer was limited in the collection of delinquent taxes to the sale of personal property,<sup>38</sup> or goods and chattels.<sup>39</sup> The charter of 1875 clarified the matter by stating that the city treasurer was authorized to collect delinquent taxes in the same manner as the county treasurer except that he couldn't sell real estate for that purpose.<sup>40</sup>

<sup>37</sup>General Statutes of Nebraska (1873), 121.

<sup>38</sup>Ibid.

<sup>39</sup>. . . Charter of 1873 . . . . , 20.

<sup>40</sup>Ibid., 28.

### The Prosecuting Attorney

The prosecuting attorney who was also to exercise the office of city sclicitor was listed among the elective of-  
ficers on the charter of 1869. He was to prosecute all city  
and state cases brought before the police court and to per-  
form duties like those of a district attorney in district  
court. A salary of not to exceed six hundred dollars a year  
was to be paid to him by the county commissioners for prose-  
cuting of state cases. Succeeding charters omit this po-  
sition from the list of elective or appointive offices.

### The Street Commissioner

The office of street commissioner was made elective in  
1871, but his duties were not prescribed beyond that of im-  
mediately repairing damages to streets and bridges caused by  
accident or storm. The office was not mentioned in the chart-  
er of 1875 although Rosewater<sup>41</sup> states that the office of  
street commissioner was elective from 1871 to 1881.

### The City Engineer

The only mention of the city engineer in the charter of  
1869, besides the provision for his election, was the stipula-  
tion that he submit a plan and estimate of the expense of con-  
structing sewers and drains. In 1871 he was to inspect and  
accept any improvement for which special assessments were to

<sup>41</sup>loc. cit., 84.

be levied, his report being subject to the approval of the city council. He was also to calculate the amount of tax to be levied on any piece of ground for special improvements and file a statement thereof with the city clerk. The amendment to the charter of 1871 stated that bridges, sidewalks, and sewers built within the city should be constructed in accordance with the plans and specifications furnished by the engineer and approved by the council. All such improvements were to be inspected and reported on by the city engineer before final acceptance by the city. Subsequent charters did not change these duties.

#### The Police Judge

The police judge in the charter of 1869 was given the power to hold a court to be called "Police Court". He had jurisdiction over all violation of city ordinances and over all inferior offenses, committed within the city or within two miles thereof, not requiring a grand jury. He was given the same power and jurisdiction in criminal cases as justices of the peace had in counties, being able to hear and determine suits where a jury was not demanded. His fees were to be the same as were received by probate judges or justices of the peace for similar services except that they were limited to two thousand dollars a year exclusive of fees received from acknowledging deeds and depositions, and performing marriage

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ceremonies. He was empowered to summon and empanel juries and was required to make rules of practice and procedure which were to be posted in a conspicuous place in the court room.

The charter authorized the police judge to appoint a clerk of the police court whose duties corresponded with those of the clerk of the district court and whose salary was to be paid partly by the city and partly by the county. The clerk was to account for all fees paid by him, file and preserve all papers used in the court, and keep a journal of court proceedings. Journal entries of all cases where judgment was given were to be deemed the records of those cases.

The charter of 1871 listed the duties of the police judge specifically and in full. It gave him the same jurisdiction over violations of city ordinances as did the preceding charter but his jurisdiction over state cases was limited to those in which the fine did not exceed one hundred dollars or imprisonment for more than three months. However, the police judge was given the power of examination of all offenders against the laws of the state when the offense was committed within the city limits. He was given power to enforce obedience to all orders or decrees made by him and he could fine or imprison for contempt of court in the same manner, and to the same extent as the district court. He could issue warrants for arrest on the oath or affirmation of any person competent to testify against the accused, summon witnesses and

enforce their attendance, hear and determine complaints alleged against the defendant, and declare punishment and render judgment accordingly, or postpone the trial and release the defendant on bond. If during the process of a prosecution the judge or the jury should find that the prosecution was commenced without probable cause the judge or the jury was required to state the name of the prosecutor in the findings and impose upon them the costs.

The police judge was named the conservator of the peace and was required to hold court open every day except Sunday. On Sundays his only duties were to receive complaints, issue processes, and take bail.

An amendment to the charter of 1871 stated that it was the duty of the judge to sign any bill of exceptions, and place them in the court records. Appeal to the district court from the police court on writ of error was also provided for in this amendment.

A vacancy in the office of police judge was to be filled temporarily by the mayor under the ruling of the charter of 1869. Subsequent charters specified that the vacancy should be filled by a justice of the peace chosen by the mayor.

#### THE COUNCIL - ITS POWERS AND RESTRICTIONS:

##### Organization

The charter of 1869 stated that the city council should consist of two members from each ward elected for a two year

term. The terms were so arranged that one trustee would be elected annually from each ward. Each trustee must be a resident of the ward from which he was elected and a qualified voter therein.

The council was the judge of the election, qualification and returns of its own members. A majority of the whole number elected constituted a quorum. The president of the council, elected by the membership, presided at their meetings. The council could decide the times and places of holding their meetings and compel the attendance of absent members.

The council was empowered to determine the rules of its proceedings but the meetings were to be open to the public at all times and an accurate record kept of its transactions, also open to public inspection.

The charter directed that the council should make provision by ordinance for preferring charges against members. A trustee could be expelled by a two-thirds vote of all the members of the council, but he could not be removed twice for the same offense. Vacancies were to be filled within thirty days by a special election unless the regular municipal election occurred within sixty days.

A trustee, either during his term of office or for one year thereafter, was forbidden appointment to any municipal office which "has been created or the emoluments of which shall have been increased during the term for which he shall

have been elected; . . . nor shall such Trustee be interested directly or indirectly in the profits of any contract or job for work or services to be performed for the corporation.<sup>42</sup> The compensation of the trustee was limited to one dollar per member per meeting attended.

The charter of 1871 stated that the city council was to be composed of twelve members, two from each ward, elected for a term of two years, six being chosen annually. They were officially designated as councilmen. The president of the council when acting as mayor was entitled to exercise full powers as the mayor and at the same time retained all his privileges as councilman. Any five councilmen could call a special meeting.

The charter of 1873 changed the qualifications of councilmen. Besides being electors they had to be "actual and bona fide owners of real estate in said city"<sup>43</sup>. The property qualification was not repeated in the charter of 1875.

The charter of 1875 changed the salary of the council. They were permitted to appropriate a sum not exceeding in the aggregate two hundred dollars in any one month for services rendered by the council for the preceding month.

#### Legislative Functions

All the legislative powers granted by the charter of 1869 were vested in the city council. The council was directed to make and publish ordinances not inconsistent with the laws of

<sup>42</sup>Bartlett, Revised Ordinances, 268.

<sup>43</sup>General Statutes of Nebraska (1873), 113.

the state for carrying into effect the powers conferred or required under the act. It was the " . . . duty of the corporation to make and publish ordinances . . . to provide for the safety, preserve the health, promote the prosperity and improve the morals, orders, comfort and convenience . . . ." <sup>44</sup> of the inhabitants of the city.

The procedure for passing ordinances was specific. They were to be read fully on three different days, unless three-fourths of the council decided to dispense with this rule, and were to be approved by a majority vote of the council. Each ordinance was to deal with not more than one subject which was to be expressed clearly in the title. No ordinance could be amended unless the new ordinance contained the entire passage to be amended and the ordinance or section amended must be repealed. Yeas and nays were to be recorded on final passage. Ordinances concerning any improvement which necessitated the condemnation of property required a vote of two-thirds of the whole number of members elected to the city council. The same rule applied to ordinances requiring a special assessment against property owners for improvements, unless two-thirds of the owners, subject to the special assessment, petitioned for the improvement, in which case only a majority vote was necessary.

All ordinances were to be recorded in a book and authenticated by the signatures of the presiding officer and the clerk

<sup>44</sup> Barlett, Revised Ordinances, 254.

Printed copies of the ordinances, published by the authority of the corporation, and transcripts of any ordinances, recorded in any book or in any minutes or journal kept under the direction of the corporation and certified by the clerk, were to be received as evidence, the same as original copies. All ordinances of a general or permanent nature and those imposing any penalty were to be published in some newspaper of general circulation. The charter further stated, "It shall be deemed a sufficient defense to any suit or prosecution for such fine or penalty to show that no such publication has been made."<sup>45</sup>

The charter of 1871 dealt with the legislative powers of the council much more briefly. It stated that the council had the power to enact any and all ordinances not repugnant to the constitution and laws of the state, and to alter, modify, and repeal them. The council was given power to make its own rules for the passing of ordinances, except that the yeas and nays were to be entered in the record. A majority vote of all the members of the council was necessary for the approval of any legislation. An ordinance could be passed over the mayor's veto by two-thirds of the whole number of members of the council. If the mayor neglected to sign an ordinance or to return it with his objections in writing the ordinance could take effect without his signature. All ordinances, attested by the clerk under the seal of the city or published in book or pamphlet by authority of the city, were to be received in all courts without further proof. The only new ruling in

<sup>45</sup>  
Ibid., 269.

the two succeeding charters was that the council was required at the first meeting of each month to provide by ordinance for the payment of all liabilities of the city.

### Structure of Government

The city council was permitted in the act of 1869 to appoint, or provide by ordinance that the qualified voters of the city, wards, or districts could elect all such city officers as were necessary for the government of the city and for the due exercise of its corporate powers. The appointment of a city clerk was mandatory. All appointments of officers were to be made viva voce and a majority vote of the legal membership of the council was necessary for appointment. Names of those voting and for whom they voted were to be recorded.

Elective officers could be removed by concurrence of two-thirds of the council while the removal of appointive officers required a mere majority. The council was authorized to provide by ordinance for trying all elective officers for misbehavior in office. To enable the council to investigate charges against city officers, or such other matters as they thought necessary, the mayor or the police judge at the request of the council was empowered to issue subpoenas to compel the attendance of persons and the production of books and papers before the council or any council committee.

All city officers whose term was not prescribed, or whose

duties were not defined by the charter, were to exercise such powers as city ordinances might specify but their term of office was fixed at not less than two nor more than three years.

The charter was somewhat confusing in its rules for filling a vacancy in the mayor's office. The council could appoint any person to act as mayor in case of vacancy until the expiration of his term or the removal of his disability,<sup>46</sup> but the charter also required a successor to be elected at the annual city election, for the unexpired term in case of a vacancy in any elective office.<sup>47</sup> The regulation that vacancies in elective offices be filled by appointment until the next city election, accompanied by the mandate that a special election be held within thirty days to fill a vacancy in the city council unless the regular city election should occur within sixty days,<sup>48</sup> probably engendered further perplexity.

The council could provide by ordinance for the compensation and bonding of all elective and appointive officers except themselves. Additional duties besides those laid down in the charter could be required of elective officers by the city.

The power to provide for the election of officials not named in the charter was taken away from the council by an amendment in 1870. They retained their appointive power but the term of appointed officers was shortened to correspond with that of the elective officers. The city clerk was espe-

<sup>46</sup>Ibid., 256.

<sup>47</sup>Ibid., 261.

<sup>48</sup>Ibid., 277.



cially mentioned. His term was fixed at two years and he could be removed by a majority vote for malfeasance in office or neglect of duty.

The charter of 1871 clearly stated that vacancies in elective offices could be filled by special elections only. It also reiterated that the powers and privileges of all officers of every character, in any way connected with the city government, should be defined by ordinance within the limits set by the charter. Bonding of officers was no longer left to the discretion of the council; it became a requirement.

The city council was empowered to demand from any officer of the city at any time a report in detail of the transactions in his office or of any matter connected with them. The council or any committee of its members had power to compel the attendance of witnesses for the investigation of matters that might come before them. The presiding officer of the council or the chairman of the committee could administer requisite oaths. The council or the committee had the same authority to compel the giving of testimony by the attending witness as was conferred on courts of justice. Ordinances were to be passed providing for the removal of city officials for misconduct.

Additional local authority was provided by the following clause. "When by this act the power is conferred upon the mayor and council to do and perform any act or thing and

the manner of exercising the same is not pointed out, the . . . council may provide by ordinance the details necessary for the full exercise of such power.<sup>49</sup> Salaries of all elective officers were fixed by the charter and penalties were provided for members of the council who voted to change them. Penalties were also provided for members of the council who accepted any "valuable consideration or promise" for his vote.

The charter of 1873 gave the council the power to provide by ordinance for the election of city officers. They could control registration, the manner of conducting elections, the counting of the returns and the method of deciding contested elections in any manner not in conflict with "existing law".<sup>50</sup>

#### Public Welfare

Among the corporate powers listed in the charter of 1869 was authority to prevent injury or annoyance within the city limits from anything dangerous, offensive, or unhealthy. Nuisances were to be abated. The city was empowered to regulate the morals of the inhabitants regarding gambling and disorderly houses. The property of the city and its inhabitants was to be protected, and peace and good order preserved. The council was given power to provide by ordinance for the safety, health, prosperity, morals, comfort and convenience of the corporation and its inhabitants. Then the charter went on to give more specific suggestions and directions about making

<sup>49</sup> Ibid., 26.

<sup>50</sup> . . . Charter of 1873 . . . . , 11.

these powers effective in particular instances.

To provide for the safety of the city the council was required to establish and organize fire companies, provide them with equipment, and make rules governing them. Building regulations could be made for the purpose of guarding against fire. The council was authorized to establish a city watch or police, to organize it under the general superintendence of the marshal, mayor, or other police officer, to prescribe its duties, and define its powers. A reserve watch was also to be appointed to consist of a number of persons in each ward to be called on in case of emergency. The council was permitted to erect a city prison to be placed under the control of the marshal.<sup>51</sup> A station house and a police court could be provided. The city was given power to compel the lighting of railways within the city if the railroads refused or neglected to do so.<sup>52</sup> The transportation and keeping of gunpowder and other combustibles were under the control of the council. Ordinances might be made to prevent the fast riding of horses or immoderate driving of vehicles through the streets.

Power was granted to establish a board of health<sup>53</sup> and prescribe its duties, to secure the city against contagious

<sup>51</sup>The only city prison established during this period was a basement room in a building on the northeast corner of Farnam at Sixteenth.

<sup>52</sup>Nothing in the council proceedings shows that anything was ever done about this matter.

<sup>53</sup>The board of health was formally organized in 1879. Clement S. Chase, Annual Message of the Mayor of Omaha, (1880). An earlier board of health created by ordinance on December 12, 1871 remained in an inactive condition. A.T. Andreas, History of the State of Nebraska (Chicago, 1882), 716.

diseases. The draining of stagnant water and the removal of decaying matter were under the control of the council. The lots could be drained either by the owner or by city action and the owner assessed for the costs. The council could prevent the sale of tainted meat or other spoiled provisions in the city market by authorizing its seizure and destruction.<sup>54</sup> The charter provided that places for the burial of the dead should be provided outside the city limits. The protection and improvement of such places of interment was to be in the hands of the city authorities.

To provide for the relief of the poor an infirmary<sup>55</sup> could be built either within the city or the county in which the city was located. Both the control of the infirmary and the management of out-door relief<sup>56</sup> were to be vested in a board of three directors elected by the voters of the city, the term of office and the time of election being prescribed, although the council was permitted to make the rules and regulations governing these functions.

Grants of power to regulate the morals of the city were given in detail by the charter of 1869. The council was authorized to make ordinances suppressing indecent and lascivious behavior in the streets and public places, and "prohibiting and suppressing all places of resort generally known as

<sup>54</sup>Since no city markets were built during the period of this investigation this power was not exercised. (see footnote 71).

<sup>55</sup>pest-house. It consisted of a rented three room house in deplorable condition judging from the reports of attending physicians. It was used for small-pox patients. Omaha Daily Bee, May 5 1872.

<sup>56</sup>Out-door relief, such as it was, was granted directly by the city council, seldom, and in small amounts. Council Proceedings, passim.

music halls where women are employed in the capacity of waiters or otherwise.<sup>57</sup> The charter encouraged the council to pass ordinances to prevent any riots, noise, or disorderly assemblages, to suppress and restrain disorderly houses, houses of ill-fame, billiard tables, nine or ten-pin alleys, or "tables and ball alleys, and to authorize the destruction of all instruments or devices used for the purpose of gaming".<sup>58</sup> Taverns, inns, hotels, and places where intoxicating liquors were sold were subject to regulation.<sup>59</sup> The council was empowered to regulate or prohibit all theatrical shows for which money was demanded except lectures on historic, scientific, or literary subjects.

All transportation on the city streets, as well as auction sales on public grounds, was directed by the council. The council was authorized to restrain the running at large through the city of animals. Dogs were especially mentioned and in connection with this provision was made for their impounding.

<sup>57</sup>Bartlett, Revised Ordinances, 254.

<sup>58</sup>Open gambling and prostitution were virtually licensed by the payment of occasional light fines as the following quotations show.

"The fines from the soiled doves of Omaha for the month of June are now overdue and they may accordingly expect a visit from Officer LaFond at any moment for the collection of the same." Omaha Daily Bee, June 18, 1872.

"The complaints against the Frail Sisterhood for their February tax were made out today. They have until the fifteenth to call at the Captain's office and settle." Omaha Daily Bee, February 12, 1872.

"Warrants have been issued for the 'knights of the green cloth'. Several have already paid fines and the remainder will probably save expense by stepping up to the Captain's desk and settling. Don't kick." Omaha Daily Bee, August 3, 1872.

<sup>59</sup>In 1871 there were one hundred eight saloons in Omaha. Frank J. Burkley, The Faded Frontier, (Omaha, 1935), 349. By 1873 the number had increased to one hundred thirty-two. Alfred Sorenson, The Story of Omaha from the Pioneer Days to the Present Time (Omaha, 1923), 482.

The charter of 1871 provided in a general way for all the powers over the general welfare granted in the charter of 1869. A few new suggestions were added. Regulation of building for fire prevention became more specific. The council could prohibit, on the petition of the owners of two-thirds of the ground included in any one square or block, the erection of any building or addition to any building more than ten feet high unless the outer walls were made of brick and mortar, stone and mortar, or of iron. The safety and protection of private property from the action of the elements was made an object of the council's attention, and to insure this safety provision was made for the organization of a special night watch.<sup>60</sup>

The concern of the charter for health regulations was probably due to the sporadic and at times rather violent epidemics of smallpox which occurred frequently during this period. The council was authorized to make quarantine laws and enforce them within five miles of the city limits. With what seems to be a rather grandiose gesture of the times, the council was informed it could "establish and regulate hospitals, work-houses, houses of correction, and jails and provide for the government and support of same".<sup>61</sup> The coming of the packing industry to Omaha added to the list of the nuisances. The charter suggested that the council pass ordinances to regulate the cleaning

<sup>60</sup>In consequence of the Chicago fire twelve men were appointed to the police force to serve at night to protect property from fire until the status of Chicago Insurance companies could be learned. James W. Savage and John T. Bell, History of Omaha, Nebraska [New York and Chicago, 1894], 368.

<sup>61</sup>Bartlett, Revised Ordinances. 7.

and keeping in order of all slaughter houses, stables or other places where offensive matter was kept or likely to accumulate. Concern for the welfare of the constant stream of emigrants coming through Omaha caused the insertion of a clause to the effect that the council adopt all measures necessary for the accommodation and protection of strangers. Among the miscellaneous provisions the charter empowered the council to prevent the desecration of the Sabbath, horse-racing in the streets, all kinds of indecencies, and cruelty to animals. The council was directed to compel people to fasten their horses and other animals, attached to vehicles, while standing in the streets. A foreshadow of the present state barrier system can be noted in the provisions that the council control all goods brought into the state for auction purposes.<sup>62</sup>

The charter of 1873 required the council to "prohibit and suppress by ordinance all lotteries and gift enterprises of all kinds under whatsoever name carried on".<sup>63</sup> Railroads within the city limits constituted a danger of enough magnitude

<sup>62</sup>Undoubtedly this meant all goods brought into the city from other states for auction purposes.

<sup>63</sup>. . . Charter of 1873 . . . . , 9. The required ordinance had been passed the previous year. Omaha Daily Bee, July 31, 1872. J. M. Pattee had been conducting a lottery in Omaha ostensibly for the benefit of a public library. G. H. Collins advertised a lottery with \$30,000 in cash awards. Besides the cash, three residences, buggies, harness, a horse, blankets, and boots were offered as prizes. Five hundred dollars was to be given to the poor. Tickets were three dollars each.

to attract the attention of the legislature. The city council was given authority to regulate railway crossings and the running of engines and cars within the city, to make rules to prevent accidents at crossings and on the tracks of railroads, and to prevent fires from engines. The location, construction, and keeping in order all slaughter houses, stockyards, warehouses, stables, or other places where offensive matter might accumulate came under council regulation. The council could prevent any person from having or leaving on his premises any dead carcass, any putrid beef, pork, or fish, hides or skins of any kind, or any other unwholesome substance. Fire limits could be defined and the erection of all buildings could be regulated. Animals running at large still continued to be a nuisance,<sup>64</sup> so the council was granted the power of selling animals impounded to pay the expenses of catching them. Dogs could be licensed for the same reason. Another safety measure listed was the power given the council to prevent the carrying of concealed weapons, the discharge of fire-arms or fire-works of any description in any of the streets, alleys or public grounds in the vicinity of buildings.

Control of Finances

The charter of 1869 gave the city council the management and control of the city finances subject to a few limitations. No money was to be appropriated except by ordinance and all

<sup>64</sup>Cattle and dogs were running at large ruining Omaha gardens. Omaha Daily Herald, June 13, 1874.



such ordinances required the concurrence of a majority of all members elected to the council. Compensation for city officers was to be decided by the council with three restrictions: the mayor was to be paid quarterly out of the city treasury; compensation of officers was not to be increased or decreased during their term of office; fees for city councilmen were not to exceed one dollar for each member for every meeting.

The city council was not given specific authority in the charter of 1869 to levy taxes to meet current expenses, or to pay outstanding bonded debts. However, other state laws imposed two limitations upon the taxation power of the council. City warrants were to be received for city taxes.<sup>65</sup> Whenever the collector of city taxes was unable to collect them by sale of personal property he was to notify the county treasurer who was empowered to sell the real estate of the delinquent to recover any tax due.<sup>66</sup> A third restriction imposed by the charter stated that no tax levied upon land for special improvement was to exceed fifty per cent of the value of the land. All costs of improvement exceeding the fifty per cent were to be paid by the city out of its general revenue.

The only mention of a bond issue in the charter of 1869 was the grant of power to the council to borrow money to purchase land for parks within two miles of the city. The outside

<sup>65</sup>Nebraska Session Laws (1869), 195.

<sup>66</sup>Nebraska Session Laws (1869), 200.

limit of this particular indebtedness was not to exceed one hundred thousand dollars. If an amount over twenty-five thousand was borrowed the proposition was to be submitted to the electorate. The bonds were to bear not over seven per cent interest and the length of time they were to run was left to the discretion of the council. The bonds could be issued to those from whom the land was purchased for the price paid. The council was permitted to mortgage the land to secure the bonds.<sup>67</sup> To repay the principal and interest on these bonds the council was authorized to assess upon and collect from all real estate in the district, for which the bonds were issued, funds sufficient to pay the interest and establish a sinking fund. Not more than five per cent was to be collected in any one year to retire the principal.

The method by which the tax was to be collected was also specified. The city clerk was to make the assessment upon the valuation established for state and county purposes, and certify

<sup>67</sup>The bonds were never issued. The following facts may or may not have any significance in connection with the action of the legislature.

In 1872, three years later, A. J. Hanscom and J. G. MeGeath donated what is now known as Hanscom Park to the city of Omaha on condition that the city spend five thousand dollars a year on its improvement and upkee. Due to the financial stringency of the city the conditions could not be met but the council spent a total of twenty-five thousand dollars on the park during the next six years. Arthur C. Wakeley, Omaha, the Gate City and Douglas County, Nebraska. A Record of Settlement, Organization, Progress and Achievement. (Chicago, 1917), Volume I, 155.

On October 31, 1872, the Omaha Daily Herald contained an item stating that Hanscom proposed to extend a street-car route to the park district and sell residence lots in the neighborhood.

it to the city council on the second Monday in May annually. After the amount was confirmed by the city council the clerk was to certify it to the county clerk who was to place it on the tax duplicate. The county treasurer was authorized to collect the tax and pay it to the city treasurer.

The charter of 1869 authorized the council to collect fines and licenses. No fine was to exceed fifty dollars for a single offense. The clerk of the police court handled the money under council regulations. Dogs and other domestic animals not included in the list of taxable property could be licensed. The council could license all exhibitors of shows and performances of other kinds not otherwise prohibited by law, all hawkers and peddlers, all auctioneers of animals on the public grounds of the city, all venders of gunpowder, all taverns and houses of public entertainment, vehicles used for transportation of persons and property for hire, undertakers or owners of hearses, and hucksters in the public streets and markets for such sums of money as the council saw fit. However no charge was to be imposed on any farmer or producer of vegetables or provisions in bringing products to any of the markets in the city either on market days or evenings previous. In 1871 farmers who were residents of the state could sell their produce at any time within the city without being liable to assessment. Out-state farmers could sell in the city without a license only during market hours.

The amendment to the charter in 1870 filled some of the gaps in the financial powers of the council. The first day of May was named as the beginning of the fiscal year. On the second Monday in May annually the mayor, treasurer, and clerk were to make a complete statement of the condition of the city finances, showing the indebtedness of the city and its nature, and the receipts for the preceding fiscal year. Failure to comply with these provisions with intent to deceive the taxpayers by concealing information or making a false statement would subject the officer involved, if indicted and convicted, to a fine of not exceeding one thousand dollars and removal from office. The council was authorized to assess annually for taxation all species of property in the city subject to taxation under the laws of the state. Taxes were to be levied for the purpose of paying the interest and principal on all the bonded debts of the city then existing, or those which were to be created afterward in pursuance of law, and to pay the current expenses of the city. Neither bonded indebtedness in the aggregate nor current expenses in any one fiscal year was to exceed two per cent of the valuation of property. In addition indebtedness in the aggregate was to be limited to five-sixths of the amount of the tax levy in any one fiscal year. The members of the council were to be held personally liable for the payment of any money appropriated over this amount. The council could provide for bonding the floating debt of the city

but the interest on the bonds was not to exceed ten per cent. A two-thirds majority of the council could issue bonds for any purpose in their discretion with the approval of the electorate. All bonds previously issued by the corporation and having been ratified by the voters were declared legal and binding in law regardless of any technical informality.

Some relief to the tax-payers from this bewildering array of proposed bond issues was granted by a state law in 1870. No tax was to be levied to pay the principal on bonds issued to aid in the construction of railroads or other internal improvements until after 1880. After 1880 a tax could be levied sufficient to retire ten per cent of the principal of the bonds each year.

The charter of 1871 repeated that no money was to be expended nor payment made by the city except in pursuance of a specific appropriation made by ordinance. At the first meeting in each month the mayor and council were to provide by ordinance for the payment of all liabilities of the city incurred during the preceding month or at any time previous thereto. Semi-annually the mayor and council were to publish a statement of the receipts and expenditures of the financial condition of the city. All orders on the treasury were to be signed by the mayor and attested by the city clerk under the seal of the city. The city was limited in issuing warrants to eighty-five per cent of the amount of the corporation's

income from taxes and other sources and it was prohibited from incurring any indebtedness over that amount.

The compensation of all officers not provided for in the charter could be determined by the council. Remuneration for council members was not to exceed in the aggregate two hundred dollars for services rendered in any one month. Penalties of a fine not to exceed one thousand dollars, imprisonment in the county jail for a maximum period of one year, and removal from office were provided for councilmen who voted for the increase of any salary fixed by the charter.

The council was empowered to levy and collect taxes for general purposes to the amount of ten mills on the dollar in any one year on all the property within the city limits taxable according to the laws of the state, the valuation of the property to be taken from the assessment roll of the county. Another clause empowered the council to make a general increase in the valuation of real estate up to twenty per cent of the valuation for county purposes. The sum total of taxes levied for payment of bonded indebtedness, judgments, and current expenses of the city was not to exceed two and one-half per cent of the value of any property as valued for taxation for general purposes.

The taxes collected for redemption of the principal of bonds and for payment of the interest on them were to be paid in cash. The sinking fund to redeem at maturity the bonded

indebtedness of the city could be used to purchase the bonds before they became due on such terms as might be prescribed by ordinance. However bond holders were to be given an opportunity to compete for the sale of bonds held by them. The bonds that could be purchased on the most favorable terms were to be given preference by the city.

The council was authorized to issue bonds in such amounts and for such length of time, providing it didn't exceed twenty years, as their judgment determined. Bonds were not to bear greater interest than twenty per cent per annum. The purpose for which the bonds were issued and the ordinance under which they were authorized were to be expressed on the face of each bond. Bond issues were to be approved by two-thirds of the voters at an election; they were not to be diverted from the object for which they were issued; they were not to be sold below par.

The council was directed to make provision for the sale of real estate by the city for non-payment of taxes and for its redemption. The charter restricted this power by stipulating that property sold for taxes could be redeemed within two years after the date of sale, or any time after that, until the tax deed was issued, by payment of the full amount of the tax due, all taxes paid by the purchaser, and all costs, with interest at forty per cent per year. Personal property

could be sold by the city for any tax due from the owners. All property owned by the city was declared exempt from taxation.

The council could impose fines and forfeitures for the breach of any ordinance at their discretion. The list of occupations subject to licensing was increased to include runners (men hired by hotels to solicit patronage, stationed at the depot to meet incoming trains), pawn-brokers and brokers. Articles used for recreation and possibly gambling, such as billiard tables and ball and ten-pin alleys, were made subject to the council's licensing power.

The charter of 1873 required that a statement concerning the financial condition of the city be published annually on the first day of July. The mayor and council were given power to prescribe the methods of bookkeeping to be used by the city treasurer. City authorities were encouraged to pass ordinances to secure the "speedy and thorough collection of all municipal taxes and special assessments."<sup>68</sup> The charter provided that when municipal taxes and special assessments remained uncollected because of an irregularity in the levy, a new levy could be made upon the property in lieu of former taxes. Municipal and special taxes were payable in city warrants or coupons of city bonds, as well as in legal tender. The



council, acting as a board of equalization, was given the same powers as those of county commissioners performing similar duties.

The levy for taxes for general purposes was held at ten mills on the dollar, the valuation of the property taxed to be taken from the county assessment roll. The aggregate amount of warrants issued annually could not exceed ninety per cent of the taxes levied for the year plus the amount received from other sources. City authorities were prohibited from incurring any indebtedness in addition to the amount for which they were authorized to issue warrants or bonds. On the first of May next succeeding the levy all unpaid taxes were to become delinquent and drew one per cent per month interest payable in advance. The city treasurer was empowered to collect the tax by the sale of the personal property of the delinquent if necessary. To make provision for a sinking fund for bond redemption and to pay judgments against the city the mayor and council were permitted to levy an additional two per cent tax upon all property taxable for general city purposes. Bonded indebtedness could be increased to six per cent of the assessed valuation. Other regulations regarding bond issues remained the same.

The charter of 1873 declared that the property of the state and of the federal government were exempt from taxation.

Purchasers of any real estate for taxes were to have complete title thereto after a lapse of five years. Neither irregularities in making assessments, in equalization, in the manner of advertising the sale of any property, nor the listing of the property in any other name than the rightful owner was to invalidate the sale of property for delinquent taxes.

Authority to license shooting galleries and the auctioneering of all goods brought into the state for auction purposes was given to the council. The council was also authorized to receive donations and bequests of money or property in trust or otherwise for public libraries and reading rooms.

The charter of 1875 made few changes in the financial powers of the council. They were empowered to correct any error or defect, or supply any omissions in the assessment or listing of any property subject to municipal tax. Error or irregularities in the levy or collection of taxes could be corrected by the mayor and council. They could make by-ordinances a compromise settlement of any action concerning the regularity of taxes levied. The annual levy was to be made at the first regular meeting in July of each year.

#### Miscellaneous Administrative Powers

The charter of 1869 gave the council management and control of all the property, real and personal, belonging to the city. The council was authorized to lay off, open, widen,

straighten, extend, improve, repair, and light streets, alleys, public grounds, wharves, landing places, and market spaces. The supervision and control of all bridges within the city, and the construction and repair of sewers and drains were listed among the powers of the city council.

To carry these powers into effect the council was permitted to levy special assessments on property owners benefiting from such improvements and to appropriate land and materials for public use. A two-thirds majority of the city council was necessary to make any improvement where appropriation of property or special assessment was necessary, unless two-thirds of the owners of the property affected by such improvement should petition for the change. In such case only a majority of the council was necessary to pass the ordinance or resolution authorizing the improvement.

To defray the expense of making any improvements in public grounds or highways, owners of abutting property were to be assessed either in proportion to the front feet of adjoining land or to its value as assessed for taxation under the general laws of the state. Special assessments upon land were not to exceed fifty per cent of its value. Three weeks notice of the assessment previous to its adoption must be published in the official newspaper of the city. Objections to the assessment were to be filed with the city clerk. Two-thirds of the council were to appoint three disinterested

free-holders to hear and settle all disputes. The assessments were collectible from the owners personally or by a lien on the property assessed. Forced collections could be made only by a suit at law or in equity. Whenever payment was refused the council could demand six per cent interest from the time of assessment and five per cent more to pay the expenses of collection. The district court was given jurisdiction in all such cases.

Damages to property caused by grading, paving, or construction of drains were to be determined by suit in the probate court of the county by a jury of twelve free-holders resident within the city. There was to be no appeal from the jury's decision. If the jury could not agree they received no fees. Where the jury found no damages the claimant was liable for the costs.

The city could exercise the right of eminent domain only through the courts. The council had to make an application to the district court explaining its purposes. The district judge was required to set a time for inquiry into the matter, calling a special term of court if necessary and empaneling a jury. The jury was to determine the amount of compensation to be given for the property and the judge was to decide the time and manner of payment and the time and manner in which possession of the condemned property could be taken. The council could take the case to the supreme court in case the

the city disagreed with the findings of the jury. Costs of the suit were to be paid by the city.

Among the miscellaneous administrative powers granted to the council was that of providing a supply of water for the city by the construction of wells, pumps, cisterns, reservoirs, or water-works. Their authority extended five miles beyond the city limits for prevention of pollution or injury to the stream or source of water. The council was empowered to fix the minimum price at which the gas company was to furnish gas to the citizens of the city for any period not exceeding ten years,<sup>69</sup> and was prohibited from lowering the price during the period agreed upon. The council had the power of establishing and regulating landing places, wharves, docks, and piers, and to fix the rates of landing, wharfage, and dockage. The use and control of the shore or bank of any river not the property of any individual was entrusted to the council "to the extent that the state can grant such control or use."<sup>70</sup> The council could establish stands for hackney coaches, cabs, and omnibuses and compel their use. Rates for the transportation of people and property from one part of the city to another were subject to council control. All vehicles kept for hire were under city supervi-

<sup>69</sup>In 1870 there were one hundred street lamps and one hundred ninety-eight consumers of gas. Federal Writers Project of the W.P.A., Nebraska, A Guide to the Cornhusker State, (American Guide Series, New York, 1939), 227.

<sup>70</sup>Bartlett, Revised Ordinances, 261.

sion and even the width of their tires was a subject for council decision. Markets and market places were to be established and regulated. The council was authorized: to prevent fraud and preserve order in the market; to prescribe times for its opening and closing; to regulate the kind and description of articles to be sold,<sup>71</sup> Auctions of any kind on public grounds were subject to council authority but the auction of goods imported into the city for the purpose of being sold at auction was pointed out as meriting special attention by being placed under the council's licensing power. The council was empowered to provide for the weighing of hay, wood,<sup>72</sup> and coal, or any other articles for sale. The purchase of land within two miles of the city for public parks was authorized with the restriction that no land dedicated as a public park or square should be afterward appropriated for any other purpose inconsistent with its dedication.

<sup>71</sup>The farmers near Omaha and the citizens themselves petitioned the council at various times to establish a market. Finally the vegetable growers themselves organized a market at the intersection of Fifteenth and Douglas. Omaha Daily Bee, May 11, 1872.

The Omaha Daily Herald of November 5, 1872 suggested that the reason the citizens of Omaha and the surrounding territory could not convince the city council that Omaha should have a market was because the middle-men were too powerful.

J. W. Savage in his article on Omaha in the Tenth Census said there were no market places in Omaha except for hay and wood. The farmers generally disposed of their produce by selling it to grocers.

<sup>72</sup>This was probably due to the large amounts of this material sold to the army. The headquarters of the Department of the Platte was situated in Omaha.

The amendment to the charter in 1870 gave the council long needed power over sidewalks.<sup>73</sup> The council could require property owners to construct sidewalks in front of their property or pay the costs of constructing them. The costs were to be a lien on the delinquent lots until they were paid. In case of failure or neglect to pay, the lots could be sold to pay an amount including the costs, ten per cent interest from the time of assessment, and an additional ten per cent penalty. If the grade of the street had not been established or if the street had not been worked to the grade, the sidewalks needed to be constructed only of planks of such description and in such manner as the council decided.

The amendments of 1870 added increased penalties for delinquent special assessments. The interest was raised to ten per cent (formerly six per cent) and the penalty to defray expenses of collection was increased to ten per cent (formerly five per cent). The council was given control of all additions and could compel the owners to lay out streets corresponding in width and direction to those in the city.

To the types of street improvement permitted in the charter of 1869 the power of paving and macadamizing was added in the charter of 1871. All types of street improvements and all bridges built by the city were to be done by contract with the

<sup>73</sup>The construction of sidewalks had been left to property owners. Where there were sidewalks they were of varying width, and materials. Omaha Daily Bee, November 21, 1872.

lowest responsible bidder. Street improvements for which a special tax was to be levied were to be legalized by a resolution of the council and the resolution was to be published in the official newspaper of the city for four consecutive weeks. If a majority of the resident owners subject to special taxation for the improvement did not file a protest with the city clerk within twenty days after the last publication of the resolution, the council was empowered to make the improvement, and to levy and collect the tax provided. Such special taxes were to become due either as the improvements were completed in front of or along any block of ground, or at the time the work was finished. The tax became delinquent thirty days after becoming due and the property owner would incur a penalty of ten per cent, with interest at forty per cent per year to be computed on the tax, the penalty, and the costs of sale. The cost of improving intersections was to be included in the special tax levied for the improvement of any one highway. The council was given the power to keep sidewalks clean and free from all obstructions and accumulations. To pay the expenses of such cleaning the city could collect a tax on any unoccupied real estate and provide for its sale and conveyance if the owner neglected to pay the cost. The mayor and council were permitted to establish by ordinance the grade of any street,



alley, avenue, or lane within the city. After it was established the grade could not be changed except by a two-thirds majority vote of the council, and not then until the amount of damages which might be caused by the change in grade was ascertained and paid to interested property owners. The amount of damages was to be ascertained by three disinterested appraisers appointed by the mayor and council, who were to report to the city clerk within ten days after their appointment. The council could lay out the city into sewerage and drainage districts and collect a special tax for the purpose of constructing sewers and drains.

Each piece of property against which taxes were due for special assessments was to be described by lot and block number. The mayor and council were given power to provide for the sale and conveyance of any lot or piece of ground for non-payment of special taxes. Any piece of ground sold for special taxes could be redeemed within two years after the date of sale or at any time thereafter until the tax deed was issued, by paying to the treasurer the tax penalty, costs, and interest at the rate of forty per cent per year. The property of a minor could be redeemed at any time before he became of age or one year thereafter.

Appropriations of private property were to be made by ordinance. Three disinterested free-holders, after taking an oath to perform their duties faithfully and impartially,

were to assess the damages to the property owners and report to the council. The council, after confirming the report, was required to pay the damages before the property could be taken for the use of the city.

The council was empowered to purchase public property and parks with no restrictions attached. Water-works could be constructed within or without the city and the council could make needful rules concerning the use of water supplied by the works. The council was required to provide for enumerating the inhabitants of the city. Power was granted to city authorities to establish and alter the channels of streams and water-courses. The council could provide for the lighting of streets, the laying down of gas pipes, and the erection of lamp posts. The sale of gas and the rent of gas meters was subject to regulation by the council. The council was authorized to erect necessary and useful municipal buildings and bridges with the restriction that if the proposed improvement was to cost more than five thousand dollars it must first be ratified by a majority of the voters of the city.

The residents of cities were declared by the charter to be exempt from the payment of a poll tax for the benefit of roads. Instead the mayor and council had the power to require every able-bodied male person between the ages of

twenty-one and fifty-five resident within the city to do, or to provide a substitute to do, a day's work each year upon the streets and highways of the city. The alternative was a payment of a dollar and seventy-five cents each year to be expended on the streets and highways. Active volunteer firemen were exempt.

The charter of 1873 provided some relief for tax-payers from the burden of paying special assessments. Ordinary repairs of streets and alleys and one-half the expense of bringing streets, alleys, avenues, or parts thereof to the established grade were to be paid out of the general fund of the city. The amount of special assessments levied in any one year against any piece of land was not to exceed five per cent of the value of the land. The value was to be determined by three disinterested free-holders to be appointed by the mayor and council as commissioners for that purpose, in every case of complaint of excessive assessment. The interest rate on delinquent special assessments was lowered from forty per cent a year to one per cent a month although the ten per cent penalty was retained.

In all cases of damage arising under provisions of the charter, right of appeal to the district court was permitted when property owners involved were not satisfied with the settlement made by the city. Suit was to be filed within

sixty days after the assessment was made. If the city deposited with the clerk of the district court sufficient money to cover the claims of the plaintiff no delay was necessary in the appropriation of the land by the city. The city was liable for the costs of the suit if the district court decided that the owner was entitled to a greater amount of damages than was awarded by the free-holders. The wording of the clause in the charter of 1871 concerning intersections was changed. The cost of improving them could be included in the special tax levied for any one passageway, street, or sidewalk. The special tax levied against property owners for the construction of sewers and drains was limited to those tax-payers whose estates lay within the drainage district under improvement. This tax was to be collected the same as other special assessments and subject to the same penalties. The council was given control of the construction, repair, and use of sewers and drains, and of all proper house connections and branches.

For the first time the council was authorized to establish and maintain public libraries and reading rooms, to purchase books, papers, maps, and manuscripts therefor, and to make regulations for the government and protection of any library. The council could regulate transportation so as to prevent injuries to streets from overloaded vehicles. Levees

and depots were placed under council supervision. Provision was made for city inspection of weights and measures and the council was directed to prohibit the use of imperfect weights, measures, or weighing apparatus. This charter encouraged the council to provide for the planting of shade, ornamental, and useful trees. The passage of railways through the streets and public grounds of the city was to be controlled by the council. Regulation of the erection of all buildings and other structures within the corporate limits was also granted to city authorities.

#### ADMINISTRATION OF JUSTICE

The charter of 1869 gave the council the power to establish a city watch or police, to organize it under the supervision of the mayor, marshal, or other officer of the police, and to prescribe its powers and duties. The duties of the police were defined as follows: to suppress disturbances of the peace; to pursue and arrest any person fleeing from justice in any part of the state; to arrest persons in the act of committing an offense and bring them to the police court for examination; to enforce all laws and ordinances; to have the powers of constables. The mayor had in the city limits the same power as a sheriff to suppress disorder and keep the peace.

The legislature singled out certain types of miscreants

and certain offenses that specially merited punishment.

The council shall have power to provide for the punishment of vagrants, common street beggars, common prostitutes, habitual disturbers of the peace, known or reputed pickpockets, burglars or thieves, watch-stuffers, ball game players, persons who practice any trick, game, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no account of themselves.<sup>74</sup>

The council might authorize the immediate seizure, arrest, and removal from any market, of any person violating its regulations as established by ordinance. The charter gave the council power to make ordinances for the punishment of all lewd and lascivious behavior in the streets and public places, to impose fines for the unlawful burial of the dead, and to "punish fast or immoderate riding of horses."<sup>75</sup>

The police court was given in all criminal cases the same jurisdiction as was vested in the justice of the peace in the county. It had exclusive jurisdiction over all violations of city ordinances within two miles of the city limits. All cases of petit larceny and other inferior offenses not requiring a grand jury were also within the jurisdiction of the court. All suits were entitled to trial by jury but the judge was empowered to hear and determine cases without a jury with the consent of the defendant. The police court was given the same power in respect to the issuing of process, the preserving of order, the punishing of contempts, the administering

<sup>74</sup>Bartlett, Revised Ordinances, 260.

<sup>75</sup>Ibid., 244.

of oaths, and the summoning and empaneling of juries as were granted to a district court. Any final conviction of sentence of the police court could be examined into by the district court on certiorari. The sentence of the police judge could either be suspended or set aside. In a like manner a conviction for a violation of an ordinance before the mayor could be examined and revised.

Fees in police court were to be, in all state cases, the same as were allowed to justices of the peace. In city cases they were to be as the council might prescribe but they were not to exceed those allowed for state cases. The jurors in police court were required to have the same qualifications as jurors in the district court, and were to receive the same fees as were allowed in trials of like nature before the district court. Witnesses were to receive in city cases the amount granted by state law in like cases before a justice of the peace. For state cases witnesses would receive such fees as were allowed in district court.

The charter of 1869 stated that the by-laws and ordinances of a municipal corporation could be enforced by the imposition of fines and forfeitures. The council was to provide by ordinance for their collection and recovery. The charter specified that fines were not to exceed fifty dollars for a single offense or double that amount for each repetition. Where the offense was continuous by nature a lim-

fine of ten dollars a day was set as a penalty. The city could sue in any state court to collect fines providing action was commenced within one year from the date of violation, although fines could be worked out at hard labor at the rate of seventy-five cents a day excluding Sunday. Such labor could be performed within or without the walls of the prison, if the age, sex, and health of the prisoner were duly regarded and if the work was done within a suitable enclosure or under proper guard. The keeper of the city prison was directed to provide all persons confined therein with necessary food at a cost not exceeding fifty cents a day. Bills for food were to be presented to the police judge and if they were approved by him they were to be paid.

Two justices of the peace were elected in each precinct of the city. They had jurisdiction over minor offenses against state laws. The district court had jurisdiction over liens on railroad property for the expense of lighting railroads within the city, as well as on other private property for the non-payment of taxes. The amount of compensation and the manner of paying it were subject to the decisions of the same tribunal. The district court exercised jurisdiction for the collection of any debt or the enforcement of any lien to which the city was a party, even if the amount involved was less than that to which the jurisdiction of the



court was limited. The amount of damages due property owners affected by the improvements on any street or highway was in the hands of a twelve-man jury in probate court.

In the charter of 1871 the council was authorized

to provide for the punishment of persons disturbing the good order and quiet of the city by clamor and noise, by intoxication, drunkenness, fighting, using obscene or profane language in the streets or other public places, to the annoyance of citizens, or otherwise violating the peace by indecent or disorderly conduct or by lewd or lascivious behavior; and to provide for the punishment of common street beggars, common prostitutes, habitual disturbers of the peace, known and notorious pick-pockets, gamblers, burglars, thieves, watch-stuffers, ball game players, persons who practice any trick, device or game with the intent to swindle, persons who abuse their families and suspicious persons who can give no reasonable account of themselves.<sup>76</sup>

The council was to regulate the police of the city, impose fines, forfeitures, and penalties, and provide for their recovery and collection. In case of default in payment the council was to provide for confinement in the city prison or at hard labor in the city without the alternative of instituting a law suit as was stipulated in the charter of 1869.

The mayor was again named conservator of peace in the city and was given power with the consent of the council to appoint any number of special policemen and to dismiss them at pleasure. The mayor with the consent of the council was given power to remit fines and forfeitures, and grant reprieves and pardons for all offenses arising under the ordinances of the city.

<sup>76</sup>Bartlett, Revised Ordinances, 10.

The marshal had the power of arrest within and without the city limits for offenses committed inside the city. He could arrest at all times persons in the act of committing offenses with or without a warrant. Any person arrested without a warrant was entitled to have a complaint on oath in writing filed against him before trial and the accused could be tried for that offense only.

Policemen were subject to the order of the mayor and marshal. They had the power to arrest all offenders against the laws of the state or ordinances of the city, by day or night, and to detain the offender in the city prison until he could be brought before the proper officer. Each policeman was to receive a salary not exceeding eighty dollars a month and he was allowed to accept no fees as witness in any case tried before the police judge.

Police court was to be open every day except Sunday. All trials for misdemeanors arising under the laws of the state were to be decided by a jury of the same number and to be selected in like manner as jurors in justice courts in like cases, unless the defendant and prosecuting attorney, with the assent of the police judge, agreed to submit the trial to the judge. Jurymen and witnesses were to receive one dollar for each day's attendance in court. The judge was not permitted under any circumstances to remit fines or penalties on pay-

ment of costs or otherwise. The charter of 1871 authorized the police judge to sign and cause to be entered in the record any bill of exceptions tendered to him during the progress of a trial. Whenever during the progress of a trial it became evident to the police judge or to the jury that the prosecution was commenced without probable cause or from malicious motives, the jury or the judge was to state the name of the prosecutor in the findings and he was required to pay the costs of the prosecution.

In all cases of violation of city ordinances in police court when the fine exceeded twenty dollars or the imprisonment one month, an appeal could be made by the defendant to the court having criminal jurisdiction in the county. In all cases not especially provided for, the proceedings in court were to be governed by the laws regulating proceedings in justices' courts in criminal cases.

The amendments to the charter of 1871 gave the council the power to provide by ordinance "that the Mayor may suspend the enforcement of any judgment rendered by the police judge for offenses arising under the ordinance of the city until the next meeting of the council, in such cases as the Mayor shall determine that a pardon ought to be granted, or that the fine or forfeiture imposed by the judgment ought to be remitted."<sup>77</sup> Cases in police court arising under the ordinan-

<sup>77</sup>Bartlett, Revised Ordinances, 30.

ces of the city were to be tried and determined by the police judge without the intervention of a jury unless the defendant should demand a jury trial. In that case the laws of the state governing the trying of misdemeanors against state laws were to apply. Challenges were to be allowed in cases of misdemeanor in the same manner and for the same causes as in district court. Any final conviction, sentence, or judgment of the police court could be examined by the district court on writ of error. The number of justices of the peace was reduced to one in each precinct but no change was made in their jurisdiction.

A few additional minor grants of power were provided for in the charter of 1873 and continued in the charter of 1875. The council was instructed to "punish and prevent the carrying of concealed weapons, the discharge of firearms or fireworks of any description in any of the streets, alleys, or public grounds or about or in the vicinity of buildings".<sup>78</sup> The charter suggested that the council provide penalties for obstructing or injuring any sewer. The mayor and the marshal were each given authority to call upon any citizen to aid in the enforcement of any ordinance or the suppression of any riot. Any person refusing or neglecting to obey such summons was liable to a fine not exceeding one hundred dollars. The marshal was given supervision of the police force of the city subject only to the orders of the mayor. All orders of the

<sup>78</sup> . . . Charter of 1873 . . . ., 15.

mayor relating to the direction of the police force were to be given through the marshal or, in his absence, to the officer in charge of the police force. The council could provide by ordinance for the manner and terms by which the mayor could remit any fine or penalty imposed by the police judge for cases arising under the ordinances of the city.

An offender against city ordinances was to suffer penalties as regulated by the city council. A violator of state law in police court was to be punished in the same manner as if he had been committed by district court. Provisions for appeal from the decisions of the police judge were the same as in the charter of 1871, except that the defendant was required to post a bond sufficient to pay the costs and fine if the appeal should be determined against the appellant.

The charter of 1873 stipulated that all fines collected in police court were to be transferred to the city treasurer within thirty days after being received, or within ten days after the mayor requested them. Failure to comply with this regulation was declared a misdemeanor, and upon conviction the guilty official was to incur a fine of not more than one hundred dollars and imprisonment of not to exceed six months in the county jail. The charter also declared that in no case was the city to be liable for any costs or fees in police court.

## ELECTIONS

On June 24, 1867 the legislature passed an act to provide for the registration of the voters of the state. The governor was to appoint one registrar for each voting precinct in the state except where more than two hundred votes were polled. For such precincts two registrars were named. Compensation was to be three dollars a day but the aggregate expense for each precinct was not to exceed forty dollars in any one year. Beginning the first Monday in September the registrars were to sit in some convenient place in the precinct to take registrations, having given public notice of such sitting ten days in advance by means of newspapers or handbills. Registrars had the same powers as justices of the peace, while on duty, to preserve order around places of registration, to compel the attendance of witnesses for ascertaining the qualifications of voters, and to issue summons.

Books of registration arranged for the alphabetical classification of names were furnished to all registrars. The registrars were to list all persons whom they knew to be qualified voters and all those who presented themselves claiming to be such. To the person claiming the elective franchise the registrar administered an oath and recorded the following information: the name of the registrant, whether or not he was sworn, his age, place of birth, and

time of residence in the precinct, county, and state. If the claimant was of foreign birth, the date of his naturalization and whether or not he possessed his court papers was placed upon the record. Finally the registrar recorded whether or not the applicant was a qualified voter. If he was disqualified the reason was listed. Legal reasons for disqualification were non-residence, age, alienage, lunacy, disloyalty,<sup>79</sup> and bribery.<sup>80</sup>

A list of the registrants was then published in a local newspaper and allowance was made for corrections or omissions. The registrar made two copies of the list, one to be left with the county clerk and the other to be given to the judges of election on election day. Judges of election were not to receive or deposit the ballots of any person until they found his name on the registrar of qualified voters and checked it thereon. To keep the registration of voters up-to-date the law specified that registrars were to sit for three successive days in the week next preceding a municipal election for the purpose of correcting errors and omissions, and registering new voters.

According to an election law passed in 1869 any person could vote who was a male citizen of the United States or who had declared his intention of becoming such, if he was twenty-

<sup>79</sup>An act passed previously stated that no person who had aided or abetted in the rebellion or borne arms against the government of the United States would be entitled to vote unless he had received a full pardon from the president of the United States. Revised Statutes of Nebraska (1866), 145.

<sup>80</sup>Nebraska Session Laws (1867), 96.

one years of age and had lived in the state six months, the county forty days, and the precinct or ward for ten days next preceding the election. A voter, who was the head of a family, did not need to comply with the ten-day ward or precinct residence law if he, in good faith, had moved from one ward to another within the corporate limits of a town or city.<sup>81</sup>

The charter of 1869 stated that the council could appoint or provide by ordinance that the qualified voters of the city, or of the wards or precincts as the case might require, should elect all such city officers as were necessary for the good government of the city where the election or appointment was not provided for in the charter or in a general law of the state. Special elections were held to fill vacancies and to legalize bond issues. The council selected the places for holding elections, limiting the number to one in each ward. The mayor was required to issue a proclamation ten days previous to the election in some newspaper in the city, designating the time, the place, and the purpose of the election. Elections were to be conducted in all respects in accordance with the general election and registry laws of the state. The charter named the first Tuesday in June as election day but specified that it might be changed by ordinance.

Three judges of election and two clerks for each precinct were to be chosen at the general state election held on

<sup>81</sup> Nebraska Session Laws (1869), 109.



on the second Tuesday in October, annually. The county commissioners furnished the ballot boxes which were to be deposited with the judges of election between elections. The judge receiving the ballot from the voter was to announce the voter's name in a clear, loud tone. If the name was on the registry list the judge could deposit the ballot in the box. Then the clerk was to enter the name and number of the voter in the poll-book. In canvassing the votes, if the judges found that more ballots had been cast than the number of voters, then the ballots were to be chosen at random from the box up to the number in excess of the correct total. The remaining votes were to be counted. The ballots were then sent to the city clerk to be kept for twelve months. They were not to be inspected except in case of a contested election.

The returns of the election were to be made to the city clerk who verified them, made out an abstract, and delivered certificates of election to the successful candidates. He was given the same powers and duties in respect to city elections as were given to county clerks in state elections. Contested elections were to be decided by three justices of the peace. A general state law passed in 1869 prohibited the sale of intoxicating liquor on days of election.<sup>82</sup>

The charter amendments in 1870 made two changes in the city election laws. The time allowed the city clerk for mak-

<sup>82</sup>Nebraska Session Laws (1869), 19.

ing the returns was reduced from ten to four days and the council was no longer permitted to provide for the election of such officers as were not mentioned in the charter. However the council still retained the power of appointing them.

The charter of 1871 permitted the council to provide by ordinance for the election of all city officers. The polls were to be open from nine in the morning until seven in the evening. Each ward was to constitute an election district unless it contained more than eight hundred voters. In that case the ward could be divided into two election districts. Places for voting could be decided by the mayor or by ordinance. Election day was changed to the first Tuesday in April. The council no longer had the power to appoint a citizen to fill the vacancy in the mayor's office. A special election called by the president of the council was to be held to elect a new mayor.<sup>83</sup>

A state law passed in 1873 authorized the city clerk to draw upon the city treasurer for the per diem pay of the registrar. The registrars secured the books of registration from the county clerk at the expense of the city. The jud-

<sup>83</sup>The marshal had charge of the ballot boxes and was charged with the duty of distributing ballot boxes and poll books to the places of election in time for the opening of the polls. Council Proceedings, August 24, 1872.

Elections were conducted along party lines. Wards were organized. Each ward club, both Republican and Democratic, sent five delegates to their respective city conventions. At these conventions city candidates were nominated and committees were appointed for each ward to aid in conducting campaigns. Omaha Daily Bee, Omaha Daily Herald, The Tribune and Republican (1873 and 1874), passim.

ges of election were not to receive or deposit the ballot of any person until his name was found on the list of qualified voters, and when found there the vote could not be challenged.<sup>84</sup>

The charter of 1873 stated definitely that each city governed by that act was to be divided into six wards, each ward to constitute an election district. The wards, the precinct lines, and the election districts were all to be co-extensive. Provision was made for division of wards if they contained more than eight hundred voters. The council was given additional power to provide by ordinance for the election of city officials, to prescribe the manner of conducting elections, and of making election returns. They could also provide for the registration of voters and the manner of deciding contested elections in any way not in conflict with existing state law. The qualifications of electors in municipal elections were to be the same as were required for electors in precincts under state law. The council itself was to canvass the returns at their first meeting after the election but the clerk continued to make out and deliver certificates of election. The only new provision concerning elections in the charter of 1875 stated that the polls were to be open from eight in the morning until seven in the evening.

<sup>84</sup>General Statutes of Nebraska (1873), 886-890.

## TAXATION

The state tax law of 1869 provided that one assessor should be elected yearly in each precinct. His duties, besides that of assessing property, were to enumerate the inhabitants in his district, list their nativity, record the number of births and deaths, and the number of cases of insanity and idiocy.<sup>85</sup>

All property was to be taxed at actual value. The property owner was to list all his taxable property on the blanks provided for that purpose, sign his statement, and take an oath that the list was correct and in full. The county board of equalization, composed of the county commissioners, was authorized to add fifty per cent to the amount of property returned by the assessor as the list of any person refusing to swear as to the correctness of his returns.

The county clerk prepared the tax list which consisted of the names of property owners in alphabetical order with the valuation of their property, together with a list of city lots, their owners and valuations. The various species of taxes were also listed. This tax list was the property of the county. The county treasurer was the collector of

<sup>85</sup>Nebraska Session Laws (1869), 79.

taxes.<sup>86</sup>

The act provided that city warrants were to be received for city taxes. No demand of taxes was necessary. All taxes were delinquent after the first of May succeeding the levy. Taxes upon real property were a perpetual lien. The owner of any land sold for taxes could redeem it within two years by paying all costs and forty per cent per year on the whole amount.<sup>87</sup>

An amendment to the charter of 1869 passed at a special meeting of the legislature the following year gave the council the power to assess annually for taxation all and every specie of property in the city subject to taxation under the laws of the state for county and state purposes. The council could levy and collect taxes sufficient to pay the interest on and create a sinking fund for the bonds issued, plus an additional levy amounting to two per cent on the taxable valuation of all assessable property to pay the current expenses of the city.

<sup>86</sup>Evidently the city collector of taxes collected one kind of tax and the county treasurer another, as the following quotation will show.

"When the collector of city taxes is not able to make the tax by sale of personal property he shall notify the County Treasurer who is empowered to sell the real estate of the delinquent for taxes." Nebraska Session Laws (1869), 200.

"It shall be lawful for the City Clerk to make the assessment upon real estate . . . to pay the interest and principal on bonds issued . . . certify it to the County Clerk . . . The County Treasurer is authorized to collect such taxes . . . pay the same to Treasurer of the City." Nebraska Session Laws (1869), 61.

<sup>87</sup>Nebraska Session Laws (1869), 186-200.

The charter of 1871 gave the city more power over taxation. The clerk was authorized to make out an assessment roll for the city, from the assessment roll of the county, of all property liable to taxation. The council was given authority to levy taxes for general purposes not to exceed ten mills on the dollar which was less than the amount authorized in the previous charter, but this was partially offset by the power given the council to increase the valuation of real estate up to twenty per cent of the valuation for county purposes. Assets of every description belonging to the city were exempt from taxation. The council was to equalize assessments and to correct any error in the listing or valuation of property and to supply any omissions in the assessment roll.<sup>88</sup>

The city treasurer was delegated to collect the taxes. The council could provide for the sale of real estate for taxes due and for the time and manner of its redemption, with the restriction that the delinquent tax-payer could redeem his property, within two years after the day of sale or at any time thereafter until the tax deed was issued, by the payment of all costs with interest at the rate of forty per cent per year. The sale of personal property for taxes was also

<sup>88</sup>An editorial in the Omaha Daily Bee complained that city collections were irregular because they were levied with partiality. The numerous ward assessors made equalization an impossibility. December 13, 1872.

placed under the control of the council. Residents of cities of the first class were exempt from paying a poll tax for the benefit of the roads, but every able-bodied man between the ages of twenty-one and fifty-five was required to furnish one day's work a year on the streets of the city or pay an annual fee of a dollar and twenty-five cents to be expended on street improvement and construction.

The charter of 1873 provided that the city clerk should make out a tax list from the assessment roll of the county and deliver it to the city treasurer after the council had made the levy. The treasurer was to correct any errors or omissions and proceed to collect the taxes. The city was no longer permitted to sell real estate for delinquent taxes. All municipal taxes were to be collected from the personal property of the owners. When personal property could not be found then the collection of delinquent taxes was placed in the hands of the county treasurer who was empowered to collect the taxes by the sale of real estate. Delinquent taxes were subject to a penalty of ten per cent and a reduced interest rate, one per cent per month payable in advance. Any purchaser of real estate for any tax levied by the authorities of cities of the first class was to have a complete title thereto after a lapse of five years. The charter of 1873 declared the property of the state and of the United States to be exempt from city taxation.

A state law passed in 1875 provided for a county delinquent tax collector to collect all the city taxes delinquent for one year or more. All money collected by this official was to be subject at any time to the order of the city and he was required to make a settlement at least once every six months.<sup>89</sup> The city treasurer had the same powers to collect taxes in the city as the county treasurer exercised in the county, except that he could not sell any real estate for delinquent taxes. That power remained in the hands of the county treasurer.

#### GENERAL AND SPECIAL LAWS AFFECTING THE MUNICIPAL GOVERNMENT OF OMAHA

Two of the general laws, passed by the state legislature in 1869, affecting Omaha, were later incorporated in a city charter. One was an act to provide for the payment of judgments against the city by a special tax if necessary and the other provided that all property of a city or incorporated town should be exempt from taxation.

Some of the general and special laws passed during this period were concerned with finances. In 1869 a state law decreed that all funds arising from fines and licenses in Omaha were to be appropriated for the support of a high school in the old capitol building. A law passed a week earlier had given the capitol building and grounds to the city for school

<sup>89</sup> Nebraska Session Laws (1875), 98.



purposes. Another act passed in 1869 provided for the bonding of the Omaha City Scrip issued in 1857. The mayor was directed to ascertain the amount of scrip outstanding and unpaid. If the amount did not exceed thirty thousand dollars bonds could be issued equal to one-half the principal plus the interest. The total amount of bonds issued was not to exceed thirty-five thousand dollars. Any loss to the scrip-holders was to be divided pro-rata. If the electors of Omaha decided at an election in favor of the bonds the council was empowered to issue ten year coupon bonds bearing ten per cent interest payable semi-annually. Persons holding scrip were to surrender it, receiving bonds in its place. Coupons were to be receivable as taxes. Additional taxes could be levied to pay the interest and retire the bonds at maturity. The council was encouraged to secure as many bonds annually as funds would permit, by purchasing them from the lowest bidder.<sup>90</sup>

Another act passed in 1869 authorized any city in Nebraska to issue bonds to aid in the construction of a railroad or any other internal improvement. The bond issue was not to exceed ten per cent of the assessed valuation of all taxable property and the act provided that the proposition must first be submitted to a vote of the people. The question as submitted to the people was to include a plan for levying a tax to pay for the bonds. The same act legalized bonds already

<sup>90</sup> Nebraska Session Laws (1869), 261-265.

issued for the above purposes regardless of any defect or irregularity in the submission of the vote to the people or in taking the vote. An amendment to this law in 1870 lowered the amount of tax to be levied in paying for the bonds. Only the interest on the bonds was to be paid the first ten years. No tax was to be levied to pay off the principal until after 1880. In 1871 the legislature required the city of Omaha to guarantee the payment of the bonds issued by the Board of Regents who administered the new high school. These bonds were to be endorsed by the mayor and countersigned by the city treasurer. In 1873 an act was passed to provide relief for delinquent tax payers. All taxes levied in the territory or state of Nebraska previous to 1872 could be fully discharged by paying the amount of the tax without interest, penalties, or charges at any time before December 1, 1873. If the taxes were not paid by that time the taxes and all penalties were to remain a lien on the property, to be enforced by the sale of the property at auction. In 1875 an act was passed stating that the revenue arising from the taxation of works of internal improvements was to be set apart "forever" to pay the interest and principal on the bonds issued to construct and complete the improvements, until the bonds were fully paid.

In 1870 a legislative act gave the consent of the state

of Nebraska to the purchase by the United States of land for the erection of a post office and court house at Omaha.<sup>91</sup> The next year the mayor and council in cities of the first class were given the power to license and regulate the keeping of toll bridges, to fix the rates of toll and to authorize their collection. The state encouraged the planting of trees in towns, cities, and villages in 1871. Trees were to be planted annually, when practicable on each side of one-fourth of the streets in each city and village in the state of Nebraska until all streets had shade trees not more than twenty feet apart. A tax of from one to five dollars was to be collected from the owners of lots adjacent to which trees were planted. The owner of any lots would be excused from the tax if he could submit proof to the effect that he had caused trees to be planted in front of his property.

The territorial jurisdiction of justices of the peace was widened by state law in 1875. Applying to all cities having two or more precincts within their corporate limits, this law allowed any justice of the peace to hold his court in any part of the city without regard to the precinct within which he presided.

<sup>91</sup>Bartlett, Revised Ordinances, 174.

## SUMMARY AND CONCLUSION

Omaha was made a city by legislative action. It was classified by executive decree subject to legal restrictions. Control by the people of Omaha over their charters could be exercised only through their elected representatives in the legislature and in the municipal government.

The first three charters, those granted before Nebraska became a state, were devoted in the main to establishing a workable frame of government. That the legislature succeeded in its purpose was evinced by the resolution of the council declaring its approval of the charter of 1865.

The constitution of 1866 contained no provision prohibiting special legislation relating to cities. It merely prohibited the legislature from passing special acts of incorporation. This constitutional prohibition failed to effect any material reform due to the legislature's method of classifying cities. Cities were included or shut out of certain classifications at will. The legislature continued to enact laws directly affecting Omaha. Thus any constitutional restrictions regarding special legislation were nullified.

The charters granted after the admission of Nebraska as a state grew longer and more detailed, granting increasing number of powers and adding restrictions concerning their

use. Interpretations as to the authority of the city to perform its functions were made according to the detailed specifications in the charters covering certain limited fields rather than according to the broad grants contained in the corporate powers. The charter of 1869, passed in spite of expressed opposition on the part of city authorities, received the most condemnation. Hamstrung by various absurd regulations, Omaha sank to its lowest level as a self-governing political unit. The protest of the city authorities was effective. By the time the next regular session of the legislature convened in 1871, Omaha had a charter framed and ready for legislative consideration. The charter of 1871 restored all former powers and added some new ones. Subsequent charters, with some variations, retained these powers.

Due to the extensive authority given the registrars to list voters and the smallness of the population, some doubt may be expressed as to whether Omaha actually had the three thousand registered voters necessary for it to be ranked as a city of the first class in 1869. The legislature changed the law in 1871, re-defining cities of the first class as those municipalities possessing a population of over fifteen thousand. Since the federal census of 1870 had recorded Omaha's population as more than sixteen thousand, Omaha's status was assured.

A trend toward the departmentalization can be seen in the changes made in the powers of the mayor. Originally he was a member of the council, the chief executive officer, and judge in the only city court. Gradually a pattern of government evolved showing a separation of powers analogous to the plan of the national government. The mayor was removed from the council, given the veto power and the duty of recommending needed legislation, and the privilege of calling special council meetings. His powers of law enforcement were largely taken over by the marshal, the police judge, and justices of the peace. He was given authority, with the consent of the council, to grant reprieves and pardons and to remit fines for offenses against city ordinances. As chief executive officer his duty was to supervise the officials of the city in the performance of their duties and to "cause any violations of the law to be punished." His appointive power continued to be restricted by council action.

No consistent policy was followed by the legislature in naming the officials who were to administer the government of Omaha. The duties of the various municipal officers were altered or shifted in succeeding charters. The roster of elective and appointive officers varied in composition. Official positions were named or omitted from the charters according to legislative opinion of the moment. The council had about the same control over the framework of the government at the

end of the period under investigation as at the beginning.

While the territorial legislature provided that city officials must be legal voters and residents of the city, the state government made no such restrictions, except in the case of individual officials, until 1873 when they were required to be qualified voters of the city at the time of their election or appointment. Compensation for city officials was gradually changed from the fee system to a fixed salary schedule imposed by the charter. Remuneration of appointed officials remained under control of the council.

The legislature, beginning in 1866, attempted to force obedience to its regulations by providing penalties for individual office-holders who were remiss in the performance of their duties as specified in the law. By this method tax levies for the payment of judgments against the city and for retiring bonds were made compulsory. An attempt to control the expenditures of the city was made by making officials personally responsible for the payment of any excess over the amount specified. The legislature also provided penalties for negligence, fraud, graft, or deception committed in connection with the city's financial functions. By 1871 this type of legislation had diminished markedly. At that time the only penalty mentioned in the charter concerned the city treasurer. It made him liable personally

for all taxes remaining uncollected by him by reason of neglect of duty.

The powers of the council under the different charters varied in such a manner that any sweeping statement about them would be difficult to verify. Ordinances could be passed under council rules throughout the period except for the interval, 1869-1871, when procedure was specified. During this same interval the council suffered restrictions on its appointive power and its power to provide for the election of city officials not named in the charter. Authority to fill vacancies in elective offices by appointment was lost in the charter of 1871. The power to investigate the conduct of municipal affairs was increased beginning in 1869. By 1871 the council was given the same authority as a court of justice to compel the giving of testimony. The broad grants given in the corporate powers of the earliest charters conferred adequate powers on the council to take care of the general welfare, but the charters increasingly granted minute powers in this field, the prohibition of lotteries, however, being the only directive. The later charters also exhibited a growing number of delimitations dealing with the council's miscellaneous administrative powers. The charter of 1869 hampered the freedom of administrative control by forcing the city to submit to the authority of the state courts in the exercise of some of the more important func-



tions . A directive in this same charter required the council to place a floor under the price of gas purchased from a privately owned company and maintain it for a period of ten years. The tendency, evident about this time, to interpret the authority of the council in terms of limited grants of power over specific activities led to a demand by the city for an increase in the number of these grants so as to increase the control of the municipality over local affairs. The broader grants of power usually found in the list of corporate powers were evidently ignored by both the legislature and the city.

Legislative financial policy toward Omaha was remarkably inconsistent. The constitution required the legislature to limit municipal expenditures and indebtedness. During this entire period, with one exception the legislature constantly raised these limits along with the tax rate. An unwarranted number of special tax levies and bond issues were authorized or required. The legislature passed laws to aid Omaha in the efficient collection of taxes. At the same time attempts were made to provide relief for the over-burdened tax-payer.

As to the question of whether city property should be taxed according to territorial law or municipal ordinance the legislature changed its mind four times between 1857 and 1865. It finally decided in favor of the laws of the

territory. During this period the assessor was an elected city official. After the admission of Nebraska to the union, assessors became state officials, one being elected from each precinct. The presence of six assessors in Omaha, each depending upon the favor of the property-owners whom he was assessing for his position, made tax inequalities inevitable.

The charters varied in their methods of providing for municipal tax collections. The phase involving the most legislative experimentation was the question of whether a city or a county official should collect the taxes, especially those involving the sale of real estate. From 1857 until 1869 a city collector exercised full power. A study of the charter of 1869 and a state law in effect at that time indicate that from 1869 until 1871 the city collector and the county treasurer shared in the collection of municipal taxes, with the power of selling real estate for delinquent taxes in the hands of the county treasurer. The charter of 1871 gave full power to collect taxes to the city treasurer. The charter of 1873 was indefinite as to whether the city or the county treasurer should collect delinquent taxes by the sale of real estate. However a state law in effect at the time assigned this duty to the county treasurer. The charter of 1875 confirmed this regulation for Omaha.

As the tax rate increased the limitations on indebtedness and current expenditures were relaxed. The original charters authorized the city to levy a one-half per cent tax. In 1864 this was changed to five mills on the dollar with an additional two mill levy for the improvement of streets, bridges, and fire companies. In 1866 when it became evident that the amount of money received from tax collections was going to continue to be seriously short of the amount needed for current expenses the legislature limited the issuance of city warrants to three-fourths of the amount of taxes levied. The charter of 1869 omitted any mention of taxing power for general purposes. An amendment in 1870 authorized the council to levy taxes for general purposes but specified no rate. In the same year the limitation on current expenses was raised to five-sixths of the tax-levy in any one fiscal year. A further restriction stated that neither bonded indebtedness nor current expenses was to exceed two per cent of the valuation of taxable property. In 1871 the tax levy was set at ten mills and the council could increase the valuation of real estate up to twenty per cent of that fixed for county purposes. The sum total of all taxes levied was not to exceed two and one-half per cent of the assessed valuation. This is the first instance of an attempt to lower the tax rate. City warrants could be issued to an

amount equalling eighty-five per cent of the city's income from taxation and other sources. In 1873 the aggregate of warrants was not to exceed ninety per cent of the city's expected income. In an attempt to collect delinquent taxes the legislature in 1873 canceled all interest and penalties on delinquent taxes if they were paid before the first of December of that year. When taxes remained uncollected because of an irregularity in their levy, a new levy could be made upon the property in lieu of former taxes.

An enumeration of the special tax levies required or authorized by the legislature during this period is of interest. In 1866 the council was required to issue two special tax levies; one to provide for the bonds issued in behalf of the Cedar Rapids and Missouri River Railroad, the other amounting to two and one-fourth mills, to pay for the bonds funding city warrants. A third special levy, authorized the same year, permitted the council to raise one hundred thousand dollars for the purpose of promoting the building of a railroad bridge across the Missouri River at Omaha. A fourth law directed the city to pay all judgments against it by a special tax if necessary. All this legislation took place in the face of Omaha's inability to collect enough taxes to meet current expenses. In 1869 three more special tax levies were authorized to pay for any bonds issued in acquiring a public park, to retire bonds used to purchase

city scrip, and to pay for a proposed bond issue to aid in the building of any railroad or other internal improvements. This flurry of tax legislation subsided rapidly after 1869. There were only two more recommendations for special tax levies after this period; one in 1871 to provide for sewer construction (this was amended in 1873 so that only the districts benefiting would be affected), and the other in 1873 to authorize the council to levy a two per cent tax for a sinking fund to retire bonds and to pay judgments.

A gradual loosening of legislative control in providing for bond issues can be noted. A law passed in 1866 requiring city authorities to fund city warrants was the only instance of a legislative attempt to force a bond issue. Penalties were prescribed for officials failing either to issue the bonds or to levy the tax necessary for their payment. The same session of the legislature decreed that the council must pay for the bonds issued in favor of a railroad. (See previous paragraph.) Future bond issues as recommended by the legislature were authorizations or grants of power. Limitations in each case were placed on the amounts, the time, and the purpose of the bonds to be issued.

That there was some difficulty in raising money by bond issues can be inferred from the type of restrictions provided. The interest rate rose from seven per cent in 1866 to twenty per cent in 1871, and the time was increased

from ten to twenty years. Hand in hand with legislative encouragement of bond issues went restrictions as to their issue. In 1870 the consent of two-thirds of the council and a majority of the electorate was necessary for a bond issue and the aggregate amount of bonded indebtedness was not to exceed two per cent of the valuation of taxable property. By 1871 a majority vote of the council and a two-thirds majority of the voters was required. In 1873 the city could issue bonds to the amount of six per cent of its assessed valuation. In 1871 the legislature ceased to specify the purposes for which bonds could be issued. In 1875 the legislature set aside all revenue from the taxation of internal improvements to be used to pay the interest and principal on the bonds issued in favor of that improvement, until such bonds were fully paid.

The history of the council's authority to levy special assessments exhibits legislative caution and experimentation. In 1857 the council was empowered to levy special assessments for the construction and repair of sidewalks and the draining of stagnant water from privately owned land. In 1866 special assessments were allowed for the improvement of streets if the improvements were petitioned for by the owners of two-thirds of the abutting property. By 1869 a two-thirds majority of the council could levy special assessments for public improvements at their discretion, providing the aggregate

amount levied did not exceed fifty per cent of the value of the land. In 1871 special assessments for street improvements could be legalized by a council resolution requiring a mere majority. The cost of keeping sidewalks clean and free from obstructions could be levied against the owners of abutting property. Special assessments were authorized for the construction of sewers and drains in 1873. Ordinary repairs of streets, alleys, and bridges, and one-half the expense of bringing public thoroughfares to the established grade were made chargeable to the general fund and the total amount of special assessment to be levied in any one year was limited to five per cent of the value of the property.

Legislation concerning the collection of delinquent taxes and the redemption of land sold for taxes was marked by its severity during the early part of this period. In 1857 taxes were delinquent six months after the levy and the land was subject to auction any time after that, thirty days prior notice having been given. Such land could be redeemed by paying the selling price, fees, costs, and any subsequent taxes paid with interest on the whole amount at twenty-five per cent a year. In 1858 the interest was raised to sixty per cent and in 1860 it was reduced to forty per cent. Until 1869 the same regulations applied to the collection of all delinquent taxes. The charter of

1869 specified that delinquent special assessments could be collected only by suit in district court. The council was empowered to sue for five per cent additional, to pay for the cost of collection, and six per cent interest. An amendment in 1870 increased these penalties to ten per cent each. In 1871 the council recovered its authority to sell property to collect delinquent special assessments. The costs of redeeming this property were increased to include a ten per cent penalty and interest at forty per cent per year on the tax, the penalty and the selling price. The time limit for redemption was placed at two years. By 1873 all delinquent taxes carried a ten per cent penalty and interest at one per cent per month. After five years the purchaser of any land for taxes was given a complete title.

The earlier charters gave the mayor's court criminal jurisdiction over violations of territorial law as well as exclusive jurisdiction over offenses against the city ordinances. Court procedure and provisions for appeals were regulated by laws governing justices' courts. The charter of 1865 gave justices of the peace concurrent jurisdiction with the mayor's court over violations of city ordinances, the state law already permitting justices to preside over cases involving minor misdemeanors. In 1869 a police court was established to be presided over by an



elected police judge. Its criminal jurisdiction was limited to minor state cases and violation of city ordinances. Jury trials could be demanded in all cases and records were kept by the clerk of the police court. Subsequent charters provided for the gradual abolition of jury trials. The police court and the police force, being further removed from the supervision of the mayor, began to emerge as a separate department. The number of justices of the peace was reduced and they were each given city-wide jurisdiction.

Until 1871 the legislature placed limitations on the penalties to be prescribed for violations of city ordinances. Beginning in 1869 the legislature listed offenses for which punishment should be provided. This tendency increased during the remainder of this period, the list expanding with each succeeding charter.

Early election laws were deficient. There was no system of registration. The ballot was not secret. Judges and clerks of election were elected. The first two of these disadvantages were removed by the election law of 1867. While it specified a method of registration, the law gave too much latitude to the registrars in the listing of voters. Until 1871 municipal elections were almost entirely under the control of the state legislature. The exceptions were special elections called for filling vacancies and legalizing bond issues. A law in 1869 permitted the council

to provide for the election of city officials not mentioned in the charter. This was repealed in 1870 and re-enacted in 1871 when Omaha was given control of the election of all city officials to be exercised in any manner not in conflict with state law.

The general incorporation act had no especial significance for Omaha since by its classification the city remained subject to legislative will. The most remarkable phenomenon of this period was the pernicious legislation of the interval from 1866 until 1871. The general trend of the city government was marked by a separation of powers and the emergence of legislative, executive, and judicial departments. The legislature in its dealings with Omaha was influenced at times by pressure groups to the detriment of public interest. The forced bond issues and tax levies were of doubtful constitutionality. Legislation in the financial field was especially inept. In general, the charters left a great deal of authority in the hands of city officials. Most of the provisions of the charters authorized but did not direct the council to exercise specific powers. Therefore many of them could and did remain dormant. To what extent these grants of power were used is a problem for further investigation.

## APPENDIX

Charter and Charter Amendments  
Passed by the Territorial and  
State Legislatures 1857 - 1875.

- An Act to Incorporate the City of Omaha .... February 2, 1857.
- An Act Supplementary to an Act Incorporating  
the City of Omaha ..... February 7, 1857.
- An Act to Amend an Act entitled "An Act to  
Incorporate the City of Omaha" ..... November 4, 1858.
- An Act to Amend the Charter of the  
City of Omaha ..... January 11, 1861.
- An Act to Amend an Act entitled "An Act to  
Amend an Act entitled 'An Act to Incor-  
porate the City of Omaha,' approved  
February 2, 1857" ..... February 4, 1864.
- An Act to Revise and Consolidate the Several  
Acts Relative to the City of Omaha and  
for other Purposes ..... February 11, 1865.
- An Act to Incorporate Cities of the First  
Class in the State of Nebraska ..... February 2, 1869.
- An Act to Amend an Act entitled "An Act to  
Incorporate Cities of the First Class  
in the State of Nebraska" ..... March 2, 1870.
- An Act to Incorporate Cities of the First  
Class ..... February 8, 1871.
- An Act Relative to Cities of the First  
Class ..... March 4, 1871.
- An Act to Incorporate Cities of the First  
Class approved March 23, 1873 ..... March 23, 1873.
- An Act to Amend an Act entitled "An Act  
to Incorporate Cities of the First  
Class approved March 23, 1873" ..... February 23, 1875.

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