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THE TERRITORY OF JEFFERSON

*By Rodney J. Bardwell Jr. of the Denver Bar**

THE Territory of Jefferson was an illegal commonwealth, set up by the residents of parts of the Territories of Kansas, Utah and Nebraska. The parts of these Territories covered by the Territory of Jefferson, practically correspond with the present boundaries of the State of Colorado. This provisional territorial government existed from the time of the ratification of the constitution and the election of the first governor and assembly on October 24, 1859, to approximately June 6, 1861.

In order properly to understand the problems and attempts to solve them during the existence of the Territory of Jefferson, it is necessary to go into the history of this country immediately preceding the formation of the Territory. The present State of Colorado was referred to in the old histories as the Pikes Peak Region. There had been various gold discoveries reported in the Pikes Peak Region from time to time previous to the actual settling of Colorado. These reports, however, were discredited and people had not made a rush to this section as a result of them. However, in the year 1858, a discovery of gold was made on the right bank of the Platte River, within the present boundaries of the City and County of Denver, by an army teamster then encamped here. He was discharged from the service a month or two after this discovery, and returning to the States, created some enthusiasm through accounts of this gold discovery.

In the winter of 1858, there were very few inhabitants in the district now comprising this state, so there was no immediate need for any organized form of government. However, the settlers realized that many people had migrated to the west boundaries of the states adjoining this region on the

*A paper presented before the Law Club of Denver.

east, and were preparing for a gold rush into the Pikes Peak region in the spring of 1859. Therefore, a movement was started to secure an organized government to provide for the anticipated requirements. Kansas Territory embraced most of this area, there being only small strips of land which were included in the Territories of Nebraska and Utah. Under the act creating Kansas Territory, the following wording was used:

"That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Kansas until such tribe shall signify their assent to the President of the United States to be included within the said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise which it would have been competent for the Government to make if this act had never passed."

The assembly of Kansas had established Arapahoe County in 1855. This county was very large, and included quite extensive territory in the now State of Colorado. Practically all of the Territory of Kansas which would be included within the present boundaries of the State of Colorado was Indian tribal territory. There arose grave doubts as to whether the Territory of Kansas had a right to legislate and enforce laws within this tribal area. Also, the settled portion of this region was far removed from that part of Kansas then settled, so that it would be very difficult to enforce law and order if Kansas had authority to govern this region.

The people of Arapahoe County at an election November 6, 1858, held in Auraria City, delegated A. J. Smith as their representative to the legislative assembly of Kansas Territory. The only recorded act that Smith put through the assembly was to divide the county of Arapahoe into five separate counties, which only tended to complicate matters amongst the various governments established later. At this same election Hiram J. Graham was delegated to go to Washington to promote the political interests of the people at Pikes Peak. His

proposals to congress, however, for the establishment of a territory in this region were not adopted, and it was due primarily to this that the Pikes Peak residents decided to form a government of their own, and instead of having a territorial government, decided to have a state government. The state contemplated embraced an area more than forty per cent larger than the present State of Colorado, and included parts of the now State of Nebraska, nearly one-half of Wyoming, and a part of Utah.

In defense of the zeal of the residents of this territory in organizing a government of their own, and not waiting for Congress to establish a territory, the then attitude of Congress toward territories should be explained. This was shortly before the outbreak of the Civil War, and the members of Congress were either representing slave states or were opposed to the ideas of slavery; therefore, whenever a new territory was proposed, the group against slavery tried to have their views incorporated in the territorial act, which would immediately provoke opposition from the slave states, and for this reason it was next to impossible to have any new territories created, so that it became increasingly necessary for settlers in remote regions to establish local self government for their own protection.

The proclamation of the settlers in adopting a government of their own, is set forth in the first issue of the Rocky Mountain News, dated April 23, 1859, which reported a convention of the 15th of April, 1859, as follows:

“Being vividly impressed by our recent journey hither over the plains, with the great distance our heterogeneous and active population is removed from any seat of government, either territorial or state, of the United States, where our wants could be made known, or civil and religious rights protected, and our wrongs redressed; having already experienced the evils of such remoteness from government adequate to the duty of trying and punishing crime; and being fully impressed with the belief, from early and recent precedents, of the power and benefits and duty of self-government; and of the evils attending the government of bodies of men by agents of States or Territories at a distance, or of legislation without representation; and, * * * *

“Whereas, owing to the absolute and pressing necessity for an immediate and adequate government for the large population now here and soon to be among us, actively engaged in the various acts of life; and aware of the impossibility of an early formation into a territorial government, that duty having been neglected by the recent session of Congress; and also believing that a

territorial government is not such as our large and peculiarly situated population demands" * * * (After this follows an intention to create a state and not a territory.)

Another reason set forth in an address to the preliminary convention of the "intended State of Jefferson", which appears in the issue of the News of May 7, follows:

"Again, if crime be committed, the United States Courts of a Territory are the only ones competent for a trial, and what criminal will be deterred from the commission of crime when his judge is separated from him by seven hundred miles of arid waste? Government of some kind we must have, and the question narrows itself down to this point: Shall it be the government of the knife and the revolver, or shall we unite in forming here in our golden country, among the ravines and gulches of the Rocky Mountains, and the fertile valleys of the Arkansas and Plattes, a new and independent state? Shall the real keystone of the Union now be set on the summit of the arch, and a republic inaugurated that can from her mountain aerie cast her eye to the Pacific on the one hand and the Atlantic on the other? Embracing the waters of the Arkansas and the Plattes flowing into the Atlantic, Grand River and the Colorado flowing to the Pacific, she at once becomes the real center of the Union.

"We may soon expect the advent of the iron horse, and a national railroad is no longer a question. Northern and southern routes will no longer be a cause of delay, for nature has provided by her golden largess an argument for its location that will be irresistible, and both roads will become not a disputed issue but a remunerative speculation."

An interesting article appeared in the Rocky Mountain News of May 14, 1859, as a warning to horse thieves. This article was as follows:

"These gentry have been pursuing their calling with great industry and success for a few days since. Some sixteen horses and mules have been stolen from this vicinity in the last three days. We give the rascals warning that if they are caught, they will be called upon to dance upon nothing, with a very short time for preparation."

On May 9, 1859, delegates were elected to organize a new and independent state of the Union. These met on the 6th day of June, and after appointing committees, decided that new precincts should be formed and delegates sent to a convention to be held on the 1st day in August; these delegates were to be apportioned according to the number of residents of the various precincts. During the months of June and July a considerable opposition to the movement to organize a state arose among the people, most of the objections coming from

those professing to favor a territorial form of government. The convention convened in August, and it was decided that the convention should prepare a constitution for the State of Jefferson, and also prepare a memorial to congress, asking an immediate organization of a territorial government for this district; that the proposition should be put to a vote of the people in September, as to whether a state or a territory should be formed. It appears that on August 5, 1859, during the convention, this state took its first steps to regulate the saloon-keeper. Smiley's history reports as follows:

"It appears that the saloon had become a practical issue and that the assembly had been annoyed by its 'influence' as Delegate Eli Carter moved, in the forenoon of that day 'That the Sergeant-at-Arms be requested to desire all liquor saloons to remove at least fifty yards from this building.'"

But the record is silent as to the disposition made of Mr. Carter's motion, which was the first proposition advanced upon Colorado soil to "regulate" the saloon-keeper.

At the September election, the vote was against the formation of a state and for the formation of a territory. The leaders, having based all their plans on the supposition that the people would adopt a state form of government, had not made any provisions for a government if the people adopted a territorial form. At this election, the returns from Fountain City, which later developed into the City of Pueblo, were as follows: for territory, 1; for state, 1089; but as stated in the history, the Fountain City return was either an error or a gross misrepresentation, the truth being that the vote was probably 89 instead of 1089.

The people of the Cherry Creek towns called a mass convention on the 24th of September, and sent out a circular letter to the voters of Jefferson Territory requesting that the voters of all precincts on the first Monday in October appoint or elect delegates in the ratio of one delegate from each 50 voters, to meet in convention in Denver the second Monday in October to form a provisional government. The election was held on the first Monday in October, both for delegates to the convention and also for the election of a delegate to Congress from Jefferson Territory. Beverly D. Williams was elected

to Congress. This election was described by Smiley as follows:

"The election was conducted recklessly, with 'terrible ballot-box stuffing' as one of the accompaniments, and 'returns' were sent in from several alleged precincts of which no one had ever heard before. However, Beverly D. Williams, * * * emerged from the scrape with a large plurality of the honest votes."

The delegates elected to the territorial convention assembled at Denver City October 10, 1859, and a constitution was drawn and nominations for the various territorial offices were made by the delegates. The constitution appointed the 4th Monday of October as the time for holding the election for territorial executive and judicial officers, and district elections for members of the Assembly, subject to the ratification of the constitution, which was to be submitted to "a vote of the people" on that date. At this election the constitution was adopted and the men nominated by the convention for the territorial offices were elected over an independent ticket, Robert W. Steele being elected governor. The election, however, did not turn out as contemplated, as no elections were held in 5 of the 19 districts; the campaign managers consolidated the 17th and 19th districts with the 13th, and gave the combination 3 representatives, and raised the representation of the 5th from one to three, and that of both the 4th and 6th from one to two, and still the quota elected lacked one of having the number provided for by the apportionment.

The executive and judicial officers of Jefferson Territory were sworn in, and the new government machinery put in motion. The members of the general assembly gathered in Denver City on November 7, and Governor Steele delivered his first annual message to the Assembly.

The assembly provided for by the constitution consisted of two houses; there were to be 8 members in the upper house, and 21 members in the lower house. The Assembly divided the territory into three judicial districts, and assigned judges thereto. The first term of these district officers was to begin on the 3rd Monday in January, 1860. The assembly turned out laws at a rapid rate. One of the most worth-while acts of the assembly was the consolidation of Auraria City, our present West Denver, with Denver City, which was the

present down-town portion of Denver, and with Highlands, the present North Denver, as the municipality of Denver City. Under this act the first city officers for the Cherry Creek towns were elected December 10, 1859, although this union was not formally approved by the cities until the next April.

The assembly levied a poll tax of \$1.00 to defray immediate expenses and appointed committees to prepare full Civil and Criminal codes and report them to a later session to be called by the governor.

The assembly met in special session, pursuant to a proclamation by the Governor on January 23, 1860, adopted codes drawn by the committees, received the governor's approval of the legislation, and the lawmakers adjourned on January 25.

A study of the Civil and Criminal codes as adopted by the assembly of the Territory of Jefferson discloses that they were very complete, setting forth in detail the various pleadings, defining causes of demurrer and service of notices, also concerning replevin, executions, foreclosure of mortgages, habeas corpus, providing for jury selections and the like, and would, with very few changes, be comparable to our own codes.

Several special legislative acts were passed besides the one consolidating and incorporating the Cherry Creek towns. These included incorporation of road, ditch, lumbering, bridge, hydraulic, town, and insurance companies. The Jefferson constitution provided that "every white male citizen of the United States, of the age of twenty-one years," excepting persons "convicted of any infamous crime," shall be entitled to a vote at all elections held according to law." But the Jefferson "law" specifically denied the ballot to Indians, and to "negroes, mulattoes or black persons." Sec. 378 of the Jefferson Civil Code contains the following respecting witnesses: "Every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases, both civil and criminal, except as otherwise herein declared. But an Indian, a negro, or a mulatto or black person shall not be allowed to give testimony in any cause."

The revenue system put a special tax on every occupation except those of farming and mining. On storekeepers, the tax was one-fourth of one per cent. on all merchandise offered

for sale that was "not the growth, manufacture or product of the Territory"—a home-made protective tariff. The tax on gamblers was \$2.50 per month, "on each table or other appliance used for gaming." There was a territorial seal provided, and the territory was divided into 12 counties.

January 2, 1860, the voters in Mountain County, which embraced the upper Clear Creek mining districts, instead of voting for county officers, held an election to decide whether or not there should be such a county. The vote was four to one against recognition of the county, and some 650 silver miners signed a protest against, and a refusal to pay a poll tax of \$1.00, and sent the document down to Governor Steele. The territory was now in full operation, and about to meet its most difficult task, that of enforcing the laws it had passed, as there were now three factions to contend with; those in favor of the illegal government of the Territory of Jefferson, those contending that this Territory was still Arapahoe County, Territory of Kansas, and those claiming that this was tribal territory, so that neither government could function, and who preferred to function by the miners' courts and through mass meetings of the people. The provisional government had extreme difficulty in obtaining funds for its treasury, taxes amounting to voluntary contributions rather than a lien on property; also public confidence was waning in the organization, as congress paid no attention to the appeals for the recognition of the territory formed, nor did it take notice of the laws adopted and thus recognize it. Further, the authority and the jurisdiction of Kansas was accepted by the great majority of the people when the more direct of their affairs were involved.

Although most of the men interested in the pioneer town companies had participated in the convention adopting a provisional government, such companies never recognized it, and all business transactions were kept within Arapahoe County and Kansas Territory, as shown by their records, town lot certificates, and deeds to real property. It appears that in no instance of any written transaction, did "Jefferson Territory" figure in the papers of the case, as the place of the action.

However, Governor Steele issued a proclamation for the second election for Territorial officers and members of the

general assembly. This election was held October 22, 1860. Governor Steele was again elected Governor, and although some of the districts did not elect delegates to the assembly, enough were elected to form an assembly.

In the meantime, the citizens of Denver resolved that the city should secede from Jefferson Territory and establish a provisional government for itself. On September 22, 1860, a mass meeting of citizens was held, which approved a constitution entitled the "People's Government of the City of Denver," and set the first day of October for the day to submit this question to a vote of the people, and elect its officers. At this election, the new government went into effect, almost by unanimous vote, and Denver City passed from under the jurisdiction of Jefferson Territory.

In the meantime, various inhabitants of the Clear Creek mining towns, moved by the example of Denver City, elected delegates to a convention which was to provide for extinguishing Jefferson Territory and establishing a new form of government in its stead. These delegates met at Central City on October 24, before the result of the Jefferson Territory general election had been determined, and after having been in session two or three days adopted "An Act for a Judiciary System" and called their organization Idaho Territory, and elected a delegate to Congress to supersede Beverly D. Williams, the delegate from Jefferson Territory.

However, the Jefferson Territory second general assembly met in Denver on November 12, and Governor Steele delivered his message; but the business of the assembly was second in the minds of the delegates due to the excitement over the result of the presidential election, and the startling news of secession from the Union by the states of the South. It adjourned November 27, to Golden City, the principal reason for the change of base being that Golden City offered board at \$6.00 per week, and wood, lights, and hall rent free. As these lawmakers were serving without pay, the Golden City inducements were persuasive. The members, however, were indifferent, and took but little interest in the proceedings. This assembly made a heroic effort to win attention by a proposition to convert the Territory into the "State of Jefferson." This act was approved by the Governor on Decem-

ber 12, and provided for holding a convention of delegates to prepare a state constitution for Jefferson, but the proposition was not favorably received, and came to nothing. Governor Steele and his associate executives nominally held on until the Territory of Colorado came into existence, and started to function, upon the arrival of Governor Gilpin, who had been appointed by the President as Governor of the Territory of Colorado.

The "swan song" of Jefferson Territory was sung by Governor Steele in his proclamation of evacuation June 6, 1861, as follows:

"PROCLAMATION"

"By virtue of the authority in me vested, I, R. W. Steele, Governor of the Territory of Jefferson under the Provisional Government, and in and by virtue of my election by a majority of the People of the then called government of the People of the Mining region, unrecognized by the General Government, at the base of the Rocky Mountains, on the East, and at the center thereof, and placing our confidence in that 'over-ruling Providence' that has for a long period of time, steadied us as an American people, through so many difficulties by foes seen and unseen, I therefore issue this my proclamation in view of the arrival of Governor Wm. Gilpin, and other officers of the United States, whom I recognize as being duly in authority. I deem it but obligatory upon me, by virtue of my office, to yield unto 'Caesar the things that are Caesar's', and I hereby command and direct that all officers holding commissions under me, especially all Judges, Justices of the Peace, etc., shall surrender the same and from this date shall abstain from exercising the duties of all offices they may have held under me by virtue of said commissions, and further I advise and recommend to all law and order loving citizens to submit to the laws of the United States and restrain themselves from deeds of violence which so long have made our *peculiar position* almost a bye word in the eyes of the civilized world. Again I advise my fellow citizens who know me 'so long and so well,' to yield obedience to the Laws of the United States, and do it by attending to your proper and legitimate avocations, whether Agricultural or Mining."

"R. W. STEELE, Governor."

And thus in closing we are reminded of that famous painting by Emanuel Leutze in the House wing of the Nation Capitol, "Westward the Course of Empire Takes its Way."