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The Development of County Government in the Territory of Utah, 1850-1896

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THE DEVELOPMENT OF COUNTY GOVERNMENT
IN THE TERRITORY OF UTAH,
1850-1896

A Thesis
Presented to
The Faculty of the Department of History
Brigham Young University
Provo, Utah

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts in History

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by
James B. Allen
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PREFACE

The writer's interest in county government was first stimulated while taking a class in historical method at the Utah State Agricultural College. While working on a paper on county boundaries he found, to his surprise, that little or nothing had been done in the area of county government, especially for the territorial period. It was felt that, because of Utah's peculiar religious and political situation during the territorial period, a significant study could and should be made of the patterns of local government in order to help provide a better over-all picture of territorial administration. Much encouragement was given to the idea by members of the History Department at the Brigham Young University. It is earnestly hoped that this resultant thesis is a step toward better understanding of this most important period in Utah's history.

The writer is well aware that there are limitations to the scope of this work. Several areas merely touched on here could themselves be expanded into more significant studies. The problem of county finance, for one, could perhaps be a thesis in itself. A more detailed historical development of the several offices outside the county court, further study into the functions of the probate court as a court of law, an analysis of the influence of the "Gentiles" on county government in the urban areas, and a comparison between county governments in the territorial and statehood periods are all fields which may warrant much
further consideration. It is only hoped that this preliminary attempt to analyze the functions of county government in the Territory of Utah will strike a note of interest in other students and give them ideas for further study.

It was considered impossible to study every Utah county, so the writer attempted to pick three counties which would give fair representative samples of the kinds of problems encountered. Davis, Iron, and Utah Counties were consequently selected for detailed study. Records of other counties, however, were spot-checked in order to determine the validity of the patterns established and it was discovered that the problems which arose and methods used to solve them were similar to those discussed here. Extensive use was made of the journal of George W. Bean. Not only did he hold several official county positions, such as probate judge, assessor and collector, and county attorney, but he was extremely active in the Church of Jesus Christ of Latter-day Saints and held several important offices, including that of bishop. He therefore typifies the average Mormon attitude toward both county and church affairs.

A special word of grateful appreciation is expressed to the following people: Dr. Richard D. Poll, chairman of the Brigham Young University History Department, for his sincere interest in this project, his continued help in suggesting sources and new areas of investigation, and his most helpful direction in the entire undertaking; Dr. Russell R. Rich, Brigham Young University Division of Religion, for his helpful suggestions and interest; Dr. Everett L. Cooley, Archivist at the Utah State Historical Society, for his willingness to open his files to me and his helpful direction on sources; my wife, Renée, for her patience
during these difficult two years of trying to earn a living and write a
thesis at the same time and for her work as typist.

James B. Allen
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CHAPTER I

TO PUT IT IN ITS PLACE

A modern student of history and government climbs aboard a 200 mile an hour airplane and takes off for a trip across the United States. As he looks down upon the quilted landscape his mind unconsciously reproduces a map with the boundaries of the forty-eight states boldly defined and his day-dreams take him into the problems and complexities of state government. Our federal system, he reflects, is unique in that a large share of essential sovereignty is retained by state organizations. The Constitution, in fact, guarantees that every state shall have a republican form of government and the Tenth Amendment declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states.

Suddenly, however, the patchwork below forces a new pattern into his mental map. Dimly at first, and then in bold relief, new lines, which he recognizes as county boundaries, implant themselves into his consciousness and a new thought strikes him. What has been the significance of county organizations in the history of local government in the United States? What degree of authority have state and territorial legislatures of the past given to these smaller units of government? How has the county system affected the settlement and growth of new areas of colonization? Certainly, he observes, the county must hold some significance in the lives of the people for there are 3,050 of them
in the United States\textsuperscript{1} and from where he sits he is looking down on a new county every eight minutes, each one averaging about six hundred miles in area.\textsuperscript{2}

The student's reflections take him quickly into the field of county government and its origin in the United States, but he determines that a more detailed analysis of one state at a time will be the best means of answering his numerous questions. The next stop is Salt Lake City. As the map of Utah is enlarged in his mind he sees that there are presently twenty-nine counties. Their boundaries follow an irregular pattern, some following mountain ranges and streams while others are formed by straight lines with no apparent geographical or political significance. The counties average about 2,928 square miles in area and have an average population of approximately 25,415 people.\textsuperscript{3}

Why not study the origin of county government in this state? It would certainly be a significant study. In the first place, it would illustrate the importance of local government in settling new areas of colonization. Secondly, the history of Utah is unique when compared with other western states. Here is one of the few states settled with a purely religious motive. The Mormon pioneers who came here in the middle of the nineteenth century were, in a sense, a forcibly transplanted society, most of them having come from comparatively well settled communities. It would be significant to see how closely this people followed the pattern of local government as set up elsewhere in the


\textsuperscript{2}Ibid., p. 3.

\textsuperscript{3}Based on an estimate of about 757,000 people in the state.
United States and how much they allowed their religious institutions to influence it. Thirdly, a study of county government in Utah, or any other state or territory, would be worthwhile in presenting a picture of the various local problems involved in running a state and the role played by traditional county officials in solving them. This would be a good basis of comparison when studying other states.

As our traveller prepares to land in Salt Lake City, he mulls over the history of Utah in his mind and determines that, for this study at least, he ought to stick to county government as it functioned in the Territory of Utah before its admission to statehood in 1896. The territorial period saw the county court system of government, with unusually far-reaching authority placed on certain county officials, whereas today the county is controlled by a board of commissioners, none of whom have the authority given to the county judge during the former period. It saw a period of extensive colonization into unsettled areas and thus is illustrative of the way local government originated. Finally, it saw the official interest of the United States government in the affairs of county government, certainly an unusual recognition and one which would make the study of the period even more interesting.

A brief review of the history of county government in the United States reveals roots extended even back into English history. The office of sheriff, the coroner, the justice of the peace and the grand jury were all parts of county administration in England as far back as the seventeenth century.\(^4\) During the colonial period counties were

organized with similar officials but changes such as locally elected county boards and the extension of the elective principle for other officials soon came in. The number of county officials was also enlarged to include prosecuting attorneys, clerks, and recorders, all of these being elective offices.\(^5\) The importance of the county was modified in the New England colonies by the development of the town government, but in the south the county became the main unit of local administration.\(^6\)

Wager lists four major systems of rural government which developed during colonial times: the New England town, the town-supervisor plan, the commission system, and the southern county.\(^7\)

By 1850, when the Territory of Utah was created, there were counties in every state of the union and in every organized territory.\(^8\) The functions of the county varied from that of mere judicial districts, as in Rhode Island, to the nearly all important county, as in Virginia. Generally, however, counties existed as election, military, judicial, financial, and administrative districts and thus had significant local authority. Such became the case in Utah. The elective principle for county officials had been established in most Eastern states and was generally being established in the newer states. The Territory of Utah provided for popular election of all major officials except the probate judge. Liberal manhood suffrage had also been extended in nearly all states and Utah had also adopted liberal voting qualifications. Later, however, the right to vote was withdrawn from polygamists. Finally,

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\(^5\) Fairlie, op. cit., p. 108. \(^6\) Loc. cit.

\(^7\) Wager, op. cit., p. 5.

most states regarded their counties as units of local administration for state affairs, but had also given them a limited corporate capacity and thus the counties had become largely independent of control by any state agency except the legislature. The first Utah laws mention nothing about the county being a corporation, but such extensive responsibility was given to the county that it could be considered a quasi-corporation at least. Later the county was definitely defined as a corporate body.

During the period 1860-1900 the characteristics of county government in the United States did not change as rapidly as in the previous period. A few changes, however, may be noted.

In the first place, extension of the elective system of choosing county officers continued. This trend was most marked with regard to judicial officers, such as county judges, clerks of courts, and prosecuting attorneys, which generally had remained appointive even after other officers had become elective. In the South, however, the appointive method remained. In Utah, all the major officials were elected except the probate judge, whose office was filled by appointment first by the territorial legislature then, after 1882, by the President of the United States. This remained the case until 1896 when, with statehood, the county court was abolished and elected county commissioners became the chief officials.

Many new areas, such as the Dakotas, Nebraska and Kansas, adopted the township form of local government. Further west, however, the new states generally followed the policy of granting corporate

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9 Loc. cit. 10 See Chapter III, p. 28.
11 James, op. cit., pp. 111-113.
powers to very small communities and using the county as the real unit of local rural administration. The Territory of Utah seemed to follow this pattern, except that in areas of large population, such as Salt Lake City, the county government had little to say about affairs within the city corporation. This study is mainly concerned with county administration in rural areas.

Another characteristic of this period was the increasing attention new state constitutions gave to counties and the tendency of existing states to revise their constitutions to include more provisions relating to local government. These provisions covered such subjects as the manner of creating new counties, dividing or consolidating counties, enumeration and qualifications of county officers and careful enumeration of their powers. In Utah, the Constitution of the Provisional State of Deseret had said nothing about county government, although counties were organized by this temporary state. The organic act which created the Territory of Utah in 1850 had merely indicated that county, district, and township officers should be elected in such manner as should be provided by the governor and the legislature. The Constitution of the State of Utah, however, recognized existing counties as legal subdivisions of the state, provided for change of county seats and county boundaries, and made it mandatory for the legislature to establish a uniform system of county government throughout the state.

\[12\] Acts, Resolutions and Memorials, passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah. (Great Salt Lake City, 1855), p. 114, sec. 7. Note: The titles of the various session laws and compilations of laws in the Territory of Utah vary considerably (see bibliography). Throughout the remainder of this thesis the titles will be abbreviated.

A final tendency to be observed during this period is the development of administrative supervision by the state over county officers. This was especially true in the fields of finance and education and, to a lesser degree, in public health, poor relief, and highway control. In Utah the county treasurer, the superintendent of schools, and a few other officials became subject to state administrative agencies by the end of the territorial period. Thus counties throughout the United States developed to become a very definite and important part of the state government and the legal development of counties in Utah generally followed the pattern established in other new states, especially in the West.

A few more general observations can be made concerning county government across the nation. Politically, the counties are considered to be of a lower order than cities. The same is true in Utah, except that in at least two cases during the territorial period the county, instead of the state, was the authority which actually incorporated a city.

The primary purpose of the county is to be an agency of the state for the convenience of local administration. County officials are now usually chosen locally, salaries are fixed locally and counties determine their own tax rate. The principle areas of county administration are in the administration of justice, roads and bridges, and poor

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15 Utah County, County Court Minutes, Book C, p. 203. The city of Salem was incorporated by the county court. Ibid., p. 539. The city of Santaquin was incorporated by the court.

16 Wager, op. cit., p. 9.
relief, and most states have some form of county supervision over education. In many areas, and especially was this true in the Territory of Utah, a large degree of local autonomy has been left to the county.

The governing body in over sixty per cent of the counties is called the board of commissioners or board of supervisors, although there are at least twenty-seven different titles in use in the United States. In Utah it is called the board of county commissioners. Several states retain the word "court" in the title, although the county has lost the historic functions of a court. Thus it is called a county court in Missouri, fiscal court in Kentucky and commissioner's court in Texas. Louisiana calls its parish board a police jury. In states with large boards, elected by townships, the usual title is board of supervisors, although New Jersey calls it the board of freeholders.

Thus, as our student traveller sets down in Utah, he has obtained a brief picture of the development of county government across the nation. His objective now is to discover the pattern of development of county government in the Territory of Utah.

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17 Fairlie, op. cit., p. 111. 18 Wager, op. cit., p. 11.
CHAPTER II

IN THE BEGINNING

The early legislators of Utah were apparently very much aware of the local problems which would arise with the sending out of colonists to various and remote areas of their western empire, for they began a system of county government even during the period of the Provisional State of Deseret. Though this did not become an elaborate system it nevertheless established a pattern of county government which was adopted and then largely modified by the territorial legislature.

The first legislation concerning county government was passed by the legislature of Deseret on January 9, 1850 and approved by Governor Brigham Young January 16. It created the county court and the offices of prosecuting attorney, clerk of the county court, sheriff, justice of the peace and constable.

A prosecuting attorney was to be elected by the people of each county and it was his duty to prosecute all crimes within the county and to attend to legal business in which the state was a party.1

The county court, evidently meant to be the highest authority in the county, was to consist of a "Chief Justice" and two "Associate Justices," any two of which could form a quorum to do business.2 The

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1Ordinances passed by the General Assembly of the State of Deseret (Great Salt Lake City, 1850), p. 19, sec. 17. (These ordinances are hereafter referred to as O.S.D.)

2Ibid., p. 20, sec. 19.
chief justice was to be elected\textsuperscript{3} by the General Assembly of the State of Deseret for a period of four years, while his associates were elected for the same period by the people of the county. Original jurisdiction of the court extended to all civil cases involving more than one hundred dollars and to all criminal cases arising in the county. It could also hear appeals from a justice's court. The court was required to consider and issue writs of habeas corpus and to "administer justice in all cases regardless of technical forms of the law."\textsuperscript{4} In cases of bribery or corruption any member of the court could be tried before the county court of an adjoining county or before the supreme court.

It is interesting to note that at this time there seems to have been no rule-making authority placed in the hands of these county officers. Very soon after the organization of the Territory of Utah, however, the responsibility of the county court was considerably changed in order to make it a rather strong county legislative body and, as will be seen, the organization of the court was altered.

The clerk of the court\textsuperscript{5} was to be appointed by the justices and was to affix a seal to all official papers, keep a record of proceedings, issue process, etc. For every civil suit which he entered on the docket a fee of ten dollars had to be paid into the public treasury.

\textsuperscript{3}The term "elect" was used by the legislatures of both Deseret and the Territory of Utah in referring to legislative appointment of county officials. When county officials are selected by someone outside the county it is usually by appointment by the governor and approval by the state legislature. The reverse seems to have been true in the early years of the Territory of Utah. Special laws were passed by the territorial legislature "electing" probate judges for each county. Utah, Acts, Res. and Mem. . . . (comp. 1855), p. 231.

\textsuperscript{4}O.S.D. (1850), p. 20, sec. 23. \textsuperscript{5}Ibid., p.20, sec. 24.
One sheriff was to be elected in each county for a term of four years. Being called the "chief executive officer" of the county, he was to execute the orders and decrees of the county court and could appoint, with the approval of the court, such deputies as were needed to perform his business.

Also provided for in this early law was the election of at least one justice of the peace and two constables in each precinct. Their terms were for two years each. In addition to his regular duties, any justice of the peace was authorized to officiate as a coroner and to hold inquests.

All these county officials were required to take an oath of office and to file bonds as security for the faithful performance of their duties. This same procedure became common with all county officers throughout the territorial period.

Another office created in 1850 was that of assessor and collector. Before the first counties were completely organized the respective assessor and collectors were to be selected by the legislative assembly. After county organization, however, this officer was to be appointed by the county court annually. It was his duty to assess and collect taxes on all private property, the assessment for the first year being two per cent. He was also to keep a record of all property owners which showed complete tax information and to give an annual statement to the auditor of public account.

The office of county road commissioner was created by an act of

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6Ibid., p. 21, sec. 27. 7Ibid., p. 21, sec. 29.
8Ibid., p. 22, sec. 32. 9Ibid., p. 23, secs. 1-5.
January 15, 1850.\textsuperscript{10} Being appointed by the county court for a term of two years, the commissioner was to locate all roads within the county, make contracts for the improvement of roads and report regularly to the county court. In locating roads the commissioner had power to go through enclosures, farming lands, etc., when necessary. Any person who felt that he had been damaged by such openings through his property had the right to call "three judicious men" to appraise the damage and consider the possible benefits accruing to the property. If the damages appeared to be greater than the benefits the owner could make recovery by appeal to the county court.

In addition to the county road commissioner, this law provided for the annual election of a supervisor of roads in each precinct.\textsuperscript{11} His duty was to "call out and expend the poll tax" on all roads within his precinct.

As will be observed in the discussion of county problems, the location and maintenance of roads was one of the main concerns of early county officials. Roads were needed in order to haul timber from the hills for building and fuel purposes. The road commissioners and supervisors, therefore, were very much in the public eye in the early years of Utah and their work made a distinct contribution to the effective settlement of the Utah communities. In 1851 the precinct supervisor was allowed to collect the road tax either in labor or in money\textsuperscript{12} and he was required to prosecute all delinquents or be sub-

\textsuperscript{10}Ibid., pp. 26-27, sec. 1. \textsuperscript{11}Ibid., p. 28, sec. 9.
\textsuperscript{12}O.S.D. (1851), p. 21, sec. 3. See pp. 52, 95 for a discussion of financing procedures in road building.
ject to liability for twice the amount owed.\textsuperscript{13}

The office of county recorder was created on March 2, 1850,\textsuperscript{14} and was to have a term of office of four years. The holder of this office was to record "in a fair and legible manner" all transfers of property and "all other instruments of writing and documents suitable." He was also to keep a record of town and city plats, surveys of land and roads, and surveys of all permanently located public works in his county. Deeds, bonds, mortgages and other instruments to be recorded in the county records were not to be deemed lawful until acknowledged before the recorder.

Another act of March 2 created the office of county surveyor.\textsuperscript{15} He was to supervise all surveys made in his county and to see that a copy of each survey was filed with the county recorder and the surveyor general.

Although the Territory of Utah was established in September, 1850, the General Assembly of the State of Deseret was not dissolved until April, 1851. This body, therefore, made a number of additional rules concerning County Government.

In January, 1851, an ordinance was passed which amplified the duties of the county court and set its time of meeting to be at semi-annual sessions, commencing the first Monday of March.\textsuperscript{16} At the March meeting the court was to "take into consideration the affairs of the County," settle with the commissioner and the assessor and collector, assess taxes for the coming year, and generally "... do and perform

\textsuperscript{13}ibid., p. 22, sec. 7. \textsuperscript{14}S.D. (1850), pp. 32-33. \textsuperscript{15}ibid., pp. 33-34. \textsuperscript{16}S.D. (1851), pp. 18-21.
the county business for the year." The court was to assess the county tax and that, together with the state tax, was to be assessed and collected by the county assessor and collector semiannually. This was the first law to indicate that the county court was to be something more than a judicial body and might therefore be considered the beginning of the evolution of the powers of the court.

The same law required the county clerk to settle all fiscal affairs with all officers handling public funds at the beginning of the March term, to receive all claims against the county by the first Monday of October in each year, and to give full reports by the first Monday of December. The clerk was given the responsibility of delivering to the county commissioner abstracts from the assessor and collector's book of the road tax in his county and the commissioner was to furnish a copy containing all the names in their respective districts to each supervisor of roads. ¹⁷

The probate court was established in January, 1851. ¹⁸ This court was to consist of one judge, elected by the General Assembly, whose term of office was to run concurrently with that of the chief justice of the county court. It was provided that the chief justice could also be appointed probate judge. ¹⁹

The probate judge was given power to probate wills and grant administration of estates of deceased persons whose property lay in his county. He could appoint guardians to minors and others and had

¹⁷Ibid., p. 19, sec. 5. ¹⁸Ibid., pp. 22-24, secs. 1-11.

¹⁹Notice that in 1852 the territorial legislature combined these two offices by providing definitely that the probate judge should be the judge of the county court and that the same clerk should serve both courts. See p. 19.
jurisdiction in all matters relating to the settlement of the estates of such persons under guardianship. He was also given authority to issue all warrants and processes necessary to carry into effect these powers, and sheriffs, deputies and constables were required to execute all such warrants. The judge was required to make out transcripts of all proceedings of the court, including orders and decrees, wills, probates, warrants, reports, returns, accounts and bonds.

The supreme court was to be the supreme court of probate and had appellate jurisdiction in all matters considered by the probate judge. It was provided that appeals must be made within twenty days from the date of proceedings appealed from.

Additional responsibility was again given to the county court in February, 1851, when the judges were authorized to grant mill and other water privileges and to control the timber within their counties, provided that such privileges did not interfere with irrigation or other rights of the community. It will be observed later that this became one of the more important functions of the court in the early days of settlement.

The General Assembly of the State of Deseret was also concerned about election procedure in the counties and in 1850 provided that three judges of election were to be appointed in each precinct by the county court. The election judges were to appoint a clerk of election and voting was to be by ballot.

Another office created in 1851 was that of estray poundkeeper.

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The law provided for one poundkeeper to be elected in each precinct, with no specific term of office. He was to receive, brand, and take care of all strays or unruly animals driven to him. He was required to keep a description, certificate of appraisal, and bills of damage and costs on each animal and was considered the owner of the animal until the true owner appeared and paid.

The office of fence viewer was also created in 1851. Each precinct was to elect two or more fence viewers for a term of four years. Their duty was to decide on the legality of all fences in the precinct and to see that all laws concerning enclosures and trespass were faithfully executed.

Such, then, was the legal structure of county government under the laws of the State of Deseret. It is not to be supposed, however, that all the counties were organized or operating by the time the territorial government took over. Indeed, some uncertainty seems to exist concerning the early organization of these counties. Utah County, for instance, had been created in 1850 and it appears that Brigham Young, as governor, had nominated some county judges, but no work of organization seems to have been done by them. A new effort to organize was apparently made in October, 1851, with the legislative appointment of Gershun C. Case as chief justice and probate judge and Joshua T. Willis and Duncan McArthur as associate judges. A few other officers were appointed and these served until the county was

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23Ibid., p. 76, sec. 7.


25Loc. cit.
organized again under the provisions of the Territory of Utah.

A more complete organization seems to have been accomplished in Iron County. George A. Smith had been appointed chief justice. On January 17, 1851 an election was held for county officers and 117 votes were polled. Elected were a representative, two associate justices, a sheriff, recorder, assessor and collector, road supervisor, four magistrates, a sealer of weights and measures, and four constables. It appears, however, that these officers did not take over all functions immediately, for the Iron County Camp organization continued to exist and function under the leadership of President George A. Smith.

One of the first acts of the new Legislative Assembly of the Territory of Utah was to legalize all the laws of the provisional State of Deseret which did not conflict with the organic act of 1850, which established the territory. This, in effect, established the county government as set up by the State of Deseret as the official pattern for the new territory. In the discussion to follow, therefore, it can be considered that the county court and the various other units retained any power granted here unless specifically modified or withdrawn by the legislature.

In the pages to follow each unit of county government will be discussed separately as it developed under the laws of the Territory of

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27 Ibid., Jan. 31, 1851.

Utah, for this seems to be the best way to get a comprehensive picture of the evolution of each office. Two important units, the county court and the probate court, will receive the most detailed and complete consideration in individual chapters, while the remainder will be discussed in a single chapter.

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29 The Historical Records Survey of the W.P.A. has compiled in chronological order the various responsibilities given each office. See Historical Records Survey, Inventory of the County Archives of Utah Number 23, Tooele County (Ogden, 1939), pp. 76-215. It is considered worthwhile here, however, to discuss this evolution in narrative form and, in a few cases, consider in detail the implications of some of the changes made. There is no point, however, in attempting to discuss in detail every law concerning county government for the objective here is to give a general picture of the evolution of the offices. Anyone interested in more detail concerning a specific office is referred to the above work.
CHAPTER III

EVOLUTION

A typical county court in the Territory of Utah was a unique body. Presided over by the probate judge, this group had the responsibility of managing all the business of the county and also supervised the activities of all other county officers. The selectmen had authority to act independently in certain affairs concerning county welfare and the judge, by virtue of his position in the probate court, had original jurisdiction in all civil and criminal affairs of the county. These items, together with the fact that these men often held important positions in the Mormon church, all combined to make them men of unusual influence among Utah's early citizens. The purpose of this chapter is to trace the legal development of the powerful executive group which they composed.

The Court and its Duties

"An Act in Relation to the Judiciary," approved February 4, 1852, gave the probate judge, together with the selectmen, the usual powers and jurisdiction of county commissioners and conferred upon them the title of "county court." This action, it will be observed, made a functional change in the body known as the county court from that of the State of Deseret. Previously the court had been primarily a judicial

body with a "chief justice" presiding. Now it became basically an executive body with the responsibility of managing all the affairs of the county and with power to pass the necessary rules and regulations to administer this responsibility. Judicial functions had been given over to the United States District Courts and the newly created probate courts.²

In addition to the management of county business the county court was to take the care and custody of all county property, audit all claims against the county, and to draw and seal with the county seal all warrants or orders on the treasurer for money to be paid out of the county treasury. It was further required to audit and settle the accounts of the treasurer and anyone else who collected county revenue plus those of any person entrusted to expend county funds.

With reference to records, the court was required to keep a "county book" in which was to be recorded all orders and decisions made by it, except those relating to roads and probate affairs. Orders for money from the county treasury were also to be recorded in this book and the court was to superintend all fiscal affairs of the county. It appears that in most cases the clerk of the court was very faithful in keeping this record, at least in the counties studied in connection with this research, and that this book also served as the official minute book for the court. Thus, in the early county records, problems, discussion, official orders, regular reports from various county officials, tax levies, and financial balances are all recorded in one book. In Davis County, for instance, the records of finances, at least

²See Chapter V.
for the early period, were kept in the margin of the minute book and audited from there. On March 6, 1871 appears the signature of the auditors, Peter Barton and William Thurgood, certifying (in red ink) "These records Audited up to this date."  

The same law required the county court to keep a separate book for the entries of all proceedings concerning the establishment, change or discontinuance of roads and also a separate book for probate affairs. The latter evidently needed to be specifically mentioned because of the fact that the clerk of the county court was also clerk of the probate court. Further, the court was to keep an account of the receipts and expenditures of the county and file in its office a minute statement of them annually, together with an account of all debts payable to and by the county and the assets of the county. Copies of this statement were to be posted at the county seat, at the usual place of holding courts and at two other public places.

The county court was given control of all timber and water privileges in the county and had the right to grant mill sites and exercise such powers as in their judgment shall best preserve the timber, and subserve the interest of the settlements. This authority proved to be one of the most important functions of the county court, for these were the problems directly concerned with clearing, settling and cultivating the land in the newly settled areas. Colonization was only beginning at the time county governments were set up; so, in effect, the county court had a direct responsibility for

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3. Davis County, County Court Minutes, Vol. 2, p. 45.
establishing policies which would help in the rapid and effective colonization of this former wilderness.

The court was further required to divide the county into road districts, voting precincts, school districts, and "other subdivisions as may become necessary. . . ." They were to locate sites for and erect public buildings, and they were given the right to select grand and petit jurors for their counties.

**Selectmen**

The judge of probate, together with any two selectmen, constituted a quorum to do county business. The selectmen, however, could transact business separately throughout the county relating to the poor, insane, orphans, minors, or other important business requiring immediate attention. Such business was to be reported at the next session of the court and approved by the court before becoming a matter of record. The county records show that selectmen were often required to act separately, especially with relation to the poor, but their actions seem always to have been supported by the court upon being reported. In the absence of the judge of probate, the selectmen were allowed to hold session.

"An Act creating the office of Selectmen and prescribing their duties" was approved February 5, 1852. It provided for the election of three selectmen in each county. Of the first selectmen to be elected, the senior was to hold office for three years, the second for two years, and the junior for one year. Thereafter there was to be one elected each year for a term of three years.

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The selectmen were a part of the county court but the peculiar wording of this early law indicates that perhaps the territorial legislature saw little functional difference between the probate and the county courts, inasmuch as the same judge presided over both. In defining the responsibilities of the selectmen, the law reads: "It shall be the duty of the Select Men, . . . in connection with the Probate court, to oversee the poor residing in said county, and provide for their maintenance . . . ."\(^6\) They were also to take the care, custody and management of insane persons who were incapable of conducting their own affairs, including real estate, and to provide for the safe keeping of such persons, maintenance of their families and education of their children. They were given authority to bind out orphan children and vicious, idle or vagrant children until they reached the age of legal majority. They had power to appoint guardians for orphans and insane persons and "generally to do and perform such other duties . . . as shall be required by law, or by the Probate Courts in their respective counties."\(^7\)

The selectmen were required to keep a record of all their proceedings and to return a copy of it to the county court at regular session, together with a report of the affairs of the poor or destitute within the county. Any elector was eligible to be elected a selectman, and he was to take his oath of office before the clerk of the probate court who, in turn, was to give him a certificate of office with the seal of the probate court.

In 1866 the legislature passed "An Act creating the office of

\(^{6}\)Ibid., p. 137, sec. 3. \(^{7}\)Loc. cit.
Selectmen and prescribing their duties, as also the duties of the County Courts. This law repealed the 1852 act, but there were no major changes made in the power of the court. This merely had the effect of putting the duties of the court and its members all in one law. The only addition was the authorization given the court to appoint all county and precinct offices not made elective by law and fill all vacancies that might occur between elections.

Another act of the same year further amplified the court's responsibility with relation to the establishment and support of schools by describing in detail how school districts were to be organized and teachers chosen and paid.

It can be seen, then, that the county court was the basic unit of local government in the Territory of Utah. Not only did it have the responsibility for roads, bridges, herd grounds, timber, waterways, irrigation, and many other problems incident to settling and colonization, but it also became the agency for health, welfare and education and thus in some way affected the life of every resident in the county. County school boards, physicians and other offices were later authorized, but for a time the court had the entire responsibility and even after these offices were established they were responsible to the county court.

County Government Begins

As soon as the position of the county courts had been established and the legal machinery for operating them had been set up,

9Ibid., pp. 219-223.
the legislature immediately set about to organize each county by electing probate judges for all those thus far created. The judges, whose elections were approved on February 7, 1852, were as follows: Weber County, Isaac Clark; Davis County, Joseph Holbrook; Great Salt Lake County, Elias Smith; Utah County, Preston Thomas; Tooele County, Alfred Lee; Juab County, George Bradley; San Pete County, George Peacock; Millard County, Anson Call; Iron County, Chapman Duncan. In case of a vacancy occurring before their four year term was up the Governor was empowered to fill it until the next sitting of the legislature.

It appears that the judges were quick to take up their responsibilities. The first meeting of the Utah County Court was held on April 19, 1852. Judge Preston Thomas was presiding. Also present were Dominicus Carter, Alfred Bell and James McLellan, selectmen, and Lucius Scovil, clerk. The first item of business was for the clerk and selectmen to take their oaths of office. George W. Bean was qualified as assessor & collector. A tax was levied for road purposes and the county was divided into nine road districts with a supervisor over each. Fifteen school districts were also established, and the court chose John Banks, Alanson Norton and Joseph Kelly to act as common school examiners. Judges of election in each school district were appointed, and it was ordered that elections were to be held in the county on May 15.

The organic session of the Iron County Court was held on May 4,

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11_ Utah County, County Court Minutes, Record A, pp. 7-10.
1852 with Judge Chapman Duncan presiding.\textsuperscript{12} The business consisted of court organization, filing bonds and taking oaths of office as required by law.

In general it appears that the people who were most concerned with county government and business were those who were also leaders in the church. Names, for instance, such as George A. Smith, George W. Bean, Dominicus Carter, all of them church leaders, often appear in the minutes of the Utah County Court. Most of the courts seem to have been conducted on a very business-like and practical basis.

The probate judge usually conducted the meetings at the court, but in case of illness or other reason for his absence the selectmen were capable of taking over and were fully authorized to perform county business. In Davis County, for instance, on December 1, 1856, the judge was absent because of illness. He sent a note for the selectmen to do all the county business that was necessary and especially to appoint an assessor and collector.\textsuperscript{13} Most of the business before the court was usually presented in the form of petitions. These were signed either by a number of citizens interested in a particular county or community project, such as roads or liquor control, or by individuals concerned with private business, such as mills, water rights, etc. Ordinarily only the judge, selectmen and clerk were present at the court sessions, but often they would invite special individuals or

\textsuperscript{12}William R. Palmer (comp.), "Extracts from Iron County Records," Iron County Court Book A, entry of May 4, 1852. This is a part of a collection of extracts made by Mr. Palmer from the records of Southern Utah counties. The author expresses appreciation to Mr. Palmer for his work in compiling this material. Subsequent Iron County references will be according to Mr. Palmer's citations.

\textsuperscript{13}Davis County, County Court Minutes, Vol. 1, p. 44.
groups to sit with the court and advise on special problems. In Utah County, at least, most of the meetings were opened by prayer, usually by the judge or one of the selectmen. This, of course, shows a very strong religious influence in the county government, and also indicates the sincerity of those who were in responsible positions.14

It appears that the earliest officials were much more concerned with their duties than with any financial consideration, for most of them served without pay. Joseph Holbrook, the first judge in Davis County, records in his diary:

In Dec. 1856, I resigned as probate judge of Davis Co. because of failing health. I served for six years, and have never taken anything from the treasury for my service, but have done all I could to promote the public good.

The Court House was located at Farmington and was built from the taxes of the county as most of the officers served without pay. ... It was nearly paid for in my time of service. The county was well agreed on all matters. I think I can foresee enough already to encourage the present and hope for a good future.15

The County and the Territory

Realizing that this period of Utah history was a time of rapid colonization, it is not surprising to find that new counties were often formed. Thirty-seven counties, in fact, were created during the territorial period, ten of which became extinct.16 So it was that in 1865 the legislature defined the duties of the probate judge in organiz-

14Utah County, County Court Minutes, Book A. In this early record every session of the court is opened by prayer.


16For a complete picture of the creation of counties in Utah, see James B. Allen, "Evolution of County Boundaries in Utah," Utah Historical Quarterly, XXIII, Number 3 (July, 1955), pp. 261-278.
After he had been elected (by the legislature) and qualified, he was to organize the county by appointing three selectmen and qualifying them by administering to them an oath of office. The judge and selectmen were then to proceed to appoint all other county officers required by law and these were empowered to act until their successors were elected at the next general election and qualified.

In discussing county government it must be remembered that the counties had no inherent rights in and of themselves. They were strictly creatures of the territory, created and abolished at will by the territorial government. The only privileges and powers which could be legally assumed by the counties were those specifically granted by the territorial legislature, and these powers could obviously be withdrawn or modified at will. The county system, however, proved to be highly practical and it can be said to the credit of the territorial legislature that it did not lightly grant or take away powers. The decisions of the legislature with respect to the rights of the counties seem to have been well studied with an eye toward establishing efficiency and good government.

New Powers and Restrictions

An act of 1878 further itemized certain specific powers of the county and placed some important restrictions on county activities. This was the first law to indicate that the county was a corporate body. It declared that the county had power to sue and be sued, make contracts, purchase and sell property and levy and collect taxes. It was pro-

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18 Utah, Laws, Mem. and Res. . . . (1878), pp. 3-4. See Appendix.
hibited, however, from loaning money or giving other credit unless "expressly authorized so to do by law," and was forbidden to incur any indebtedness which it could not repay with the unpaid taxes of the current fiscal year. The act also defined the responsibility of the court with reference to claims presented against the county and indicated that no legal action could be commenced against any county until the court had disallowed the claim.

Another law of the same year designated the court as a county board of equalization,\textsuperscript{19} thus giving it authority to review all territorial and county taxes and adjust them as circumstances may require. In 1886 it was authorized to equalize district school taxes in the same manner.\textsuperscript{20}

An important act of 1880 amplified the responsibilities of the selectmen by appointing them ex-officio water commissioners for the respective counties.\textsuperscript{21} The early pioneers had abrogated the right of private ownership of water rights and had put the control of water directly into the hands of the county courts. Now, however, the legislature provided for private ownership\textsuperscript{22} and made the selectmen, as a board of water commissioners, responsible for the regulation of these rights. They were to determine and record the seasonal flow of water, hear claims for the use of water, issue certificates of ownership of water rights, oversee the distribution of water and hear, and decide

\footnotesize
\begin{enumerate}
\item[Ibid., p. 16, sec. 18. See p.106 for the development of this responsibility.]
\item[Utah, \textit{Laws} \ldots (1886), p. 16, sec. 8.]
\item[Utah, \textit{Laws} \ldots (1880), p. 36, sec. 1.]
\item[Ibid., pp. 37-38, secs. 5, 8.]
\end{enumerate}
upon cases of disputed rights. Certificates issued by the water commissioners were filed by the county recorder and were to be considered legal evidence of the existence of private water rights.  

The specific duties of the county court in relation to highways were further defined in 1860. First, it was to divide the county into road districts and appoint supervisors biennially. These supervisors could be removed at the pleasure of the court. It was the responsibility of the court to see that all highways necessary for public convenience were surveyed, laid out, recorded, opened, and kept in repair, and it had power to abolish highways as necessary. The court was further responsible for obtaining right of way through private property by contract, agreement or purchase, and could require the county prosecuting attorney to institute legal proceedings for such right of way if necessary. Responsibility for the erection and maintenance of properly inscribed milestones and guide posts was also given to the court. It was further authorized to designate county roads necessary within or extending through incorporated towns or cities, but in no case was there to be more than three roads in the same direction.

The granting of licenses to do business within the county became an important responsibility of the court and provided a moderate source of county revenue. An act of 1860 authorized the county court to grant licenses to liquor manufacturers and dealers. In 1865 butchers and

23 Ibid., p. 37, secs. 3-4.
24 Ibid., p. 52, secs. 10-11.
meat markets were required to obtain such permits from the court. 26
Legislation of 1884 authorized the granting of licenses to merchants,
retailers, peddlers, auctioneers, brokers, pawnbrokers, money changers,
travelling showmen, theatrical performers, circuses, and menageries. 27
Thus the operation of all these businesses became illegal without spe-
cific authority from the county court.

A Slight Change of Character

By the late 1880's a few changes in the character of county
government can be seen. The Federally appointed Utah Commission had
taken over election procedures of the territory in 1882, and in doing
so had felt it necessary to appoint registration officers for each voting
precinct of the several counties. 28 The commission evidently took com-
plete charge of all elections, made the rules and regulations governing
elections and even designated new polling places if it were deemed neces-
sary. This, of course, took the control of elections out of the hands
of the county courts, who had held it since the days of the State of
Deseret. The commission had been required by the Edmunds Act to exclude
from voting and holding office any "polygamists," "bigamists" or any
person "cohabiting with more than one woman," but it was left up to their
discretion as to how to do it. 29 They did it by adding to the regular

26 Utah, Acts, Res. and Mem. . . . (1865), pp. 6-7, sec. 1.
28 Utah Commission, The Edmunds Act, Reports of the Commission,
Rules, Regulations and Decisions, Population, Registration and Election
Tables & c. For the Information of Registration and Election Officers in
29 Ibid., p. 10.
oath taken by voters a clause in regard to polygamy, bigamy and unlawful cohabitation. This necessarily excluded from both voting and office holding many prominent individuals who had previously been eligible. The commission, however, made no attempt to upset local government and their administration seems to have had little if any effect upon the duties and responsibilities of the court except so far as elections were concerned. Said the commission in 1882:

The legislation of Congress, as we understand it, is not enacted against the religion of any portion of the people of this Territory. The law . . . is directed against the crime of polygamy. . . . We trust that this object will be accomplished without resorting to measures destructive to local self government, punishing the whole people, the innocent as well as the guilty, with political ostracism. At all events we are unwilling to advise such a course until the act of Congress under which we are acting shall be more fully tested.30

In 1887 the privilege of selecting the probate judge was taken out of the hands of the territorial legislature and for the rest of the territorial period this office was appointive by the President of the United States. The term of office was reduced from four years to two. These changes were made as a part of the war against polygamy, but many church members felt that it was direct persecution against them. Says George W. Bean, who had been a probate judge and had held other important county and church positions, including the office of bishop: The year 1887 brought no relief to the Church members, but on the contrary much more drastic and cruel measures were adopted by Congress of our United States. The "Tucker" amendment to the "Edmunds" Laws was passed, which confiscated the L.D.S. Church property, and took away the jurisdiction of the Probate Court in almost everything, making the Judges appointive by the President of the United States. Appeals to the Government were disregarded.31

The final years of the territorial period saw much less influence of the church in county affairs. In another chapter it will be seen that church leaders and ideology played a very definite part in the county government of the early period. By the later period, however, means of travel and communication were much improved, county organization had been perfected, there were more men to choose from for county offices and hence there was much less necessity to depend directly on the church for help. The church, of course, continued to maintain an interest in county affairs, but the people did not necessarily elect church leaders to public offices and, with the change in method of selecting the probate judge, the most important position in the county government was taken out of local hands entirely. This does not imply that there was antagonism between county officials and the citizens, for the county organization seems to have continued to be a smooth-working system of local government.\textsuperscript{32}

\textbf{The Law of 1888}

In 1888 the legislature passed a new law entitled "AN ACT to Establish a Uniform System of County Governments."\textsuperscript{33} This statute appears to be largely a re-definition of the powers and privileges of the county as a unit of government, although a few changes and additions

\textsuperscript{32}It is hard to determine whether or not all the probate judges were L.D.S. under the new system. I have had some interesting conversations, however, with some of the older citizens of Davis County who knew Hector W. Haight, one of the last probate judges. From these conversations I gather that he was not particularly active in the church. There seems to have been no antagonism, however, and upon his retirement as judge the selectmen inserted into the minutes of the county court a tribute of deep respect and appreciation for his services.

\textsuperscript{33}Utah, \textit{Laws . . .} (1888), pp. 154-172. See Appendix.
were made.

The law declared again that counties were corporate bodies, the official name of the county being the corporate name. No inherent county powers were recognized—only those specifically granted or implied by the laws of the territory. It was stated that the powers of the county could only be exercised by the county court, or by agents and officers acting under its authority, or authority of law, thus affirming the fact that the court was the basic unit of county government.

Section 5 of the law forbade the county to give or loan its credit to, or in aid of, any person or corporation. Previously, it will be seen, certain counties had been loaning money to various groups, but it appears that all such aid ceased after 1888. The county was also forbidden to incur any indebtedness beyond the total amount of its income for the two fiscal years immediately preceding the incurring of such indebtedness. Any such debts were to be void.

This act recognized the existing county seats but affirmed that such locations could be removed as provided by law, thus illustrating again the superiority of the territorial legislature over counties.

A change was made in the office of the selectman, his term being reduced to two years instead of the previous three.

Beginning with section 10, the law went into the specific organization, duties and limitations of the county court. It confirmed the existing organization of the probate judge and three selectmen and provided that vacancies could be filled by court appointment or, in case a majority did not remain in office, popular election. Any member of the court could issue oaths and a majority of the court formed a quorum to do business.
The clerk of the county court was specifically required to perform the following duties:

(a) record all proceedings of the court;
(b) enter all resolutions and decisions concerning money;
(c) record the vote of each member of the court;
(d) prepare duplicate lists of all claims allowed;
(e) keep and file accounts;
(f) file all petitions and actions taken on them;
(g) sign the proceedings of the court when published;
(h) record all orders levying taxes.

Remembering that the clerk was also clerk of the probate court, it can be seen that by the end of the territorial period his job had become a very busy and important one.

The court was required to keep the following records:

(a) a minute book, in which must be recorded all orders and decisions made by them and the daily proceedings at all meetings;
(b) an allowance book, which evidently included all allowances made for salaries and expenses of the court;
(c) a road book containing the proceedings of the court relating to roads;
(d) a warrant book which included all warrants drawn on the treasury.

Regular meetings of the county court were to be held on the first Monday in March, June, September and December of each year. Special meetings could be called whenever conditions warranted and all meetings must be public.

Section 19 of this law listed the "General Permanent Powers" of the county court. It will be seen from this list that responsibility of government had grown so much by this time that it is no wonder that the
courts often met for many days at their regular sessions and then called special sessions in between. Among the important powers of the court were the following:

(a) direct prosecution for delinquencies;
(b) supervise the conduct of the county officers;
(c) divide the county into school, road, and other districts as seemed necessary;
(d) provide for the indigent and sick;
(e) lay out and manage public roads, ferries, etc.;
(f) establish and change election precincts;
(g) provide a farm and work shops in connection with the county hospital or poor house;
(h) examine and audit accounts of all officers;
(i) examine and settle accounts against the county;
(j) tax taxable property;
(k) maintain public pounds, paying the poundkeeper from fines on impounded animals;
(l) equalize assessments;
(m) direct and control suit;
(n) insure county buildings;
(o) make and enforce their own rules for their body;
(p) cause to be published annual financial statements;
(q) provide measures for protection of public health;
(r) prohibit common carriers from taking out of the county insane or indigent persons or bodies of deceased persons, unless the carrier will be responsible for burial or deceased person was a resident of the county they propose to take him to.
(s) work prisoners on public grounds;
(t) make and enforce county regulations;
(u) issue subpoenas, with authority to penalize anyone who neglected to appear and testify.

Members of the court were forbidden to have any personal interest in property purchased for use of the county or in the sale of property belonging to the county, or in any contract made by the court for the county. The court was authorized to receive donations of property for county purposes.

Compensation of the judge and selectmen was set at four dollars per day plus mileage from their residence to the county seat.

"AN ACT defining the duties of County Officers" was also passed in 1888.34 Article I concerned the probate judge and set his term of office at two years instead of the original four. It further required that he should reside at the county seat.

Only a few further duties were placed on the county court before the end of the territorial period. In 1892 the court was authorized to transcribe county and probate records when it appeared that they were likely to become useless from age, use, or illegibly written, or defaced or imperfectly written.35 Another act of the same year authorized the counties to issue bonds for the purpose of funding outstanding indebtedness, and for other county purposes.36 An act of 1894 further defined

34 Ibid., pp. 172-184.

35 Utah, Laws . . . (1892), p. 16, "An Act to Authorize County Courts to Transcribe County and Probate Records." The writer cannot help but wish that better care had been taken of some of the old county records, for many of those used in this research were in a very poor state of preservation. Some have faded to become nearly illegible, others are becoming torn or losing their bindings, while still others are very illegibly written.

36 Ibid., pp. 31-33.
the duties of the court as a board of equalization.\textsuperscript{37}

Thus was completed the legal development of the county court, the basic unit of county government in the Territory of Utah. The major steps in this evolution could be summarized as follows:

1. An organization known as the county court was created by the State of Deseret, but this was essentially a judicial body. It was presided over by a "Chief Justice."

2. At the first session of the territorial legislature the function of the county court was changed so that it became an executive and quasi-legislative body with the responsibility of managing all the affairs of the county.

3. The county court was now presided over by a probate judge, elected by the legislature, who was also judge of the probate court.

4. As the need arose for the creation of new county offices (i.e., road supervisors, county physicians, etc.,) the legislature took such action, but these offices always came under the control of the county court.

5. In 1878 counties were defined as corporate bodies with power to sue and be sued.

6. In 1880 the selectmen were appointed water commissioners and private ownership of water rights was permitted.

7. Counties were directly authorized in 1880 to grant licenses for the manufacture and sale of liquor and in 1884 to license other business within the county.

8. In 1882 the control of elections was taken out of the hands

\textsuperscript{37}Utah, \textit{Laws . . .} (1894), pp. 120-121.
of county officials and given to the Utah Commission.

9. In 1887 the office of probate judge was made appointive by

the President of the United States.

10. In 1888 counties were forbidden to loan money, which they

had done previously.

11. At first members of the county court often served without

pay, but by the end of the territorial period they were receiving for

their services $4.00 per day plus mileage.

12. After Utah became a state, the duties of the county court

were transferred to the county commission.

It will be well now to consider some of the important problems

of the county court and to demonstrate how these problems were treated

according to the official records of the courts themselves.
CHAPTER IV

PROBLEMS OF THE COUNTY COURT

The Position of the Court

Being the chief governing body of the county, the typical county court in the Territory of Utah was faced with many and varied problems. Throughout the entire period this body was responsible for all the general business of the county, including the building of roads, development of natural resources and the health, education, and general welfare of the citizens.

Because of the fact that the probate judge was the presiding officer in the court this body, in effect, held the entire executive, legislative and judicial authority of the county, at least until 1874.¹ It thus became an unusually powerful organization and had an influence in the lives of all the people. The actions of the early county governments, then, had much to do with the effectual settlement and development of this inland empire.

A study of the minutes of some of Utah’s county courts reveals an interesting picture of the variety of problems which came before the courts, methods used to solve them, and general procedure of the courts while in session. In the pages to follow a brief glimpse will be taken at those questions which seemed to be considered most frequently and

¹At this time most of the judicial power was taken away from the probate judge. See Chap. VI.
thus a general picture of government under the county courts will be obtained.

The business of the regular term of the Utah County Court, held June 5-6, 1865, is typical of the early period of Utah history. Following is a summary of the minutes:

First Day:
1. A land grant was considered. No decision made.
2. 1 hour recess.
3. A grant which had previously been given to S. Holdaway was considered. Evidently Holdaway and Company had not been complying with the terms of the grant. They were required to comply with said terms and were given the privilege of charging $1.00 per cord toll for wood taken out of South Fork Canyon. The grant referred to was evidently giving Holdaway & Co. the privilege of building and controlling this canyon road for it will be seen that such grants were very necessary and quite common.
4. The grant of the "Slate Canyon Road Co." was called up. After hearing statements of T.J. Patten and John B. Milner, the court was of the opinion that "the parties did not know what they wanted in relation to said Kanyon and on motion the matter was dismissed."
5. The treasurer presented county orders. He was credited with $18.00, which was the amount of breakage on a certain lot of crocks received on fines which had been charged to him.

Second Day:
1. Orrawell Simmons (a selectman) wanted to be excused because

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2Utah County, County Court Minutes, Record A, pp. 263-371.
President Brigham Young proposed to go to Payson that day and he wanted to be there. He was excused.

2. B.K. Bullock, assessor and collector for 1855-1857, presented a letter he had received from the territorial treasurer concerning indebtedness for $1200 tax. The court examined the records and found he was not in debt and forwarded a certified statement to that effect.

3. The Provo Bench Irrigation District was organized.

4. An election for the North Union Irrigation District was ordered.

5. The county was divided into 17 school districts.

6. They received a letter from the school superintendent in relation to his duties.

7. They made an appropriation for the care of a boy pauper.

8. They made an appropriation for the repair of a bridge.

9. They granted a petition for a herd ground.

10. The clerk was ordered to furnish the court with a plan of the Provo bridge—also a bill of material.

11. The clerk was ordered to write certain road supervisors who had not yet filed bonds, requesting them to do so.

The foregoing session was relatively short when compared with the amount of business usually carried on in the courts by 1865, but it serves to give some idea of the variety of county business conducted during a typical session.

Among the most important duties of the courts, especially in the first decade of the territorial period, was the responsibility of controlling the natural resources within the county. The court, it will be remembered, was given control of all timber and water privileges,
including the right to grant mill sites, and had supervision of all roads in the county. Lumber, canals, bridges and roads were primary necessities to the colonization of Utah and inasmuch as the organization of new counties generally followed closely the pattern of colonization, the first county courts were faced with the responsibility of establishing rules and precedents which would make for the most effective settlement. It is apparent, therefore, that the court was very much in the public eye, even more so than the county commission of today. A man, for example, who wanted to build a lumber mill must first get the permission of the court. He would then very likely need a road into the canyon for the purpose of hauling wood and equipment, permission for which must also come from the court. The court would usually grant him the right to charge a toll to anyone else using the road as a means of paying for its construction, but he was required to keep the road in good repair at all times, and to report his receipts and expenditures to the court. Among the most frequent petitions presented to the county courts were those asking for the right to establish mills, control roads and control streams.

**Mills, Timber, and Water**

A good example of a petition for the right to erect a saw mill and the action taken on it is found in the minutes of the Davis County Court of June 14, 1852:

John Nebeker verbally Petitions for furthar Priviledges in North Mill Creek Kanyon which had been Principaly Granted to John Nebeker & H C Kimble Decision of the Court that the Previous Grant to said Nebeker & Kimball shall be good & that the Bills of tole that has been granted or may Hereafter be granted may be collected according to the Previous Design

Also that the said Petitioners have the Exclusive right to the
timber & water in South fork of North Mill creek Kanyon for the
pourpose of Erecting a Mill with Circular saws and that the said
Petitioners have the term of two years to Erect the said Machinerey
& if not Erected within the said term of two years the Grant shall
be null & void.
& further that the said John Nebeker & H C Kimball make a
Semianuall Report to this Court of the Proceedings in said Kanyon.3

The fact that Nebeker and Kimball were required to erect their
mill within a certain period of time and had to give semianuual reports
indicates that the court was very much concerned with keeping full con-
trol over these projects and seeing that they were completed properly.
The courts very seldom, if ever, granted these petitions without in-
cluding some restriction or requirement for the protection of the rest
of the citizens of the county.

It should be remembered that it was especially important in this
period of colonization that mills be built quickly and that timber be
controlled in such a manner as to give all settlers a fair chance to
use it. The courts, however, were also careful to see that once they
had granted control over a certain area to a particular group that this
control was respected. The Utah County Court issued the following
"special order" in 1853:

It is hereby ordered that all persons who go into kanyons & cut
timber (contrary to the rules of Each Kanyon as granted by this
Court) from & after this date--Where grants have been given for said
Kanyons --The same shall be forfeited & they shall go for the bene-
fit of the County unless the persons have liberty from those who
hold Jurisdiction over the same--by Grant of said Court.4

In Iron County similar control over mills, mill sites, and timber,
along with other industries, was exercised by the court. On March 5,
1855 Henry S. Cook presented a petition for the exclusive right to a

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3Davis County, County Court Minutes, Vol. 1, June 14, 1852.
4Utah County, County Court Minutes, Record A, p. 29.
timber slide on the mountains south of Coal Creek. The petition was granted with the condition that the slide should be improved within one year. At the same time I.C. Haight petitioned for the right of way through Salt Spring Canyon and also for timber and wood rights in connection with the proprietors of the Salt Works. His petition was granted on condition that no wood should be hauled out of the canyon but that it should be preserved for iron purposes and the manufacture of salt subject to the control of the county court.

On November 17, 1855, George Wood and Joseph Walker were granted a petition on the following conditions:

(They) have the privilege of building said mill with machinery within one half mile above or below the mouth of said . . . Canyon . . . and shall have the privilege of all timber to which they may make a road, they agreeing to make a good road, shall have control of said road, shall keep the same in good repair.

Any person other than the said Wood and Walker shall pay for the use of said road for all timber below the Bluffs the sum of $.25 per load and for any timber above the said Bluffs the sum of $.50 for each load hauled over said road. Said Wood and Walker shall use due diligence to accomplish said work otherwise the grant is null and void.

The courts also made definite efforts to insure that the privileges granted by them were in the best public interest and that the terms of their grants were carried out by the parties concerned. In Iron County a petition was presented on March 7, 1859, by John Steele and Charles Hall, praying for a grant of the water, timber and mineral resources of Little Creek Canyon, for farming, machinery and road purposes. The petition, however, had been presented without due public notice, so it was delivered back to the petitioners without action.

5Iron County, County Court Minutes, Book B, March 5, 1855.
6Ibid., Nov. 17, 1855. 7Ibid., Mar. 7, 1859.
At the June term the same petition was again considered, public notice having been given, and was granted, . . . "there being no remonstrance against said petition from the citizens of Paragonah or elsewhere. . . ." The conditions of the grant were that it should be under the control of the county court, not transferrable except by consent of the court, and that it should be improved within one year or become null and void. Evidently the latter stipulation was not complied with, for in March, 1861, the court declared that the grant had become null and void and a new grant was made to Charles Hall and John Freeman. This gave them the right to make and use a road into the canyon and to use the "wood, poles and timber" of the canyon. They were also given a grant of water for mill privileges, provided that it did not interfere with irrigation or with the development of mineral wealth in the canyon. The grant was to continue for five years subject to the supervision of the court and was not transferrable without the consent of the court.

Along with the control of timber and the building of mills came the problem of controlling water. Water, of course, was necessary for power to the mills and for transporting timber. Thus the mill companies were given liberal controls over the waters which would affect their business.

At the March, 1853 term of the Davis County Court a group of five men petitioned for the exclusive right to control the water of Duel Creek Canyon for mill purposes. This petition was granted, but with certain conditions. The petitioners were required to make and keep in

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8Ibid., June 6, 1859. 9Ibid., Mar. 4, 1861.
10Davis County, County Court Minutes, Vol. 1, p. 15.
good repair a road into the canyon. After the road had been accepted they were permitted to charge twenty-five cents per load for all materials taken from the canyon, but they were required to keep an accurate account of all receipts and expenditures on the road and report them annually to the clerk of the court.

At a meeting of the Davis County Court on March 18, 1867, William Brown presented a verbal petition for a mill site on "Barton Davis County Creek".\textsuperscript{11} This was granted with the provision that it would not interfere with any rights and privileges previously granted and that Brown report his proceedings at the next regular term of the court. Newton Tuttle and Thomas Briggs asked for a mill site on the mouth of Holbrook Canyon and this was granted on condition that it would not interfere with previous rights and that the court retain the right to withdraw the grant in case of neglect on the part of the petitioners.

Control of water was also granted for other commercial reasons, such as fisheries. Peter Makelprang, for instance, received in 1868 full control of the fishing interests of Rush Lake so long as he did not interfere with any agricultural or irrigation interests and the grant could be altered or revoked at the pleasure of the court.\textsuperscript{12}

The agricultural nature of most of Utah's communities made the erection of grist mills also necessary and we find the courts regularly granting sites for such mills along with the necessary water rights. So it was that on May 21, 1853, the Utah County Court granted three men the exclusive right to the water at the mouth of American Creek Canyon for

\textsuperscript{11}\textit{Ibid.}, p. 157.

\textsuperscript{12}Iron County, County Court Minutes, Book B, June 1, 1868.
the use of a grist mill already built.\textsuperscript{13} John Weinel, in 1854, received from the Davis County Court the privilege of controlling part of the north fork of Holmes Creek for the advantage of his grist mill then being erected, the only condition being that the purposes of irrigation were not to be restricted.\textsuperscript{14} In Iron County James Lewis petitioned the court on November 17, 1855, for a grist mill and machinery.\textsuperscript{15} The petition was granted along with the privilege of sufficient space on the stream for taking water to the mill and discharging it and sufficient land for the needs of the mill so long as it did not interfere with the previous grants or with the location of a settlement near his mill.

Of all the projects incident to settling the new territory, perhaps none was more important than farming. With farming came the necessity for irrigation and with this came need for good control over the waters used for irrigation. Hence came another responsibility for the county courts. Utah was made to "blossom as a rose," to be sure, but not without hard work on the part of the pioneers and intelligent planning and direction on the part of local leaders. The best water sources, of course, were the mountain streams and lands were watered by small ditches and canals that had been dug from the main streams.\textsuperscript{16} The county courts, then, had the job of portioning out fairly the available water and finding watermasters or someone else to control the water by law. The courts also granted petitions for the right to build irrigation

\textsuperscript{13}Utah County, County Court Minutes, Book B, p. 32.

\textsuperscript{14}Davis County, County Court Minutes, Vol. 1, p. 25.

\textsuperscript{15}Iron County, County Court Minutes, Book B, p. 14.

ditches.

Evidence of court concern over irrigation problems is seen in the fact that nearly every grant of mill or timber sites contains the requirement that the control given is not to interfere with irrigation purposes.\(^{17}\) Committees were often appointed to control and divide water of certain areas, and the courts also provided watermasters to supervise water rights. These watermasters were at first appointed by the court, but later seem to have been chosen by popular election. Davis County was still appointing watermasters in 1871,\(^{18}\) but the minutes of March 4, 1878, show various men presenting to the court certificates of election as watermasters for their districts and being required to post bonds of $500. Watermasters were directly responsible to the court and the main water policies were set by the court.

It was not until 1880 that private water rights were recognized in Utah and the selectmen officially designated as a board of water commissioners.\(^{19}\)

The courts evidently attempted to appoint water committees and watermasters which would best serve the interests of the people concerned. Religious leaders, especially bishops, seemed to be in as good a position as anyone to serve public needs and so it was that on December 4, 1854 "Bishop Porter and Counsel" were appointed a committee to dispose of water privileges between the grist mill of Cheney & Co. and the

\(^{17}\)For example, see Davis County, County Court Minutes, Vol. 1, p. 27. Wm. Henrie was given control of water below Buckland saw mill, except he was not to interfere with irrigation.

\(^{18}\)Davis County, County Court Minutes, Vol. 2, p. 46.

\(^{19}\)See p. 29.
saw mill above on the same creek. Anyone who wanted water privileges in this area was now required to go to this committee rather than the court. 20 On June 5, 1855 the Bishop of North Cottonwood Ward was given the power of granting water privileges within the limits of Farmington and petitions for water in that town were referred to him. 21 The minutes of Davis County show that often the bishops of the several wards in the county were appointed as watermasters. 22 Such action was not necessarily taken in all counties, but in these cases it was a very practical solution to a very important problem.

Most grants of control over water in specific areas were given in response to petitions presented by citizens concerned. In 1856, acting on petition of some Davis County residents for irrigation water to be taken out of the South side of North Mill Creek, the court appointed a committee to divide the waters of the creek according to the number of acres of land to be irrigated from water on each side. 23 The Iron County Court, on March 2, 1857, granted to O.B. Adams, "on behalf of the citizens of Paragonah," the right of using the waters of Little Creek for irrigation and other purposes. 24 And on September 6, 1869, the court gave the Union Iron Co., in response to a petition previously presented, the control of the waters of Little Pinto Creek and the adjacent springs for the purposes of agriculture and manufacturing, pro-

20 Davis County, County Court Minutes, Vol. 1, p. 28.
21 Ibid., p. 37.
22 Ibid., pp. 107, 115.
23 Ibid., p. 43.
24 Iron County, County Court Minutes, Book B, Mar. 2, 1857.
vided they did not interfere with rights already acquired by settlers.\textsuperscript{25}

Irrigation districts were also organized by the courts, usually on petition of the citizens of the district involved. An example of such action is found in the proceedings of the Iron County Court of March 4, 1878.\textsuperscript{26} John Henderson and 81 other landholders of the Centre Creek area petitioned for the organization of an irrigation district and received their request. The grant included "all the land now watered or hereafter to be watered" by Centre Creek and its tributaries.

Road Building

Directly connected with the problems of developing natural resources and expanding settlement was the problem of road building. This, along with the control and maintenance of roads, became another direct concern of the county. It was necessary for roads to be built into canyons for the purpose of hauling timber and other materials. As population continued to grow more roads and bridges became necessary in order to connect the various homes and settlements. These problems were among the most frequent topics discussed by the early county officials and petitions for the right to build and control roads are among the most numerous requests recorded in the court minutes. Each concession given by the courts was different, of course, according to different circumstances, but a few general patterns can be determined.

Typical of petitions for the right to build and control roads in Utah County was one recorded on September 20, 1852.\textsuperscript{27} Benjamin F.

\textsuperscript{25}Ibid., June 1, 1868.
\textsuperscript{26}Iron County, County Court Minutes, Book C, Mar. 4, 1878.
\textsuperscript{27}Utah County, County Court Minutes, Record A, p. 20.
Steward and others had asked for a grant to make a road into Peteetneet Canyon under the direction of Benjamin Cross. Their request was granted on certain conditions. They were to be known as a company and were to report an accurate account of their expenditures to the court at the next session or as soon thereafter as possible. When the road was finished they were allowed to collect a toll of twenty cents for every load of wood, timber, poles, etc., brought out of the canyon with one span of horses or yoke of oxen. Five cents more was allowed for each additional span or yoke. The court allowed the company to draw from this toll twice the amount they actually put into the building and repair of the road. The price of labor was set at $1.50 per day for a laborer, $2.50 for a man and team and fifty cents for each additional yoke of oxen. Income from the road was to be reported semiannually and all persons were expressly prohibited from interfering with the rights of the company "under pain and penalty of the Law."

The above order set a pattern for the granting of road privileges in Utah County and subsequent grants often referred back to this one. On September 19, 1853, Charles Hopkins petitioned for the right to make a road into the main canyon leading into Cedar Valley. His request was granted on the same terms as the Peteetneet Canyon road except that the allowance for labor was increased to two dollars per day, three dollars being allowed for a man and team. Hopkins was to be the agent for the county.

Whenever a group or company was given the right to construct a canyon road it was the common custom to allow them to charge a toll for

28 *ibid.*, p. 34.
the use of the road. This was evidently to reimburse them for the expense involved in building and maintaining it. Many of these road companies were given extensive control over their projects, although their actions were always subject to the approval of the road supervisors and the county court.

Davis County provides a few typical examples of such grants. In 1852 McGee Harris and others were given the right to work a road into "Grover Kanyon" which would be acceptable by the supervisor and to charge twenty-five cents toll for every load of poles or wood drawn over the road. This was to be under the direction of the selectmen, and the petitioners were required to use every means in their power to prevent fire from getting into the canyon. In March, 1859, Henry Dalton was given the privilege of working road into "Barnard Kanyon" and controlling it until Centerville Ward paid for the labor done on it. On June 6, 1859, John Bair was given the right to increase the toll on Haight Creek and South Holmes Creek Canyon roads because twenty-five cents per load was not enough to keep the roads in repair. He was now allowed to charge fifty cents per load for fire wood and one dollar for all timber over ten inches in diameter.

In granting control of these canyon roads the courts made a genuine effort to be impartial and to make such rules as would benefit the community as a whole. It does not appear that any undue advantage was given to any group or company but the courts did try to see that these agents received a fair return for their labor and investment. In

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29. Davis County, County Court Minutes, Vol. 1, pp. 10-11.
30. ibid., p. 54.
31. ibid., p. 57.
1852, Utah County granted William Miller's petition for the right to build roads into Hobble Creek and Maple Canyons. He was authorized to call on anyone who wanted to draw wood or timber from either canyon for three days labor, or the equivalent, or more than three days if necessary to make good roads. All persons not working on the roads were required to pay Miller a twenty-five cent toll for every load of wood or timber taken out until their payments equalled the labor of those who made the roads. The latter had an advantage over those who did not work by being allowed to draw wood or timber to twice the amount of labor actually performed and when the expenses of the road were all paid these people had free access to each canyon. Miller was to keep an account of his expenditures and income and make due returns to the court.

It appears that in many cases the groups who petitioned to build these canyon roads had business interests, such as saw mills, which made the roads a necessity to them. In Davis County, for instance, Joseph Holbrook "et. al.," who were given the right to build a road into a certain canyon and charge toll, had a saw mill in that canyon. In 1855 John P. Porter and Sanford Porter Jr. were given the right to make a road into the cove east of Centerville and charge twenty-five cents per load for all material hauled over. When expenditures and receipts balanced the road was to become a county road. The petitioners were also given control of saw timber in the cove for use in a saw mill being erected there.

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32Utah County, County Court Minutes, Record A, pp. 18-19.
33Davis County, County Court Minutes, Vol. 1, p. 29.
34Ibid., p. 38.
A further illustration of the various methods used in building, paying for and controlling canyon roads is found in the minutes of the Utah County Court of October 3, 1855. A petition signed by several citizens was presented to the court and the following action was taken:

Be it ordained by this Court that Alfred Bell of Lehi City, Aura(?) Adams of Lake City & John G. Hollman of Pleasant Grove City shall be & are hereby Appointed agents for & in behalf of the Citizens of those Several Cities & the County Court, to build & Construct a good wagon road into American Fork Kanyon. for the benefit of the Citizens of those Several Cities and they are authorised to call upon the Citizens to help to make such road & for each person performing every good & faithfull days Labour Shall be entitled to 8 Kanyon Tickets which will entitle the holder to draw from said Kanyon one Load of Poles, Timber, Firewood & c. for each ticket. And it is further ordered that every person who neglects to Labour on said road under the directions of the Aforesaid Agents shall pay a Tole of Twenty-five cents for each Load drawn from said Kanyon... It is further ordered that this Company be Known as the American Creek Kanyon road Company & the aforesaid Company are duly authorised to adopt such rules, Regulations and By Laws as they may deem necessary from time to time for the Protection of the Timber. Building of Bridges &c for the general good of the people at Large. 35

Even though the courts were attempting to be just it seems that a few people were unwilling to go along with their orders. In June, 1861, the Utah County Court received a report from the superintendent of the Provo Canyon road that some people were refusing to pay toll at the bridge. 36 The supervisor requested the court to issue an order enforcing the payment of the tolls. The court took the problem seriously and ordered William Miller (a selectman) to collect "by suit or otherwise" the lawful toll from all persons who neglected or refused to pay for travelling on the road.

The building and maintenance fo these canyon roads was generally taken care of by the toll and work requirements as illustrated above, but

35 Utah County, County Court Minutes, Record A, p. 84.

36 Ibid., p. 176.
the courts sometimes found it necessary to give some special assistance from county funds. The Fairview Coal Mining Company presented a petition in 1875 asking Utah County to assist them in working the road into Spanish Fork Canyon. Two selectmen were authorized to examine the matter and to spend up to five hundred dollars on repairs. Another example is found in the action taken on a report given by two selectmen in 1889.

The report read:

We your committee to whom was referred the petition of the Provo Kanyon Road Company asking the County to aid them in making certain changes in the road, report that after examining said road and the changes proposed, we deem the said changes of great benefit to the traveling public. That the Company are unable to make the proposed changes without aid and that the Company are willing to reimburse the County for any aid so rendered out of any monies coming into their possession after paying the current expenses therefrom. We would therefore recommend that the sum of five Hundred Dollars be appropriated to be drawn and disbursed by said Company in making the changes proposed and that the amount be refunded to the County from the amount remaining after defraying the current expense of the road until the County be fully reimbursed.

The recommendation was adopted by the court.

There were actually two types of roads with which the county officials were concerned: (a) canyon roads, as discussed above, which were controlled by individuals or companies and paid for by those who used them; (b) regular county roads which were controlled by the county and paid for by county taxes, especially poll taxes. After the first half of the territorial period references to canyon roads became less and less frequent, but the concern over county roads seems to increase. By this time many of the canyon roads had evidently become county roads. Furthermore, most of the canyons probably already had roads built into

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37Utah County, County Court Minutes, Record B, p. 257.
38Utah County, County Court Minutes, Record C, p. 392
them and thus there would be fewer petitions for the establishment of new roads.

The construction of county roads was nearly always authorized only after presentation of a petition by the citizens of the area involved. Road maintenance was supervised by the court and changes in location of the roads usually came as a result of petitions.

In one of the earliest sessions of the Iron County Court the county was divided into two road districts. A supervisor was appointed in each district and he was empowered to collect and apply the poll tax for that year. A petition was next read from the citizens of Cedar praying for the location of a county road in Coal Creek Canyon. The court, however, decided that such a road should be district road. This evidently meant that it would have to be financed from that one district instead of from the county as a whole. The inhabitants of Cedar were not satisfied with the arrangement for in 1855 they presented a petition asking that the road, which was now built, be made a county road and that the county make an appropriation for the benefit of the road. This time the court granted their petition and made an appropriation from the county taxes to be spent on the road under the direction of the supervisor. Years later this same road was again abandoned as a county responsibility.

A few more examples from Iron County will illustrate the way that court provided for county roads. On March 7, 1859 the following

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39Iron County, County Court Minutes, Book B, May 22, 1852.
40Ibid., June 4, 1855.
41Iron County, County Court Minutes, Book C, Sept. 8, 1864.
appears in the minutes:

Ordered that an appropriation of $75.00 be made to Cedar Precinct to be applied in making a new road through said precinct and in making a bridge or ford across Coal Creek. Provided the amount of County tax of said precinct amounts to $75.00.42

In 1866 the court ordered a road opened through the "Gap" at the lower point of the lake and appropriated "30 days poll tax" thereon "provided that owners of the Rush Lake Meadow expend one day's work each on said road."

On March 4, 1878 the court adopted the report of the special commissioners appointed to locate the county roads through the streets of Parowan City.43

One of the problems of the court was to see that county roads were located and maintained in a way that would be fair to all concerned. In 1853 a petition signed by James R. Ivie and others was considered by Utah County.44 They asked for a county road from Provo to Battle Creek Settlement on the east side of the Provo River. Their request was granted on condition that the petitioners furnish the help necessary to survey the road. The county surveyor was appointed to survey and locate the road on the route which would "best subserve the interest of the citizens of said county."

On June 6, 1859, the Davis County Court disannulled all existing county roads and appointed a committee to locate a site for one good

42Iron County, County Court Minutes, Book B, p. 20.

43Iron County, County Court Minutes, Book C, Mar. 4, 1878. An interesting note in Palmer's collection indicates that these "special commissioners" were Parowan men and purposely zigzagged through town in order to make the county keep up a large part of the city streets.

44Utah County, County Court Minutes, Record A, p. 28.
road. In a special session one week later the committee gave their report but the court would not receive it because it was not in the spirit of the court's instructions. The court then proceeded to appoint a new committee consisting of the five bishops of the county "so that the people in each ward could be duly represented". Forwarding written instructions to these bishops, the court requested them to meet together on the following Thursday and to report to the court on Saturday the 18th. By Saturday the bishops had selected a road site and their report was accepted by the county. The road supervisors were ordered to commence work immediately, and the bishops received ten dollars each for their services.

Even though road supervisors were appointed, according to law, and given extensive jurisdiction over their areas, it appears that all the county courts kept close watch on their actions and required them to report to the court regularly. A good case in point occurred in Utah County in 1864. The majority of supervisors having failed to report to the court, the clerk was instructed to issue the following circular:

The legislative Assembly, the County Court, and the Public repose a confidence in you that you will as Supervisor of Road District No.--call out all the able bodied male inhabitants over eighteen and under fifty years of age of your district and cause them to perform two days faithful labor annually on the State or County road in your District at such time and place as you deem best for the public good.

Your duty also requires you to report to the County Court annually at the December Term the first Monday in December as follows:

The number of days legally assessable in your district for road purposes.

The amount paid in other means and how expended.

And the amount and kind of means on hand.

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45 Davis County, County Court Minutes, Vol. 1, p. 57.

Your wilful neglect in any of these things subjects you to liability to the people, which this Court feel it their duty to enforce.

In addition to this the judge had a grand jury examine the list of delinquent supervisors and this body recommended an inquiry into the cause of the neglect. The judge then ordered that each of the supervisors file their report to the county court before the next term or face prosecution for neglect before the probate court.

In addition to the problem of building roads, the early settlers found it necessary to construct bridges across Utah's many creeks and rivers. Granting the right to build such structures was another duty of the county court. It became the court's responsibility to select or approve the location of the bridges, award contracts for building and appropriate county funds to help pay for the project. The Davis County Court, for example, made a contract on December 1, 1862 with Judson L. Stoddard to build a bridge over North Cotton Creek on the county road north of Farmington. Two hundred dollars was allowed for the job and the court specified that the bridge should be fifteen feet long, eighteen feet wide and should meet certain safety requirements. Utah County, in 1864, agreed with the territorial road commissioner that they would pay one-third the cost of a bridge over Provo River. After approval by the commissioner, Myron Tanner was appointed as superintendent of the bridge and as construction moved forward the court constantly kept track

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48 Utah County, County Court Minutes, Record A, pp. 251-252.
49 Utah County, Probate Record (1859-1866), pp. 369-370.
50 Davis County, County Court Minutes, Vol. 1, p. 106.
51 Utah County, County Court Minutes, Record A, p. 236.
of its progress and the expenses involved.

The county records are replete with entries showing that the county court played an important role in locating, maintaining, and improving roads and bridges. Only a few more examples need be given here to illustrate this and to show that the members of the court were usually careful to see that a given situation was examined adequately and that whatever action they authorized was in the best public interest. The records also indicate that there was often cooperation between adjacent counties on road problems which concerned them both. 52

A Davis County problem concerning the location of a county road between Kaysville and Hooper took a number of months for the court to finally solve. The court had considered making a county road from the road then being travelled and had been so petitioned by Peter Barton and other interested parties. On September 6, 1880, however, Thomas Carlos was present at the meeting and verbally protested against the Barton petition. 53 The matter was considered at length by the members of the court and they went as a body to personally examine the location and get a better understanding of the problem. By December 6 it was still not solved and selectman Christopher Layton was appointed as a committee of one to confer with parties owning land in the disputed area with a view to making a change in the road. 54 Layton reported the following week that he had been unable to see all the parties concerned but that a Mr.

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52 Davis County, County Court Minutes, Vol. 2, pp. 67-68, 84, 93, 378-379, 384. Utah County, County Court Minutes, Record C, pp. 506-507, 515-516, 517-518.

53 Ibid., p. 302.

54 Ibid., p. 305.
Robert, who wished to have some changes made, had offered to give all
the land the road would occupy, so far as his property was concerned,
provided the road was changed to the location proposed by him. 55 On
January 3, 1881, Layton made his final report which indicated that no
one could agree on any terms. 56 It was finally ordered by the court that,
inasmuch as changes could not be made agreeable to the several parties
interested, the old road should be maintained as a highway. The road
supervisor was ordered to clear the road from all obstructions.

An example of the county cooperating with citizens of a certain
area within the county is found in the action taken by the Utah County
Court in 1891 on a petition from "Benjamin Precinct." The selectman
assigned to examine the case found that the petitioners had to travel
one and a half miles north to the Lake shore in order to get to the
mountains, thus causing three miles of unnecessary travel for every load
of rock or gravel they needed. 57 He recommended that the petition for
a new road be granted provided the petitioners furnish the right of way.
He further suggested that the county furnish the stringers and plank
sufficient to build a ten foot bridge crossing the slough on the new
road. His recommendations were accepted by the court.

Livestock

Another phase of the activities of Utah's settlers with which
the county court was concerned was the control and supervision of live-
stock. Sheep and cattle were a very necessary part of the economy and
it became necessary to designate areas for herd grounds, appoint super-

55Ibid., p. 307. 56Ibid., pp. 310-311.
57Utah County, County Court Minutes, Record C, p. 536.
visors and provide for the care and control of strays. Territorial law allowed the probate judge to appoint herdsman and required the county court to regulate the size and location of the herd grounds. Herdsman were certified by the court and were required to post bonds assuring the faithful performance of their duties. Setting up the needed regulations and supervision while avoiding interference with rights of property holders became a definite problem of county government.

Typical of the requests received by the courts was a petition presented in Utah County on August 19, 1854, wherein P. Colton and Benjamin K. Bullock requested the grant of a herd ground on the north side of Provo. They were given a license for one year which evidently conferred upon them the exclusive right to herd cattle in that area for themselves or for other settlers. The grant provided, however, that if any resident of Provo wanted to let his cattle or horses run at large and graze in the area he would have the privilege but at his own risk. Colton and Bullock were directly responsible for any cattle put in their care for they were required to post bonds "in the penal sum of Ten Thousand Dollars for the faithful performance of their duty."

On September 3, 1855, W.W. Willis petitioned the Iron County Court for a herd ground on a stream called Cedar Springs. The petition was granted provided

that said herd ground be improved and herd established within three months from date, terms of herding 1 cent per day per head, and provided further that a portion of ground may be used for gardening purposes at discretion of County Court.

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59 Utah County, County Court Minutes, Record A, pp. 46-47.
60 Iron County, County Court Minutes, Book B, p. 12.
The main problem, of course, was to provide supervision of the herd grounds which would be fair to all the citizens and would protect the areas involved from transient grazing. This was the responsibility delegated to the various men who were given control. In March, 1855, Heber C. Kimball was given the right to control the herd ground one mile south of his mill to the mountains "for the benefit of the citizens of South Kanyon Ward" and it was made his responsibility to protect it from grazing by transient herds. Various other men were given other areas to control at the same session but the court made the following stipulation:

These grants to the individuals named therein is not to prohibit the Citizens Cattle or stock from Grazing thereon But they are Required and Expected to protect said Herd Grounds from being eat off by Emigrant Cattle and other transient herds.

Responsibility for making rules and regulations governing the herd grounds in their particular areas was frequently delegated to the bishops of the various L.D.S. wards within the county. In 1854, Utah County received a petition for a herd ground for the benefit of the citizens of Cedar Valley. The herd ground was given to Allen Weeks ... and his successor in the office as Bishop of that place. ... *63

The Davis County Court, in 1855, granted a herd ground to John W. Hess and others, but it was to be governed by the bishops of the several wards of the county. In 1860, the court appointed Charles Petterson agent...
for the county to superintend the county herd ground. He was to take charge of all stock delivered to him by the citizens of the county but was to be subject to such terms, rules and regulations as should be agreed upon by the bishops of the several wards.

**Stray Animals**

The care and custody of stray animals was another natural concern of the county government in an area so predominately agricultural in nature. The problem seemed to be handled very well, however, through the poundkeepers appointed by the courts. Usually pounds were built in each district or precinct. They were constructed under the direction of the court and poundkeepers were required to report regularly to the court. Poundkeepers were required to take in all stray animals and were authorized to charge the owners for boarding the animals or, if the animals were not claimed, they could be sold. Proceeds from the pounds went to the school fund.

Only a few examples need be given to show that the courts considered the problem of stray animals as a serious one and that the poundkeepers were evidently kept busy at their jobs.

In December, 1868, the Utah County poundkeeper had some difficulty in getting his accounts straight with the court. He was called in to account for thrity head of missing cattle. His statement indicated that the strays had been crowded on him so fast when the business first started that it was almost impossible for him to take care of them. He believed the owners had acquired most of the missing cattle without his

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65 Ibid., p. 77.
knowledge. After due consideration the court considered the missing cattle as lost and in this way cleared his account.

Typical of the reports turned in by the precinct poundkeepers was one presented by William Marrott in Utah County. He showed that between March 1 and December 1, 1869 he had received 22 head of stock. One head had been delivered to the county pound, sixteen head had been delivered to the owners and five had been sold for $100.50. Expenses had totaled $38.50, leaving $62.00 balance in his hands.67

In order to help the settlers round up stray animals, the Iron County government went so far as to organize stock drives. Such a drive was ordered in March, 1867,68 and all cattle rounded up were to be delivered to the owners at one dollar per head. A similar drive the following year included not only cattle but also horses and mules.69

One reason for the frequent discussion of livestock problems in the county courts was the fact that stray animals often became nuisances to businesses and on the public streets. A petition was presented in Iron County in 1873 calling for sheep herds to be prevented from grazing or being kept in the vicinity of the saw mills and the court finally appointed a special commissioner to confer with the shepherds on the subject.70 As late as 1889 complaints were being made in Davis County concerning stray animals on the streets. The court finally made the

66 Utah County, County Court Minutes, Record A, p. 391.
67 Ibid., pp. 418-419.
68 Iron County, County Court Minutes, Book B, pp. 80-81.
69 Ibid., p. 87.
70 Iron County, County Court Minutes, Book C, June, 1873.
following order:

... that no cattle, Horses, Mules, Sheep, Goats or Swine shall be allowed to run at large, or be herded, picketed, or staked out upon any public street, road or highway, within the County of Davis, over which the County Court has jurisdiction or control.

And any such animal or animals may be taken up by any person and delivered to the Estray Pound Keeper of the Precinct wherein they may be so found, together with a certificate in writing setting forth the description of the said animal or animals, the time of taking up, the place where found and the charges for driving said animal or animals to the estray pound.

And the Estray Pound Keeper shall receive the said animal or animals and may charge therefor such fees, and dispose of the animal or said animals in such manner as is prescribed for estrays if not redeemed.

It is hereby made the duty of the Road Supervisors to take up and drive to the estray pound any animal or animals running at large, herded, picketed or staked out on any public street ... under their supervision, and to make complaint before any justice of the Peace in Davis County having jurisdiction upon its coming to their knowledge that any person or persons have wilfully violated this order.

The violation of the foregoing order is a misdemeanor, and any person or persons wilfully violating the same will render themselves liable to prosecution. 71

Public Building Projects

The erection of public buildings was another activity which was carried out under the direct supervision of the county court. In the earliest years the most important building projects seemed to be the erection of fortifications against possible Indian attack. Even though the Mormon settlers had surprisingly little difficulty with the red man, they were still not without some trouble and the county officials recognized the need for building forts for self protection. In 1855, for example, the Utah County Court approved the report of the "Alpine Committee for Fortifying purposes." 72 The report indicated that the precinct had 175 rods of fort wall to build at an estimated cost of

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71 Davis County, County Court Minutes, Book C, April 15, 1889.

72 Utah County, County Court Minutes, Record A, pp. 69-70.
They expected to raise $1600 through poll taxes and the court levied an additional tax of twenty percent on all personal property and real estate within the fortifying district.

Five "Fort Districts" were set up in Davis County in 1855 and a locating committee was appointed for each district. The members of the committees were ordered to file bonds in the amount of ten thousand dollars for the faithful discharge of their duties. Taxes were levied on all property within the forts and a twelve dollar poll tax was assessed every able bodied man over eighteen years of age in order to defray the cost of building. Similar procedure was followed in Iron County, wherein fortification districts were set up, locating committees appointed and poll and property taxes levied for fortification purposes.

Before adequate facilities were provided for conducting county business, officials often met in school houses or in buildings owned by the church. As the responsibility of government increased, however, it became necessary to build court houses and jails and discussions of these projects appear frequently in the county records. Various methods were employed in providing for construction of these buildings, but it was always done under the direct supervision of the court. George W. Bean reports on the court house built in Utah County in the 1870's:

Utah County had outgrown the little Courthouse built in 1866 on the Factory lot, and now larger quarters were very necessary, so I, together with the other officials, began to plan a large building and

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73 Davis County, County Court Minutes, Vol. 1, pp. 33-34.
74 Ibid., p. 35.
75 Iron County, County Court Minutes, Book B, pp. 8-9, 11, 13.
a jail. The new Courthouse was to cost $50,000. The contract was let to J.C. Snyder, Smoot and Company and erected under my supervision, officially, and I do modestly accept the credit to my administration, and shared honor with my co-workers. I was then Probate Judge.\(^77\)

Bean was considerably high on his estimate of how much the courthouse was to cost. After its completion in 1873, A.O. Smoot reported on behalf of the contractors that the total cost, including the price of building a privy and a jail fence, had been $21,484.80.\(^78\) It is difficult to determine just where this money came from, although in 1872 the court had voted to set aside fifteen thousand dollars from any funds in the treasury "not otherwise appropriated" to be spent on the courthouse.\(^79\) The major portion of these funds most likely came from county taxes. The old court house was sold to the Provo Woolen Factory for five thousand dollars in factory stock,\(^80\) and it is assumed that this also went toward the debt.

In addition to building court houses, some counties also authorized the construction of stables or sheds to accommodate the teams of persons having business at the court house.\(^81\)

**Criminal Expenses**

The prosecution of crime and the care of criminals were further areas of concern to the county courts. The court paid the fees of the prosecuting attorney in criminal prosecution, paid sheriffs expenses involved in apprehending criminals, allowed the necessary money for jury

\(^77\)Horne, op. cit., p. 165.
\(^78\)Utah County, County Court Minutes, Record A, pp. 157-158.
\(^79\)ibid., p. 79. \(^80\)ibid., p. 78.
\(^81\)Davis County, County Court Minutes, Book C, pp. 50, 52.
fees and other prosecution expenses, and paid for the return of wanted criminals who had fled to other counties or out of the state. The following Iron County examples are only illustrative of the numerous entries concerning criminal expenses in the court minutes.

(Sept. 2, 1867) Paid D.P. Clark $5.00 towards the expense of taking Thomas Jose to the Penitentary, also $30.00 for guarding and boarding prisoner up to the time of starting, there being $100.00 still due on expense account. Mrs. Warren's bill of $22.00 for boarding traverse jury in Jose case was allowed. The clerk was authorized to draw orders for the payment of the costs in the Jose case at the rates allowed by the Territorial Fee Bill. Also the costs of the Coroner's inquest upon the body of Dimeon, an Indian found dead near Little Creek.

On September 8, 1864, the court allowed $119.25 to D. Bullock for pursuing, capturing and bringing Robert Tait from Nevada.

**Liquor Control**

As observed in an earlier chapter, one of the responsibilities of the county court was to license certain businesses operating within the county. Interestingly enough, applications for the right to manufacture and sell liquor were among the business petitions most often presented to the courts and liquor control became one of the important problems of county government. Here again is an example of the efforts of the courts to be unbiased and to grant such privileges as would be in the best public interest. It appears that the courts were fairly liberal in granting liquor permits, but they usually considered each application carefully and often denied them on the grounds that they were not in the public interest.

Territorial regulation of the liquor problem had begun in the

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82. Iron County, County Court Minutes, Book B, p. 82.

83. Iron County, County Court Minutes, Book C, p. 97.
days of the State of Deseret when it was unlawful for anyone to manu-
ufacture "ardent spirits" without a license from the governor.84 The
governor could impose any restrictions he desired and violators were
punished by fine according to the discretion of the court having juris-
diction. When, in 1860, the right to license liquor manufacturers and
dealers was conveyed to the county court, righteous concern was shown
by the legislators in requiring the court to be fully satisfied that the
applicants were of "good moral character," "safe and proper persons" to
be entrusted with such business and that it was "expedient for the public
good" to grant such permits.85

Real concern over the liquor problem seems to have begun about
1860 in Utah County. On October 23, selectman William Miller inquired
into the problem of whether there were any distilleries in operation
without a license and found that such was the case.86 On December 3,
David Miller, Thomas B. Clark and Henry Chatwin petitioned the court for
the right to sell whiskey and beer, but all were denied.87 On December
10, Henry and William Chatwin were brought before the probate court and
tried for "manufacturing Whiskey contrary to law"88 and were fined $26.00
plus court costs of $55.65. Thus the county began to crack down on the
illegal sale of liquor.

One of the earliest licenses actually granted by Utah County was

86Utah County, County Court Minutes, Record A, p. 158.
87Ibid., pp. 160-161.
88Utah County, Probate Record (1859-1866), pp. 96-97.
given on the petition of Orrin P. Rockwell for the right to sell "Ardent spirits" at the Hot Springs. He was to pay ten dollars per anum for his license. It was evidently very difficult, however, to receive such a permit at this time for in March, 1861, a petition was presented by Edward Friel and signed by eighty-six others praying the county to grant Friel a license to make and sell "Spiritous Liquors." The petition was refused. In September of the following year Friel was again refused.

On March 6, 1862 a petition

Signed by E. Billingsley & others asking the Court to grant unto Jesse McCauslin a License to sell Spirituous Liquors was presented. The Court after investigating the matter decided that the petitioners be permitted to withdraw their petition.

The court considered the same petition again the same afternoon, but came to the same conclusion.

A unique, but evidently highly practical, method of controlling liquor sales was adopted by Davis County in the 1860's. At a special session of the court on February 6, 1863, several bishops as well as other interested citizens were there by special invitation. The judge explained the special nature of the meeting and then requested an expression from those present as to whether licenses should or should not be given to anyone to distill, brew or sell beer or liquor in the county. After the matter had been discussed at some length it was decided that if any bishop wanted such a license granted in his ward at any future time

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89 Utah County, County Court Minutes, Record A, p. 163.
90 Ibid., p. 166.
91 Ibid., p. 200.
92 Ibid., p. 188.
93 Davis County, County Court Minutes, Vol. 1, p. 107.
it would be granted by the bishop giving his sanction to the applicant. Thus the church was officially given control, for the time being, of the liquor problem in Davis County. This arrangement, of course, did not continue through the entire territorial period, but that it was held in effect for a number of years is shown in the action taken in 1867 on a petition by "Call & Co." for a license as retail dealers of liquors. The license was granted upon the payment of $25.00 per quarter and provided that the company obtain the sanction of Bishop Stoker.

Prosecution for violation of liquor regulations was carried on in the probate courts. One case concerns W.H. Rockhill who was tried in Utah County in 1865 for selling liquor to Indians. He was fined $75.00 plus costs but asked for a stay of execution. The stay was granted after he and George Wilkins put up a bond stating that they would owe the county two hundred dollars if he failed to pay before December. Rockhill failed and on December 19, the court ordered the county court to recover two hundred dollars from him. In 1885, the Davis County Court had received information that several persons were selling liquor unlawfully but they had no definite grounds for prosecution. The court thus ordered the prosecuting attorney to take such measures as he felt necessary for "a vigorous prosecution" of all offenders and appropriated $150.00 for him to draw on, with the approval of the probate judge, for aid in procuring evidence to convict violators of the liquor laws.

94 Ibid., pp. 154-155.
95 Utah County, Probate Record (1859-1866), p. 447.
96 Ibid., pp. 469-470.
97 Davis County, County Court Minutes, Book C, p. 24.
Fees charged for licenses to make or sell intoxicating beverages varied considerably between the counties and also changed from year to year within each county. Iron County, in 1864, charged John Topham five per cent of the amount sold.98 On September 5, 1881, the court voted to grant licenses for the sale of "Spirituous, vinous and fermented liquors in Iron County . . ." upon the payment of twenty-five dollars per quarter for each license.99 Fees in Utah County were slightly more severe. In 1866, George Coleman was allowed to make and sell beer for sixty dollars per quarter, or to make and sell beer and sell "Spirituous liquors" for $120.00 per quarter, "yearly in advance."100 By 1874, however, the clerk was authorized to issue licenses to liquor dealers at the rate of twenty dollars per quarter and to brewers for eight dollars.101 The fee was up again in 1883 when the court ordered that licenses for manufacturing and selling intoxicating beverages would be two hundred dollars per annum; for selling retail, $160.00 per annum; for selling wholesale, $140.00 per annum.102

By the late 1870's such licenses were being granted regularly by the various county courts. They seemed to examine carefully, however, the individual merits of each application and tried to take into consideration the public good and the feelings of the citizens. Pressure on the court from citizens of a specific locale often resulted in the denial of

98Iron County, County Court Minutes, Book B, Nov. 21, 1864.
99Iron County, County Court Minutes, Book C, Sept. 5, 1881.
100Utah County, County Court Minutes, Record A, p. 301.
101Utah County, County Court Minutes, Record B, pp. 186-187.
102Utah County, County Court Minutes, Record C, p. 43.
these applications. Thus the courts remained in tune with public sentiment. An interesting case in point occurred in Davis County in 1875. On June 7, the court received a petition signed by 102 citizens asking that Thomas Hunt be granted a license to sell beer, wines and spirituous liquors in Farmington. A second petition, signed by fifty-eight others, asked that such license not be granted to Hunt or to any other person.\(^{103}\) Being laid over for further consideration, the matter came up again on June 16, when a petition signed by eighty-one members of the Young Ladies Association of Farmington and 128 citizens of Farmington was presented asking that the license be granted to no one.\(^{104}\) Hunt's petition was finally refused. In another case the court denied Charles E. Pearson a license to sell liquor on the grounds that one place in each settlement was sufficient.\(^{105}\) In 1880, a petition for the right to sell malt beer at a certain hall in Farmington was denied because, after investigation by a selectman, it was found that the people of the town were adverse to it.\(^{106}\) Similar cases often occurred in other counties. In Utah County, J. Bolton and B. Shurtliff applied on June 7, 1880 for a license to sell liquor in Provo precinct in the mouth of Provo Canyon. The court voted

... that said application be not granted as the Court is not satisfied that it is expedient for the public good; as many of the citizens of Provo Precinct have expressed their objection to the granting of such license in said Precinct. But if a majority of the citizens of Provo Precinct will indorse the granting of said license, then this Court will reconsider the matter.\(^{107}\)

\(^{103}\)Davis County, County Court Minutes, Vol. 2, p. 118.

\(^{104}\)Ibid., p. 121. \(^{105}\)Ibid., p. 236.

\(^{106}\)Ibid., p. 295.

\(^{107}\)Utah County, County Court Minutes, Record B, p. 532.
The court did reconsider the matter on September 7, but the petition was again denied on the same grounds.\textsuperscript{108} A request was made in Iron County in 1879 by James Henrie and F. Woodward for the right to sell liquor in Panguitch.\textsuperscript{109} Henrie was refused a license on the grounds that the public good did not require it and Woodward's request was denied "... on the grounds that no evidence was produced that the said Woodward was a safe and proper person to be entrusted with the sale of liquor and that the public good did not require it."\textsuperscript{110} Thus we see that liquor control was one of the major concerns of county government in early Utah.

**Other Businesses**

The several county courts also set up policies for licensing other business enterprises. They were allowed to grant licenses to butcheries and meat markets at any rate they felt necessary and operators were required to pay quarterly in advance.\textsuperscript{111} Utah County usually gave such permits at the rate of $10.00 per quarter,\textsuperscript{112} and a similar practice was followed in Davis County.\textsuperscript{113}

After 1884, the licensing of merchants, auctioneers, brokers, circuses, and other businesses was carried out according to territorial legislation of that year. Davis County, in 1889, passed the following regulation:

\textsuperscript{108}\textit{Ibid.}, p. 556.
\textsuperscript{109}Iron County, County Court Minutes, Book C, p. 50.
\textsuperscript{110}\textit{Loc. cit.}
\textsuperscript{111}Utah, Acts, Res. and Mem. . . . (1865), p. 7, sec.3.
\textsuperscript{112}Utah County, County Court Minutes, Book B, p. 122.
\textsuperscript{113}Davis County, County Court Minutes, Book C, p. 31.
It is ordered by the County Court of Davis Co. U.T. that every person, firm, company or corporation who wishes to obtain a license to carry on in Davis County the business of a merchant, retailer, peddler, auctioneer, travelling showman, or to exhibit theatrical performances, circus or menageries must make an application thereof in writing; said application must state the name of the person or persons who intend to carry on the business or if it be a company, firm or corporation the names of the members of the firm name or the name of the corporation, the place where the business is intended to be carried on and with convenient certainty the average amount of capital to be used.114

Fees set up by the court for the operation of these enterprises were as follows:115

Merchants with capital less than $500: $3.00 per quarter or $10.00 per year.

Merchants with capital between $500 and $1,000: $6.00 per quarter or $20.00 per year.

Merchants with capital between $1,000 and $5,000: $8.00 per quarter or $30.00 per year.

Merchants with capital over $5,000: $12.50 per quarter or $40.00 per year.

Coal merchants: $5.00 per year.

Slaughter house or yard or butcher: $2.00 per month, $6.00 per quarter or $15.00 per year.

Auctioneers: $5.00 per day or $25.00 per quarter.

Peddlers of notions and small wares, meat, fish, etc.: $5.00 per month or $12.60 per quarter.

Travelling showmen or theatrical companies: $2.00 per each performance.

Circuses or menageries: $25.00 per day or $100.00 per year.

It does not appear that any particular problems arose concerning this phase of court activity. Rather, it merely became one of the frequent routine matters of business.

114 Ibid., p. 199. 115 Loc. cit.
Public Health and Welfare

Among the most important responsibilities of county government were the problems of health and public welfare. In effect, the county court had been made a public welfare board by legislative enactment, and even after county physicians had been authorized they worked directly under the supervision of the courts. The problems most frequently arising concerned quarantine, care of the poor and indigent, care of the insane and care of orphans. The court records are liberally sprinkled with entries showing that such problems were of constant concern to county officials in all parts of the territory.

It is only natural to suppose that as a body the court did not have time to fully examine each individual problem which might arise in the county. The judge and selectmen were therefore given enough latitude in their individual authority that they could handle many cases without calling a special session of the court. General policies, of course, were agreed upon but in case a selectman was forced to take some emergency action which should have required the attention of the full court his decisions were usually sanctioned when he reported at the next meeting. A few typical examples will illustrate the variety of welfare problems faced by county officials.

In the Spring of 1873 the dread disease of smallpox broke out in the settlement of Salem in Utah County. Selectman A.K. Thurber was visited by Robert Davis and Wilford Crockett of Salem and told that two cases had developed in the family of Nathaniel Hanchett. After discovering that the quarantine regulations of the adjacent city of Payson did not extend as far as Salem, Thurber immediately ordered a guard posted at the Hanchett residence with instructions to allow no one to go...
in or out unnecessarily. Even one case of smallpox could have been a serious thing in those days for immunization had yet to be introduced and thus an epidemic could easily result. The next day, May 1, Thurber tried to get a meeting of the county court. Failing this he consulted with another selectman and on May 2 he returned to Salem and found two new cases in the same family. With Davis he next inspected a building which had been moved to a good location for a "pest house." This house was evidently designed for use in future quarantine cases. It was described as a log building with a board roof, a floor, a door, and two windows. Before leaving Salem the selectman consulted various citizens then had the following notice posted:

Notice Ingress and Egress to and from the residence of Nathaniel Hanchett is positively forbidden during the prevalence of the Small Pox at said residence, and P.X. Elliot is appointed to attend at said residence to see that this requirement is complied with until Quarantine rules and regulations are established by the County Court.

A.K. Thurber, Selectman

Thus we have one good example of official action being taken by a selectman when no session of the county court could be held.

On May 5 a special session of the court was held at which time Thurber presented his report. He told the court that he had done what he considered necessary for the preservation of the health of the citizens and that he deemed it expedient that they now pass regulations for controlling contagious disease and the spread of it in Salem precinct. This the court did. A piece of ground was officially set aside and designated as quarantine grounds and the house located on it was to be

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116 Utah County, County Court Minutes, Book B, pp. 132-134.

known and used as a "Pest House." A three man board of health, including a quarantine physician, was set up whose duty it was to examine all cases reported and, if necessary, move the infected persons to the "Pest House." The board was to employ the help necessary to provide for the victims and was to examine sanitary conditions in the whole district. When an infected person became well he was to be discharged by the board and given a certificate to the effect that he was healthy. The board could, if necessary, stop all travel and could quarantine any house in the district. A yellow flag was to be put up in infected buildings. A month later it was reported to the court that the board of health had acted efficiently and that no new cases had developed.\textsuperscript{118}

Similar regulations were established in other counties. Davis, in 1872, established a quarantine ground at the mouth of Centerville Canyon. The ground was placed under the control of Joel Parish, one of the selectmen, and he was authorized to draw up to three hundred dollars from the county treasury for expenses.\textsuperscript{119} In 1883, the officials of Iron County became concerned over the breaking out of smallpox at Panguitch in the adjacent Garfield County. They felt it necessary to appoint Frederick A. King as a quarantine physician who, in connection with the court, was authorized to form a "Board on Quarantine." The following rules were then adopted.

1st. No person shall be allowed to enter this County from Panguitch and other settlements contagious thereto, the locality infected with Small Pox, without first presenting a duly signed certificate from the quarantine Physician of said Panguitch, Garfield County.  
2nd. Edward Dalton's ranch house, four miles north of Parowan City was set apart as quarantine grounds for the northern part of the

\textsuperscript{118}\textit{Ibid.}, p. 137. 

\textsuperscript{119}\textit{Davis County, County Court Minutes, Vol. 2, p. 69.}
County,
Alexander Orton, County Sheriff was instructed to see that the above rules are strictly executed.\textsuperscript{120}

A surprising number of bills for the care of the poor and the sick were presented in the early years of county government. It appears that the poor who became ill would often be boarded out by the court to various citizens who would, in turn, present the county with a bill for their care. The county also paid for funeral and burial expenses in the case of such people and sometimes had to provide funds for burying unidentified transients.

On March 6, 1854, the Davis County Court allowed the bill of Danial Wood for boarding and taking care of Able Allen, a sick man. The bill amounted to $71.00 and was to be applied toward Wood's territorial and county taxes.\textsuperscript{121} Chester Loveland had also taken care of the same man for two weeks and three days and was allowed $3.05 for his efforts. In 1856, Sarrah Allen was allowed $40.00 for taking care of John Farnsworth at her house after he had been found a short distance away badly frozen.\textsuperscript{122} After eleven days Farnsworth had been taken to the home of Allen Taylor, who took care of him for twenty-six days and was allowed one hundred dollars for doing so. The man died, however, and Taylor was given another twelve dollars for a coffin and other funeral expenses which he had furnished. Later the same year David B. Lamoreaux presented a bill for attending as surgeon in the above case, including the services of a Salt Lake doctor in amputating a limb. The bill

\textsuperscript{120}Iron County, County Court Minutes, Book B, Mar. 1, 1883.
\textsuperscript{121}Davis County, County Court Minutes, Vol. 1, p. 22.
\textsuperscript{122}Ibid., p. 43.
amounted to $130 and was granted.\textsuperscript{123} In another interesting case the same year Joseph Holbrook was allowed six dollars per week for ten weeks for boarding and clothing two orphan boys provided that the boys repay if they could find a way to earn the sixty dollars in addition to their living.\textsuperscript{124}

A few peculiar statements appear in the minutes of the Utah County Court with reference to the custody of the poor and insane. On March 6, 1854, for example, the court ordered that on the following Saturday "... will be offered at the lowest Bidder in the City of Provo for the keeping of one Hirum Woodward an Insane person who is pauper on the County ..."\textsuperscript{125} On July 21, 1855,

The following paupers were sold by the Court to the lowest Bidders for the space of six months & those who takes them are to furnish Clothing and pay all bills of damages if any sustained in Consequence of the said Paupers.\textsuperscript{126} Then were listed the names of various insane persons who were "sold" to county citizens. This, of course, did not indicate any type of slavery but merely illustrates the method used by the court to care for those who had become dependent upon the county. The "lowest bidder" was the person who would take the pauper with the least amount of remuneration from the county.

In caring for the insane the counties usually tried to see that the families involved took the responsibility. If the family could not afford to handle the person, the court would appropriate part of the

\textsuperscript{123}Ibid., p. 45. \textsuperscript{124}Ibid., p. 43.
\textsuperscript{125}Utah County, County Court Minutes, Record A, p. 45.
\textsuperscript{126}Ibid., pp. 79-80.
bill as it saw fit to take the full responsibility itself. In 1854, Utah County was asked to take "... a certain idiot by the name of Richard Vincent as a pauper on the County, as the parents were unable to do it. ..." 127 Samuel Vincent took him for twenty dollars per month.

Sometimes it became necessary to have other citizens take custody of the insane or to keep them in the county jail. The selectmen were directly responsible for the care of the insane and were often given "contingent funds" to use as they saw fit for this purpose. 128

One case in Utah County will serve to illustrate how the court provided for the care of such persons. On March 6, 1854, selectman James McClellan presented the case of Daniel Cloward, who was insane, to the court. 129 McClellan reported that he had appointed Jacob Cloward as guardian. The court approved and directed that the latter present his bill to the court in May. On May 2, the bill was presented and Cloward was allowed fifty dollars for his services. 130 Another member of the family, Thomas P. Cloward, was allowed three dollars to buy some shirts for Daniel. He further agreed to take him for three months at fifty dollars per month and the county was to pay the expense of a building to keep him in. 131 In December Daniel was "sold at the lowest bidder" and Thomas took him for six months at twenty-nine dollars per month plus

127 Utah County, County Court Minutes, Record A, p. 64.
128 Utah County, County Court Minutes, Record B, p. 229.
129 Utah County, County Court Minutes, Record C, p. 41.
130 Ibid., p. 44. 131 Ibid., p. 45.
clothing. The case was handled in a similar manner each time it came up during the following years, except that the amount of county aid gradually decreased. Later, however, it became necessary for Daniel to be kept in the county jail but in 1872 his brother, Thomas, was allowed to take him out of jail because his health was failing as a result of confinement. Thomas was now required to put up a two thousand dollar bond assuring the safe keeping of his brother. In 1874, Thomas was again given custody of Daniel who was again in the hands of the jailer and was allowed forty dollars per quarter. He appeared in September, 1875, however, and reported that his brother had been particularly bad during the summer and that unless he could get more county assistance he would be forced to turn him back to the county. Sometimes, he reported, Daniel was even dangerous. The court appropriated twenty dollars per month plus an additional twenty dollars for the past quarter. There were other such cases in the various counties but this one is reported as merely typical of the kind of action generally taken by the county government.

Educational Problems

The field of education was another important item of concern to county officials. One of the main responsibilities of the court, after 1866, was to create, alter or consolidate county school districts as they saw fit. Dr. E. Allen Bateman feels, however, that during the

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132bid., pp. 58, 64.
133Utah County, County Court Minutes, Record B, p. 142.
134bid., p. 188. 135bid., p. 247.
territorial period there was a real lack of effective coordination between the local school districts and this because no adequate authority was given to the superintendent of schools by the legislature.\textsuperscript{137} The law provided that the county court could create new school districts whenever petitioned by parents of twenty or more children living two or more miles from an existing school and this led to an amazing multiplication of county school districts. In 1867, the territory had 186 districts and by 1890 the number had grown to 334. Various proposals were made during the territorial period which would have consolidated the administration of county schools into one unit but no such action was taken until after statehood.\textsuperscript{138} Many cities, however, had charters which gave them authority to establish and regulate their own school, thus making them independent of administration by county officials.\textsuperscript{139}

The county courts were required by law in 1852 to appoint boards of school teacher examiners but the county superintendent of schools was elected by the voters.\textsuperscript{140} He was, however, directly responsible to the court and was required to report regularly to it.

The chief responsibility of the court, then, seems to have been in the establishing of school districts and disbursing of county school funds. Functional policies were apparently left to the individual districts and the county superintendent. The Davis County Court, for instance, in 1858 gave definite orders for the various districts to meet

\textsuperscript{137}Ibid., p. 9. \textsuperscript{138}Ibid., pp. 15-17.
\textsuperscript{139}Ibid., p. 9.
\textsuperscript{140}See Chap. VII for a discussion of these other county officers and their duties.
and organize by choosing trustees for their respective districts.141

Typical of meetings held by local school districts was one held in Provo on October 29, 1860. The minutes were recorded by George W. Bean and are of interest in showing how these small districts organized themselves and solved their own problems independent of the county court.

The Residents of School District No. 5 in Provo City met at the house of David E. Bunnell in the 4th Ward, at 6 p.m.
Bishop William Fausett was unanimously chosen Chairman of the meeting, George W. Bean, Clerk.
The notice from the County Clerk was read, showing the boundaries of the District.
On motion of D. E. Bunnell it was unanimously voted that George W. Bean be and act as Trustee for the District.
On motion, Joseph W. Fleming was elected for another of the Trustees, and R. R. Rogers for the third, which made out the required number according to Law.
It was motioned and seconded that we go to work forthwith and build a good school house in this District. Carried unanimously.
It was also unanimously voted that a tax of three percent be levied on all property in this District for that purpose, to be collected and expended under the supervision and management of the Trustees.
Meeting adjourned sine-die.142

After the counties had originally organized themselves into school districts, changes were generally made only upon the petition of the citizens involved. An example of such action occurred in Davis County on September 5, 1859. Daniel Wood presented a petition asking to be admitted into district number one because the roads between his house and the school house in district eleven were bad, especially in the spring.143 After consideration the court went even further and ordered that Wood have a district set off to himself, the boundaries of which were to include all his property situated in district number eleven.

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141 Davis County, County Court Minutes, Vol. 1, p. 50.
142 Horne, op. cit., pp. 138-139.
143 Ibid., p. 66.
The new district was to be numbered twelve.

In 1875, the superintendent in Utah County presented the court with a petition from the citizens of Provo, Spanish Fork, and Santaquin. They requested the court to join the three cities into one school district and recommended the redistricting of the county schools. The court followed through on the latter suggestion and defined fifteen school districts but the three towns in question remained as separate units.

The advantages of consolidated schools could readily be pointed out by a modern educator, but the early county officials in Utah should not be too harshly criticized for their habit of multiplying and spreading out the school districts. Transportation was a major problem, especially in the winter or in rainy weather, and the courts evidently felt it necessary to get schools as close to the various homes as possible. Even so, only 54 percent of the school age children in the territory were enrolled in 1875.

It wasn't always easy for a citizen to convince the county court that a new district should be established near his home. Robert Bodily, who had settled in eastern Utah, tells an unusual story of how in 1880 he got a school district and leaves an interesting picture of the problems involved in getting it started. To quote from his journal:

> . . . the next thing is school the school house was at Old Ashley 1 1/2 miles through brush and the Children had to be taken over the river which at times in spring would not be crossed with safety and the people of that part of the Country were increasing with emigrants fast the Canal was being enlarged and the dread of sending our Children over that river and through that brush was more than I could put up with so one day W. G. Reynolds and my self was talking of the danger of sending our Children to school we decided to draw up a petition to

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144 Utah County, County Court Minutes, Record B, pp. 266-268.

145 Bateman, op. cit., p. 10.
the County Court for a school district after we had drawn it up we
sent it by Br. W. P. Reynolds Wm. G. Father when he presented it they
laughed him out of it saying what need have you for a school district
when he return I could see something was wrong so he told what they
said they said Bodily is the only one that has Children so I said to
him give me that paper and I'll go and see what can be done with them
Follows I went and told them I have come and will camp right here
until I get that school district and I got it they appointed Wm G
Reynolds Philip Stringham and myself as trustees but they did not
render us any assistance in building a house we started School in
private houses until we could build a house about this time the
ward was organized with Wm. Shaffer Bishop myself first and George
Lines a second Councillor . . .

as trustees Br. Stringham and myself began to gather material for
a school house and . . . in 1882 or 1883 we built a log house but it
answered all purposes meetings and school too . . . it took quite an
effort to get things in shape it seemed we had it all to do the snow
was quite deep and there was yet the lumber to get and so we Br
Stringham & myself went over onto the head of Deep Creek where Alma
Johnston had that summer brought a steam saw mill we found the snow
about waist deep but we doubled our teams and got back over the hill
we had to tramp the snow so the team could pull the wagon but we
finally succeeded in getting the lumber on the ground . . . the snow
was quite deep and like a nasty job to commence to put it up and most
of those interested in favor of waiting until spring but I felt like
continuing I told them when you see a good fire come and we will put
this thing up I will get up early and shovel the snow away and make
a fire so when I had a fire they came and that night we had the Walls
up and in a little while we had a house to meet in and school too. 146

Educational opportunities were not always so limited. Utah
County had a definite advantage with the establishment, in 1875, of the
Brigham Young Academy. This was a means of supplying the public schools
with better trained teachers and for a number of years the county court
made annual appropriations to pay the tuition of students attending
classes at the academy. 147 Twenty-six students were so helped in 1876
and, in addition, the county superintendent was instructed to organize a
normal institute for teachers to be held on Saturdays during the winter. 148

146 Robert Bodily, "Journal of Robert Bodily" (U.S. Library of
Congress, Collection of Mormon diaries, journals and life sketches, Reel
2. This is on microfilm at U.S.A.C. library.)

147 Jensen, op. cit., pp. 341-342.

148 Utah County, County Court Minutes, Record B, p. 322.
Thus the county courts had a definite responsibility in the field of education and they apparently took it seriously. Because of poor roads, scattered settlements, and other problems incident to settling the territory, however, it appears that it was difficult for most counties to establish well-organized, efficient county school systems and much of the early education was dependent upon local support and initiative. Even the length of the school year was often dependent upon local wealth and the willingness of the localities to tax themselves.\textsuperscript{149}

In summary, among the major problems of the county courts was the control and use of natural resources for public, private, and commercial purposes. The courts assumed direct control of water, canyon roads, mill sites, and irrigation projects and whenever control of these items was given to any individual or group they were required to act under the supervision of the court. The courts attempted to establish policies which would be in the best public interest and when grants were made for the building of mills and roads the courts made every effort to make certain that they would be constructed as soon as practicable and that the roads would be kept in good repair for public use. The groups authorized to build roads were usually granted the right to charge a toll on timber taken out of the canyons, but this was evidently in compensation for building such roads and keeping them in repair.

The foregoing items were of most frequent concern in the first two decades of the territorial period, at least as far as Davis, Iron and Utah counties were concerned. This was the period of settlement when policies and precedents had to be established. After 1875 there

\textsuperscript{149}Bateman, \textit{op. cit.}, p. 10.
seems to have been few petitions for the control of timber, mill sites, water, new roads etc. The main roads were now county roads and were maintained by the county and enough mills had been erected to do most of the required work.

Other important problems which continued throughout the period included public health, welfare, education, control of livestock, criminal prosecution, public buildings, liquor control, taxation, and regular financial matters. The responsibility of the court in these affairs increased as population grew and through these activities the court had a direct influence on the lives of all the citizens of the county.

There is little evidence in the minutes studied in connection with this research of laxity or dilatoriness on the part of the members of the county court. Indeed, they seemed to approach their problems seriously, aggressively and with full realization of their responsibilities. This attitude seems to have continued throughout the entire territorial period. The journals of Judge Hector W. Haight, for example, one of the last probate judges in Davis County, reveal him as a man greatly devoted to his duty and constantly riding around the county on horseback or in a wagon doing county business. In Iron County, in 1883, a very conscientious clerk told the court that he considered his salary of $250.00 per year too high for the amount of labor he performed,

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150 Hector W. Haight, Journals (1889). These journals are full of short sentences indicating this. Thursday, April 18, 1889, for example: "... with road cart I drive to north end of County (Syracuse) precinct, to find Deputy registrar ... meet many persons and inquire as to suited man ..."
whereupon the court immediately lowered it to $175.00.\textsuperscript{161}

The county court is thus seen as a very important and powerful unit of local government in the territory of Utah. The activities of the court were directly concerned with the effective settlement and growth of this western commonwealth and many of the problems of growth in the territory were directly reflected in the problems of this basic unit of county government.

\textsuperscript{161}Iron County, County Court Minutes, Book C, p. 83.
CHAPTER V

COUNTY FINANCE

Since finance is a problem in any system of government, it is important to present a brief picture of county financial structure, showing officials involved, important sources of income and major types of expenditure.

Directly responsible for determining county taxes was the county court. Considerable authority, however, in levying and collecting them was given to the assessor and collector and district school trustees.¹

Territorial Taxation Policy

Territorial law allowed the county to assess two kinds of taxes: property tax and poll tax. In addition, a territorial property tax was levied, and during most of the period, the county assessor and collector was responsible for this. The legislature determined the territorial assessment and gave the counties permission to levy their own taxes within certain limits.

Levied by the State of Deseret in 1850, the first property tax in

¹Because of the complicated nature of the financial structure, the author has felt that this discussion would be simplified by discussing various aspects separately instead of attempting a single chronological survey. Hence, the duties of the assessor and collector and the county treasurer are developed briefly in separate sections, as well as the problem of school finance.
Utah was set at two per cent.\textsuperscript{2} No county tax was authorized at this time but a year later the county court was allowed to assess a special road tax of one-half of one per cent or one day's labor for every three hundred dollars worth of property.\textsuperscript{3} This is not to be confused with the poll tax which could also be paid either in cash or labor and was used for road purposes.

Territorial and county taxes both varied considerably throughout the period. The first legislature required a property tax of one per cent,\textsuperscript{4} levied on personal property, money on hand and money loaned. Exempt were military organizations, religious societies and public schools. At the same time the county court was given the right to assess a tax not exceeding one per cent "for county purposes" and a road tax of not over one-half of one per cent.\textsuperscript{5} It appears that some counties did not find it immediately necessary to take full advantage of the tax limit. Iron, for example, made an assessment of only one-half of one per cent for county purposes that year plus the regular road tax.\textsuperscript{6} In 1854, the territorial tax was reduced to one-fourth of one per cent and the county limit to one-half of one per cent.\textsuperscript{7} The rates that year in both Davis and Utah

\textsuperscript{2}O.S.D. (1850), p. 23, sec. 3.
\textsuperscript{3}O.S.D. (1851), p. 20, sec. 1.
\textsuperscript{4}Utah, Acts, Res. and Mem. . . . (1852), p. 110, sec. 2.
\textsuperscript{5}Ibid., p. 111, sec. 7.
\textsuperscript{6}Iron County, County Court Claims, Book A, May 22, 1852.
\textsuperscript{7}Utah, Acts and Res. . . . (1854), p. 7, sec. 3.
were at the limit.\footnote{Utah County, County Court Minutes, Book A, p. 38. Davis County, County Court Minutes, Vol. 1, p. 20.} The law provided, however, that if the county required an extra expenditure the amount could be voted on by the people of the county and, if the vote was favorable, a special tax levied accordingly.\footnote{Utah, Acts and Res. \ldots (1854), p. 11, sec. 20.}

In the years to follow various revenue laws set differing limits. An act of 1859 authorized the court to fix the tax rate at any session but no ceiling was placed on it at that time.\footnote{Utah, Acts and Res. \ldots (1859), p. 27, sec. 2.} The court was merely required to furnish the assessor and collector with a list of taxpayers, which became standard practice throughout the period. In 1862 the right to levy any tax whatsoever, except the poll tax, was taken away from the county\footnote{Utah, Acts, Res. and Mem. \ldots (1862), p. 43, sec. 2.} but it was restored the following year with a ceiling of one-fourth of one per cent.\footnote{Utah, Acts, Res. and Mem. \ldots (1863), p. 46, sec. 1.} In 1878 the legal limit was six mills on the dollar\footnote{Utah, Laws, Mem. and Res. \ldots (1878), p. 1, sec. 1.} in addition to three mills for district schools. The territorial tax was also three mills. The final territorial revenue law, in 1894, authorized only two mills for county purposes but provided again that special taxes could be levied if approved by special election.\footnote{Utah, Laws \ldots (1894), p. 23, sec. 1.}

The term "property" included several things in the territorial tax structure which were defined in 1854. The following headings were to be included in the book used by the assessor and collector in
determining individual wealth: name and residence of owner or possessor; value of land claims and improvements; number and value of cattle, horses, asses, mules, sheep, goats, swine, vehicles, clocks and watches; value of merchandise, value of stock in trading and manufacturing companies; value of gold dust and bullion; value of gold and silver plate and ornaments; money loaned and on hand; value of taxable property not enumerated. The book also provided space to record the total value and the amount of territorial and county tax. Additional items were added to the list in 1869: irrigated land; acres and value of wheat, oats, barley, corn, sorghum, potatoes, carrots, beets, cotton, meadow, apples, peaches, and grapes. Thus, almost every type of property was subject to a tax.

Designed specifically for road purposes, the poll tax also varied from year to year and from county to county. Beginning with the State of Deseret, every man over the age of eighteen was considered a "poll" and had to pay the tax. In 1862 it applied to able bodied men between sixteen and fifty. This tax was collected and applied by the district or precinct road supervisor.

As with the property tax, the territorial legislature set the legal limit of the poll tax and the court levied whatever it desired beneath that limit. The tax could be paid either by work on the county road or in cash. It appears that the most common assessment was one or

15 Utah, Acts and Res. . . . (1854), pp. 7-8, sec. 7.
18 Utah, Acts, Res. and Mem. . . . (1862), pp. 8-9, sec. 1.
two days labor per year and the value of this labor was usually set somewhere between $1.50 and two dollars per day. In case of emergency extra assessments were sometimes made. Iron County, in 1864, required an extra day's labor above the regular tax because of damage done by floods. 19

In addition to the regular taxes described above, it should be mentioned that between 1862 and 1872 a Federal income tax was levied, originally as a means of raising revenue for the support of the Civil War. 20 Territorial laws, however, indicate nothing concerning this and other Federal revenue and it seems apparent that county officers were not directly responsible for it. George W. Bean, who was prosecuting attorney in Utah County, was appointed "Assistant Assessor of Internal Revenue for the 2nd District of Utah" in 1862. 21 This district included Utah, Juab, Wasatch, and Tooele counties. He was appointed by James C. Little, who was assessor for the territory. In addition to the income tax, Bean was responsible for taxes on distilleries, nail factories, tanneries, and other concerns taxed by the government and had to visit them once a month. It appears that he came under no direct supervision of county officials in this duty but that it was an independent responsibility. In 1864, he was again appointed county assessor and collector and, reads his journal, "I also continued my duties of Assessor of Revenue for the support of the War." 22

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19 Iron County, County Court Minutes, Book B, Sept. 5, 1864.
21 Horne, op. cit., p. 140. 22 Ibid., p. 143.
Stringent methods of enforcing the collection of taxes were authorized by the legislature. The State of Deseret considered dishonest reporting as grounds for a one thousand dollar fine\(^{23}\) and required anyone who refused to pay the road or poll tax to pay twice their assessment when brought before a justice of the peace.\(^{24}\) The seizing and selling of personal property, however, became the method most commonly allowed by later revenue laws.

County taxes were usually paid in cash but sometimes taxpayers were allowed to use commodities, such as wheat or lumber, to satisfy their debt.\(^{25}\)

**The Assessor and Collector**

The government of the provisional State of Deseret had provided that an assessor and collector be appointed annually by the county court. Territorial laws made the office elective in 1852\(^{26}\) but two years later made it again appointive by the court.\(^{27}\)

The assessor and collector was required to assess all property taxes and was authorized to assess territorial as well as county taxes.\(^{28}\) He was also to collect county and territorial taxes and, in 1872, was

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\(^{23}\) *O.S.D.* (1850), pp. 23-24, sec. 7.

\(^{24}\) *O.S.D.* (1851), p. 20, sec. 6.

\(^{25}\) Iron County, County Court Minutes, Book B, Sept. 4, 1854 and Sept. 5, 1870.


required to collect school taxes levied on railroads. He was to enforce the collection of taxes and could, if necessary, execute and sell property for taxes, provided he did not distress widows and fatherless children or "oppress the honest poor." He could appoint deputies as necessary and could require any person to give a statement of their taxable property under oath. If any person knowingly understated the value of any property not seen by the assessor and collector, the latter was allowed to purchase that property for the county at the stated price. All territorial funds collected were to be turned over to the territorial treasurer and county funds to the county treasurer.

Evidently this position became very time consuming for some officials. George W. Bean reports that in 1864 Utah county was growing so rapidly he had to hire deputies in several places to assist him in his duties.

The county court was allowed to determine the compensation to be received by the assessor and collector. He was to be paid by the county treasurer for handling county taxes and by the territorial treasurer for handling territorial taxes. Here again variation is seen in the several counties and the rate ranged all the way from five per cent in 1854 in Davis County to fifteen per cent in 1870 in Iron County.

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32 Utah, Acts and Res. . . . (1859), p. 27, sec. 5.
33 Horne, op. cit. p. 113.
35 Davis County, County Court Minutes, Vol. 1, p. 28.
36 Iron County, County Court Minutes, Book B, p. 102.
in 1852, paid ten per cent and Davis, in 1855, paid seven per cent. Somewhere between seven and twelve per cent seems to have been the average.

In 1878 the structure of the office was altered when the law provided for the election of both an assessor and a collector in counties with revenue exceeding twenty thousand dollars annually. The term of office was two years. In other counties the offices could be combined, but it was still an elective position. The revenue provision for separation of the offices was increased to forty thousand dollars in 1880.

Additional responsibility was given to the county assessor in 1878 when he was required to act as registration officer and to appoint deputies in each precinct. He was to make and keep up to date a registration list of all voters.

In 1886 the assessors and collectors were also designated as assessors and collectors of district school taxes. A law of 1890 provided for the assessing and collecting of taxes on transient stock, that is, stock wintered in one county and summered in another. In 1892 the county assessor was given the further responsibility of assessing taxes for each incorporated city, town and village at the same time that

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37Utah County, County Court Minutes, Book A, p. 17.
38Davis County, County Court Minutes, Vol. 1, p. 40.
40Utah, Laws . . . (1880), p. 42, sec. 3.
43Utah, Laws . . . (1890), pp. 64-65, secs. 1-3.
he assessed the county and territorial taxes.\textsuperscript{44} Collectors were authorized to collect taxes in cities of the first or second class and the offices of city assessors and collectors were abolished. Collectors were required to publish a list of delinquent taxes and authorized to sell personal property to enforce collection.\textsuperscript{45}

Methods of insuring diligence on the part of the assessor and collector were also provided by the legislature. The law of 1854 required the court to examine the tax list twice during the year. If, at the second examination, some names remained delinquent, the amount of their delinquency was to be paid by the assessor and collector, who was then empowered to collect them for his own benefit.\textsuperscript{46} The same pattern of enforcement remained throughout the period, and in 1884 the collector was authorized, if necessary, to sell enough personal property to reimburse him.\textsuperscript{47} After 1880 any assessor who wilfully failed or neglected his duty was subject to action being taken on his bond for the amount of taxes lost.\textsuperscript{48}

Being directly responsible to the county court, the assessor and collector often appeared before this governing council with various problems. George M. Brown, collector for Utah County in 1879, reported to the court a list of several delinquent taxpayers whose property he had "exhausted."\textsuperscript{49} Being satisfied with the correctness of his report, the

\begin{itemize}
\item \textsuperscript{44}Utah, Laws . . . (1892), p. 74, sec. 1.
\item \textsuperscript{45}Ibid., pp. 29-30, sec. 1.
\item \textsuperscript{46}Utah, Acts and Res. . . . (1854), p. 10, sec. 15.
\item \textsuperscript{47}Utah, Laws . . . (1894), p. 135, sec. 2.
\item \textsuperscript{48}Utah, Laws . . . (1890), p. 52, sec. 8.
\item \textsuperscript{49}Utah County, County Court Minutes, Book B, p. 511.
\end{itemize}
court credited his account with $10.36, which was the county portion of these delinquent taxes. Brown further presented a list of several persons whose assessments he said were erroneous and was credited with the county portion of these taxes, which amounted to $2.40 out of six dollars. A similar settlement was made for J. W. Turner in 1885. The county portion of taxes remitted was $89.24 for 1882 and $136.87 for 1883. The clerk was instructed to certify this action to the auditor of public accounts and it is assumed that similar action was taken in all such cases so that the collector would not be further responsible for the territorial share.

It sometimes took several years for the court to completely clear the records of a given assessor and collector. The clearing of William Huntington, who had been assessor and collector in Utah County in 1853, was not finally approved until April, 1860. In August, 1855 his report showed a delinquency which he was unable to collect of $261.36. Further delinquencies of those who had died or left the county brought the total to $424.3. Under the circumstances, the court remitted these debts. A further delinquency of $269.94 had been discovered by the clerk, however, who reported such to the court with the revelation that Huntington was soon to leave the territory. Being summoned by the judge, Dominicus Carter, Huntington appeared before the court on May 3, 1856. Judge Carter had difficulty deciding what to do because the selectmen were absent and could not be reached, but he finally proposed that Huntington give his note for one hundred dollars in addition to the one for

50 Utah County, County Court Minutes, Book C, p. 180.

51 Utah County, County Court Minutes, Book A, p. 144.
$60.59 already held by the county and the sum of $13.94 due him from the county. Huntington readily accepted the proposition and the judge balanced the account, even though it left a delinquency of $95.41. By 1860, when the case was reviewed before the full court, a new judge presided, but the court formally ratified the previous settlement on the basis of the circumstances under which Judge Carter had made it.

The County Treasurer

The office of county treasurer was created by the Territory of Utah in 1852.\(^52\) His office was to be elective and he was to serve for a term of four years.

The specific duties given to the treasurer were to keep an accurate account of all moneys or property received or disbursed by the county and to pay all demands upon the county legally presented. He was further required to give an accurate semi-annual accounting to the county court.

In 1886 his term of office was changed to two years.\(^53\)

In 1888 the treasurer was further required to issue duplicate receipts for money received, delivering the duplicate to the person paying and the original to the county clerk.\(^54\) He was now to give an annual financial statement, instead of the semi-annual statement, to the county court and was also required to be able to make such a statement at any time if required by the court.

In 1878 the county treasurer was designated as sub-treasurer of the territory and was required to report every ninety days to the

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\(^52\)Utah, Acts, Res. and Mem. • • • (1852), p. 115.

\(^53\)Utah, Laws • • • (1866), p. 51, sec. 1.

\(^54\)Utah, Laws • • • (1888), p. 178, sec. 3.
territorial treasurer. This was evidently because of his work in handling territorial taxes. His salary was to be determined by the county court and half of it paid by the territory as compensation for his services as sub-treasurer.

School Revenue

The principle source of school revenue during most of the territorial period was from the local district school tax which, until 1886, was collected by the district board of trustees. It was used mainly for the purpose of building repairs. Such tax was difficult to raise, however, because of the fact that school revenue laws made the right to levy it dependent on a local vote. In 1876 the board of trustees were finally authorized to levy a tax of one-fourth of one per cent on all property in their district and this could be increased somewhat according to local vote.

The absence of a law making it mandatory on the taxpayers to pay a specific rate of tax was one of the serious problems of the early school administrators. The laws were only "permissive" in nature and reports show that few districts assessed such taxes under these circumstances. Schools were often built with voluntary donations, or in

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55 Utah, Laws, Mem. and Res. . . . (1878), p. 20, sec. 27.
58 Utah, Compiled Laws . . . (1876), p. 244, secs. 3-4.
59 Moffitt, op. cit., p. 126.
60 Ibid., p. 122.
connection with church buildings, and teachers were paid through tuition fees.

In 1860 a school house was built in Provo and the following partial list illustrates the kind of donations accepted toward its completion:

<table>
<thead>
<tr>
<th>Names</th>
<th>Materials and Labor</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Bean</td>
<td>5 loads of stone</td>
<td>$ 6.25</td>
</tr>
<tr>
<td>William Fausett</td>
<td>½ loads of sand</td>
<td>6.25</td>
</tr>
<tr>
<td>James A. Bean</td>
<td>6 loads of stone delivered</td>
<td>12.00</td>
</tr>
<tr>
<td>Geo. W. Bean</td>
<td>1,000 adobes delivered</td>
<td>10.00</td>
</tr>
<tr>
<td>John Turner</td>
<td>½ loads of clay</td>
<td>4.00</td>
</tr>
<tr>
<td>John McEwin</td>
<td>6 pounds of nails</td>
<td>6.00</td>
</tr>
<tr>
<td>Charles Twelves</td>
<td>cash</td>
<td>5.00</td>
</tr>
<tr>
<td>James Frodgsam</td>
<td>cash</td>
<td>15.00</td>
</tr>
<tr>
<td>E. Holden</td>
<td>2 bushel of wheat</td>
<td>3.00</td>
</tr>
<tr>
<td>James Cloward</td>
<td>1150 adobes</td>
<td>3.34</td>
</tr>
<tr>
<td>David Cluff</td>
<td>hauling 1500 adobies</td>
<td>4.50</td>
</tr>
<tr>
<td>David Penrod</td>
<td>½4 pounds mutton</td>
<td>1.80</td>
</tr>
<tr>
<td>David E. Bunnell</td>
<td>loaned 126 ft. lumber</td>
<td></td>
</tr>
<tr>
<td>M. H. Snider</td>
<td>8 days work</td>
<td>15.00</td>
</tr>
<tr>
<td>I. Pursels</td>
<td>8 hours work</td>
<td>1.75</td>
</tr>
</tbody>
</table>

It was in 1878 that a bill was passed authorizing a district school tax of three mills on the dollar. The county court was further authorized to levy taxes for county purposes not to exceed six mills and evidence seems to indicate that some counties also used a portion of this tax for educational purposes.

In 1886 the power of county officials was increased considerably when the task of assessing and collecting all school taxes was given to the county assessors and collectors, the county clerk was required to compute the taxes of each district, and the county court was made a

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61 Horne, op. cit., p. 84.
63 Moffitt, op. cit., p. 134.
board of equalization of school taxes. The rapid increase in territorial school revenue following this law shows the tremendous importance of the county school tax. Total revenue from this source jumped from $2,181.04 in 1889 to nearly $175,000 in 1894.

After 1874, some help came to district schools from territorial taxes. Several laws were passed before the end of the period appropriating money for school purposes and after 1878 territorial school taxes were levied in addition to local levies. In 1894 the sum of $302,995.90 was collected in territorial school taxes. An 1880 law declared that territorial money was to be appropriated by the territorial superintendent to the various districts according to the number of children in the district between the ages of six and eighteen.

Other sources of school revenue included rental of school buildings (usually to church groups), bond sales, and, after 1886, the county pounds. The latter does not appear to be a major source, however, for it is not even listed in a compilation of the principal sources of school revenue for the last few years of the territorial period.

In 1892 the county court was given the responsibility of apportioning the territorial and county school funds among the various districts.

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63 Ibid., pp. 130-132.
64 Ibid., p. 133.
66 Moffitt, op. cit., p. 133.
districts, but only after it had set aside so much for the payment of certain county expenses. An example of the amounts thus earmarked is found in the records of Iron County for 1894.

The estimate of the County School funds to be set aside ... for the year 1894 from the County Supt. of Dist. Schools, was then read and on motion the following amounts were set aside for the following named purposes, as follows to wit:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>For payment of the County Supt.</td>
<td>$115.00</td>
</tr>
<tr>
<td>For contingent expenses of County supt. office</td>
<td>12.00</td>
</tr>
<tr>
<td>For payment of Board of Examiners including record and stationery</td>
<td>42.00</td>
</tr>
<tr>
<td>For payment of treasurer</td>
<td>42.00</td>
</tr>
<tr>
<td>For Expenses of County institute and for records for regular County institute</td>
<td>83.00</td>
</tr>
<tr>
<td>For Assessor and Collector's compensation</td>
<td>200.00</td>
</tr>
</tbody>
</table>

**County Board of Equalization**

In 1878 the county court was officially designated as the county board of equalization. The essential rudiments of this function had previously been given to the court when, in 1854, it was authorized to remit, at its option, certain delinquent taxes, and in 1869 was allowed to remit all or part of any person's taxes, according to its judgment.

The purpose of this board, as set up in 1878, was to review all written complaints made in regard to the assessed value of any property.

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70 *Utah, Laws . . .* (1892), p. 117, sec. 75.
71 *Iron County, County Court Minutes, Book C*, pp. 342-352.
72 *Utah, Laws, Mem. and Res. . . .* (1878), pp. 16-17, sec. 8.
and it was authorized to change and correct the evaluation either by increasing or decreasing it. The board was further authorized to remit or abate the taxes of insane, idiotic, infirm or indigent persons to an amount not exceeding five dollars. The authority to completely abate other taxes, however, seems not to have been included at this time.

The duties of the board of equalization were increased in 1894 when it was authorized to equalize the assessment of the whole county, including the assessment for general taxes of cities of the first or second class.\textsuperscript{75}

Only a few examples need be given to show that the several courts were judicious in carrying out this function. Iron County, in 1875, discovered that the United Order of Parowan had been assessed on property previously assessed other parties. The court therefore returned $37.50 to the United Order.\textsuperscript{76} In 1878 the Sanpete County court equalized the assessment roll by adding $550 to the property value of "Parker of Gunnison," three hundred dollars to the Ephraim Coop Tannery, and varying amounts to several other persons or companies.\textsuperscript{77}

The courts usually set a special time to consider equalization problems. Davis County, in 1883, set Monday, July 16 as the time to "hear complaints (if any) in regard to the assessed values of property for taxes . . . ."\textsuperscript{78} At the appointed time several adjustments were made,

\textsuperscript{75}Utah, \textit{Laws} . . . (1892), p. 74, sec. 4.
\textsuperscript{76}Iron County, County Court Minutes, Book C, p. 22.
\textsuperscript{77}Sanpete County, County Court Minutes, Book B, p. 110.
\textsuperscript{78}Davis County, County Court Minutes, Vol. 2, pp. 385-386.
both up and down.\textsuperscript{79}

Utah County records show that the court met in special session each July as a board of equalization. Other business was handled if necessary, but this meeting was primarily for the purpose of adjusting the tax rolls. Some petitions were granted readily while others were rejected. In 1887 Elial Curtis of Springville requested a deduction but was turned down.\textsuperscript{80} In 1888 David Evans of Spanish Fork had $250.00 deducted from the valuation of his real estate upon the recommendation of the county assessor.\textsuperscript{81} At the same time the court remitted a total of $1028.91 in school and county taxes and completely abated $493.83 more.\textsuperscript{82} A few days later two men from Lehi requested that the assessment of $24.75 on their sheep be stricken from the rolls because they had no sheep in Utah County. Upon investigation the court discovered that they did have sheep in Utah county the previous spring and therefore did not grant the petition.\textsuperscript{83} In 1891 the Oregon Short Line and Salt Lake and Western Railways received a reduction of five hundred dollars per mile of roadbed on their assessment in Utah County.\textsuperscript{84}

\textsuperscript{79}Ibid., p. 390.

\textsuperscript{80}Utah County, County Court Minutes, Book C, p. 271.

\textsuperscript{81}Ibid., p. 330.

\textsuperscript{82}Ibid., p. 331.

\textsuperscript{83}Ibid., p. 332.

\textsuperscript{84}Ibid., p. 541.
Income and Expenditures

By far the largest share of county income came from taxes. Indeed, the total amount of county taxes even exceeded the territorial tax. In 1860 the total territorial tax was $18,909, while county taxes amounted to $25,357. City taxes for the same year amounted to $10,986 and road taxes totaled $10,571. In 1880 territorial taxes amounted to $148,650 while the counties collected $155,706 and the cities, towns, villages and school districts totaled $130,882. It thus appears obvious that property taxes for county purposes was the major tax item as far as citizens were concerned.

Tables 1, 2, and 3, compiled from several sources, will give an indication of the various sources of county revenue and their relative

85It is difficult to determine the exact financial condition during the earliest period of county history. The treasurer was required to make regular reports to the county court, but the minutes seldom give a complete statement. They merely indicate that the treasurer gave his report and that it was accepted. Expenditures authorized by the county court were kept note of in the minutes, but it is difficult to be sure you have a complete picture from this source alone. The writer was able to discover no other records of the treasurer, however, for this early period. The earliest complete financial statements found were for the year 1869. The purpose here, however, is to merely give a general picture of the major sources of income and areas of expenditure for the whole period and it is felt that this can be done with the information thus available.


importance. A few generalizations are immediately apparent. First, the county tax generally increased as time progressed. Second, the major source of revenue was this tax. Third, license fees, fines, and rent provided other means of income but these and other sources were surprisingly low.

Expenses varied considerably between the counties and from year to year within each county. A few major items may be observed, however, which were evidently important expenditures in all counties. Table 4 shows the major 1869 expenses of the three counties studied. Table 5 shows the total expenditures of these three counties in the order of their relative importance.

It becomes apparent that disbursements for roads and bridges was continually one of the heaviest county expenditures. Salaries of county officials also took a large share of the revenue, as will be observed by a study of tables 6, 7, and 8. During periods of major building projects, such as court houses, the payments in this area were extremely heavy. Other major expenditures included operating costs of the county court, expense incurred in criminal prosecution, elections, welfare expenses, and loss incurred in criminal prosecution.

In retrospect, county taxation policies in the Territory of Utah were largely determined by the territorial legislature. Setting the legal limit on taxes, this body could alter it at will. The legislature also determined the specific duties of the several officers having to do with county fiscal affairs and provided useful tools to help in the collection of county taxes.

In general, two kinds of taxes were authorized: property tax
for county purposes and poll tax for road purposes. Extra money could be raised through special taxes voted by the people. There were other sources of revenue, but the county taxes were the most important. All expenditures were made with the approval of the county court and the assessor and collector and county treasurer were responsible to this body.
TABLE 1

UTAH COUNTY INCOME FOR SELECTED PERIODS

<table>
<thead>
<tr>
<th>Source</th>
<th>1869</th>
<th>1874</th>
<th>1880</th>
<th>1894</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>$5,862.63</td>
<td>$10,690.93</td>
<td>$8,050.74</td>
<td>$10,435.32</td>
</tr>
<tr>
<td>Pounds</td>
<td>425.05</td>
<td>383.64</td>
<td>201.65</td>
<td>282.75</td>
</tr>
<tr>
<td>Fines, justice's courts</td>
<td>135.00</td>
<td>101.75</td>
<td>210.00</td>
<td>282.75</td>
</tr>
<tr>
<td>Fines, probate court</td>
<td>495.12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>232.76</td>
<td>1,032.42</td>
<td></td>
<td>33.75</td>
</tr>
<tr>
<td>Licenses</td>
<td>20.00</td>
<td>100.00</td>
<td>1,260.00</td>
<td></td>
</tr>
<tr>
<td>Rent (court house)</td>
<td>134.60</td>
<td>500.00</td>
<td>430.23</td>
<td></td>
</tr>
<tr>
<td>Sale of county wheat</td>
<td>223.15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delinquent taxes</td>
<td>1,102.29</td>
<td>528.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>2,081.98</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redemption of real estate sold for</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>taxes</td>
<td>120.20</td>
<td>419.77</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>10.30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Territorial compensation for</td>
<td>385.20</td>
<td>1,312.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>assessor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement from other counties</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>for criminal prosecution</td>
<td>135.25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poll tax</td>
<td></td>
<td></td>
<td></td>
<td>3.00</td>
</tr>
<tr>
<td>Territorial appropriation for maps</td>
<td>362.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and plats</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage for assessing city taxes</td>
<td></td>
<td></td>
<td>232.72</td>
<td></td>
</tr>
<tr>
<td>Loans</td>
<td>9,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebate from Provo for fuel</td>
<td></td>
<td></td>
<td></td>
<td>632.26</td>
</tr>
<tr>
<td>and janitorial services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance on hand from previous</td>
<td></td>
<td></td>
<td></td>
<td>1,257.36</td>
</tr>
<tr>
<td>reports</td>
<td>3,494.44</td>
<td>3,562.32</td>
<td>5,913.13</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>$10,645.00</td>
<td>$19,412.98</td>
<td>$16,155.37</td>
<td>$25,661.66</td>
</tr>
</tbody>
</table>

TABLE 2
IRON COUNTY INCOME FOR SELECTED PERIODS

<table>
<thead>
<tr>
<th>Source</th>
<th>1852</th>
<th>1869</th>
<th>1874</th>
<th>1880</th>
</tr>
</thead>
<tbody>
<tr>
<td>County taxes</td>
<td>$198.94</td>
<td>$1,158.11</td>
<td>$2,945.73</td>
<td>$2,790.40</td>
</tr>
<tr>
<td>Fines (justice's courts)</td>
<td>52.50</td>
<td></td>
<td></td>
<td>3.50</td>
</tr>
<tr>
<td>Territorial appropriation for District Court</td>
<td></td>
<td></td>
<td></td>
<td>260.00</td>
</tr>
<tr>
<td>Pounds</td>
<td></td>
<td></td>
<td></td>
<td>7.75</td>
</tr>
<tr>
<td>Butcher license</td>
<td></td>
<td></td>
<td></td>
<td>8.00</td>
</tr>
<tr>
<td>Balance from previous years</td>
<td>166.34</td>
<td>1,678.64</td>
<td>1,709.13</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>$198.94</td>
<td>$1,376.95</td>
<td>$4,884.37</td>
<td>$4,518.78</td>
</tr>
</tbody>
</table>

Source: 1852, Palmer's "Excerpts from Iron County Records" contains a brief summary in the section on taxes which shows the county taxes for 1852; 1869, same as Table 1, p. 5; 1874, same as Table 1, p. 8; 1880, same as Table 1, pp. 5-6.

TABLE 3
DAVIS COUNTY INCOME FOR SELECTED PERIODS

<table>
<thead>
<tr>
<th>Source</th>
<th>(1861-1868)</th>
<th>1869</th>
<th>1874</th>
<th>1880</th>
</tr>
</thead>
<tbody>
<tr>
<td>County taxes</td>
<td>$10,428.52</td>
<td>$2,442.84</td>
<td>$4,247.08</td>
<td>$3,412.58</td>
</tr>
<tr>
<td>Rent and licenses</td>
<td>421.36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licenses</td>
<td>236.00</td>
<td></td>
<td>115.00</td>
<td>55.00</td>
</tr>
<tr>
<td>Fines</td>
<td>102.70</td>
<td></td>
<td>14.00</td>
<td>206.50</td>
</tr>
<tr>
<td>Pounds</td>
<td></td>
<td></td>
<td>68.00</td>
<td>39.40</td>
</tr>
<tr>
<td>Totals</td>
<td>$10,649.88</td>
<td>$2,781.54</td>
<td>$4,444.08</td>
<td>$3,713.48</td>
</tr>
</tbody>
</table>

Source: 1861-1868, Davis County, County Court Minutes, Vol. 1, p. 180; 1869, same as Table 1, p. 4; 1874, same as Table 1, pp. 7-8; 1880, same as Table 1, pp. 9-11.
TABLE 4

MAJOR EXPENDITURES, 1869

Utah County

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads and bridges</td>
<td>$2,503.00</td>
</tr>
<tr>
<td>County Court operating expenses</td>
<td>884.50</td>
</tr>
<tr>
<td>Collector's percentage and remitted taxes</td>
<td>1,492.38</td>
</tr>
<tr>
<td>&quot;Aid of the Probate Court&quot;</td>
<td>762.06</td>
</tr>
<tr>
<td>Delinquent taxes</td>
<td>3,963.19</td>
</tr>
<tr>
<td>Election Expenses</td>
<td>101.46</td>
</tr>
</tbody>
</table>

Iron County

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>County and probate courts</td>
<td>200.93</td>
</tr>
<tr>
<td>Assessor and Collector</td>
<td>162.13</td>
</tr>
<tr>
<td>County charge (insane girl)</td>
<td>152.50</td>
</tr>
<tr>
<td>Roads and bridges</td>
<td>112.75</td>
</tr>
<tr>
<td>Grand juries</td>
<td>107.00</td>
</tr>
</tbody>
</table>

Davis County

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>County road</td>
<td>700.00</td>
</tr>
<tr>
<td>County clerk</td>
<td>350.00</td>
</tr>
<tr>
<td>Assessor and collector</td>
<td>305.35</td>
</tr>
<tr>
<td>Criminal Expenses</td>
<td>178.35</td>
</tr>
<tr>
<td>Estray pound at South Weber</td>
<td>125.00</td>
</tr>
<tr>
<td>Sheriff</td>
<td>92.00</td>
</tr>
<tr>
<td>Selectmen</td>
<td>75.00</td>
</tr>
<tr>
<td>Stationery, etc.</td>
<td>65.00</td>
</tr>
<tr>
<td>Judge, for services</td>
<td>45.00</td>
</tr>
<tr>
<td>Coroner's expenses</td>
<td>40.00</td>
</tr>
</tbody>
</table>

### TABLE 5

**TOTAL EXPENDITURES, 1874**

#### Utah County

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court house</td>
<td>$ 7,393.99</td>
</tr>
<tr>
<td>Collector's per cent and remitted taxes</td>
<td>1,778.14</td>
</tr>
<tr>
<td>Outstanding debts</td>
<td>1,298.87</td>
</tr>
<tr>
<td>Criminal prosecution</td>
<td>1,164.05</td>
</tr>
<tr>
<td>Court expenses</td>
<td>1,048.20</td>
</tr>
<tr>
<td>Pauper and coroner account</td>
<td>742.00</td>
</tr>
<tr>
<td>Probate court</td>
<td>569.25</td>
</tr>
<tr>
<td>Roads and bridges</td>
<td>569.11</td>
</tr>
<tr>
<td>Election expenses</td>
<td>105.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14,668.61</strong></td>
</tr>
</tbody>
</table>

#### Iron County

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court house</td>
<td>$ 1,180.50</td>
</tr>
<tr>
<td>Criminal prosecutions</td>
<td>574.10</td>
</tr>
<tr>
<td>Roads</td>
<td>397.50</td>
</tr>
<tr>
<td>Collector (13 per cent)</td>
<td>382.94</td>
</tr>
<tr>
<td>District Court expenses</td>
<td>240.50</td>
</tr>
<tr>
<td>County treasurer</td>
<td>203.00</td>
</tr>
<tr>
<td>County clerk</td>
<td>108.00</td>
</tr>
<tr>
<td>County court expenses</td>
<td>62.00</td>
</tr>
<tr>
<td>Remittances (probably tax remittances)</td>
<td>50.39</td>
</tr>
<tr>
<td>Election expenses</td>
<td>27.00</td>
</tr>
<tr>
<td>Expenses of probate court</td>
<td>25.60</td>
</tr>
<tr>
<td>Stationery</td>
<td>20.88</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 3,272.41</strong></td>
</tr>
</tbody>
</table>

#### Davis County

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads and bridges</td>
<td>$ 1,019.30</td>
</tr>
<tr>
<td>Court and clerk expenses</td>
<td>665.00</td>
</tr>
<tr>
<td>Juror's fees</td>
<td>553.40</td>
</tr>
<tr>
<td>&quot;Fitting up&quot; clerk's and assessor's offices</td>
<td>208.00</td>
</tr>
<tr>
<td>D.A. and M. Society</td>
<td>200.00</td>
</tr>
<tr>
<td>Sheriff's fees and criminal expenses</td>
<td>179.06</td>
</tr>
<tr>
<td>Indigent persons</td>
<td>126.00</td>
</tr>
<tr>
<td>Elections</td>
<td>66.50</td>
</tr>
<tr>
<td>Other expenses</td>
<td>59.25</td>
</tr>
<tr>
<td>Superintendent of schools</td>
<td>50.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 3,126.50</strong></td>
</tr>
</tbody>
</table>

Source: County Financial Reports for the years 1874 and 1875, pp. 6-7
TABLE 6
UTAH COUNTY FINANCIAL REPORT, MAY 31, 1880

RECEIPTS

From taxes, as per abstract assessment roll, July 1, 1879  $ 8959.52
Less taxes of delinquents whose property was exhausted,  $  47.22
  " erroneous assessments,  61.56  $  108.78
Total actual receipts from taxes of 1879,  $ 8850.74
From delinquent taxes of 1877, 528.90
  " licenses 100.00
  " fines 210.00
  " pound fees, 201.65
  " rent of court house to district court, 500.00
  " redemption of real estate sold for taxes, 120.20
  " interest on real estate sold for taxes, 10.30
  " Utah Territory, compensation of county assessor;  385.20
       territorial portion,
  " Juab County, reimbursed on criminal prosecution, 100.00
  " Millard County, reimbursed on criminal prosecution, 29.75
  " Sanpete County, reimbursed on criminal prosecution,  5.50
Total Receipts,  $11042.24
Balance in treasury, May 20, 1879, 5913.13
                                  $16955.37

EXPENDITURES

For highways,  $ 642.00
  " care of insane and pauper persons, 2736.50
  " criminal prosecutions, 1283.80
  " general expenses, 959.60
  " court house, care and improvements of, 1041.65
  " jail, 100.25
  " elections, 431.85
  " schools, normal class, salary of county superintendent, etc., 986.90
  " recorder's and surveyor's offices, 227.20
  " salaries, 1900.00
  " contingent purposes, 200.00
  " assessor's and collector's compensation, county portion, 816.80
  " assessor's and collector's compensation, territorial portion, 385.20
  " holding inquests, 57.20
TABLE 6--Continued

For pound expenses, blanks, etc., $ 54.50
" taxes and costs of real estate sold to county, 162.50
" water commissioner, 50.00

$12035.95

Balance in treasury, May 31, 1880,

4919.42

$16955.37

STATEMENT

Of amount paid to each county officer, and included in the foregoing expenditures, during the fiscal year ending May 31, 1880:

<table>
<thead>
<tr>
<th>Officer/Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probate judge, salary</td>
<td>$ 700.00</td>
</tr>
<tr>
<td>Probate judge, extra services</td>
<td>21.00</td>
</tr>
<tr>
<td>Selectman Tanner, services</td>
<td>$ 128.00</td>
</tr>
<tr>
<td>Selectman Page, services</td>
<td>129.50</td>
</tr>
<tr>
<td>Selectman McCullough, services</td>
<td>189.00</td>
</tr>
<tr>
<td>Prosecuting attorney, salary</td>
<td>600.00</td>
</tr>
<tr>
<td>Prosecuting attorney, legal assistance</td>
<td>150.00</td>
</tr>
<tr>
<td>County clerk, salary</td>
<td>600.00</td>
</tr>
<tr>
<td>County clerk, extra services</td>
<td>200.00</td>
</tr>
<tr>
<td>Treasurer, services, disbursing county funds</td>
<td>233.40</td>
</tr>
<tr>
<td>Treasurer, services, disbursing school funds</td>
<td>126.90</td>
</tr>
<tr>
<td>Assessor, services assessing</td>
<td>256.80</td>
</tr>
<tr>
<td>Assessor, services registering</td>
<td>144.00</td>
</tr>
<tr>
<td>Collector, services</td>
<td>480.00</td>
</tr>
<tr>
<td>Superintendent of district schools, salary</td>
<td>560.00</td>
</tr>
<tr>
<td>Surveyor, services</td>
<td>300.00</td>
</tr>
<tr>
<td>Quarantine physician, services</td>
<td>122.05</td>
</tr>
<tr>
<td>Sheriff, care of court house</td>
<td>400.00</td>
</tr>
<tr>
<td>Sheriff, serving warrants of arrest, mileage, etc.</td>
<td>253.10</td>
</tr>
<tr>
<td>Sheriff, attendance at county court</td>
<td>41.00</td>
</tr>
</tbody>
</table>

694.10

Total, $ 5176.75

Resources; exclusive of balance in treasury, $ 1327.10

Source: County Financial Reports for the years 1880 and 1881, pp. 98-100.
### TABLE 7

**IRON COUNTY FINANCIAL REPORT, MAY 31, 1880**

#### RECEIPTS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>By county tax for 1879,</td>
<td>$2790.40</td>
</tr>
<tr>
<td>Impounding stock,</td>
<td>$7.75</td>
</tr>
<tr>
<td>Fines collected from Justices Courts,</td>
<td>$3.50</td>
</tr>
<tr>
<td>Butcher license,</td>
<td>$8.00</td>
</tr>
<tr>
<td>Balance from report of 1879,</td>
<td>$1709.13</td>
</tr>
</tbody>
</table>

#### EXPENDITURES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>To twelve per cent of tax to Assessor and Collector,</td>
<td>$334.84</td>
</tr>
<tr>
<td>Relief of Assessor and Collector,</td>
<td>$21.06</td>
</tr>
<tr>
<td>Appropriation for roads,</td>
<td>$697.00</td>
</tr>
<tr>
<td>Appropriation for estray pounds,</td>
<td>$135.00</td>
</tr>
<tr>
<td>Witnesses in criminal prosecutions,</td>
<td>$69.10</td>
</tr>
<tr>
<td>Expenses on court house,</td>
<td>$815.05</td>
</tr>
<tr>
<td>Election expenses,</td>
<td>$116.80</td>
</tr>
<tr>
<td>County safe,</td>
<td>$269.00</td>
</tr>
<tr>
<td>Relief of insane and poor,</td>
<td>$435.00</td>
</tr>
<tr>
<td>Stationery, blank books and Recorder's seal,</td>
<td>$81.00</td>
</tr>
<tr>
<td>Coroner's inquest,</td>
<td>$82.05</td>
</tr>
<tr>
<td>County Superintendent District Schools,</td>
<td>$33.10</td>
</tr>
<tr>
<td>John Houston, J. P.,</td>
<td>$18.70</td>
</tr>
<tr>
<td>John H. Henderson, J. P.,</td>
<td>$9.30</td>
</tr>
<tr>
<td>Wm. Adams, J. P.,</td>
<td>$15.30</td>
</tr>
<tr>
<td>County Sheriff and deputy,</td>
<td>$314.43</td>
</tr>
<tr>
<td>County Treasurer,</td>
<td>$66.96</td>
</tr>
<tr>
<td>Selectman Geo. Hunter,</td>
<td>$63.00</td>
</tr>
<tr>
<td>Selectman Jesse W. Crosby, Jr.,</td>
<td>$76.00</td>
</tr>
<tr>
<td>Selectman S. H. Rogers,</td>
<td>$21.00</td>
</tr>
<tr>
<td>County Judge,</td>
<td>$39.00</td>
</tr>
<tr>
<td>County Clerk,</td>
<td>$241.20</td>
</tr>
<tr>
<td>County Register,</td>
<td>$100.00</td>
</tr>
<tr>
<td>Constable A. Delong,</td>
<td>$13.85</td>
</tr>
<tr>
<td>County Attorney and deputy,</td>
<td>$217.58</td>
</tr>
<tr>
<td>Principal and interest on county note of April 1st, 1876,</td>
<td>$72.54</td>
</tr>
<tr>
<td>Loss on account with individuals,</td>
<td>$67.95</td>
</tr>
<tr>
<td>Balance against the treasury,</td>
<td>$547.13</td>
</tr>
</tbody>
</table>

| Total                                                            | $5065.91 |

Source: County Financial Reports for the years 1880 and 1881, pp. 15-16.
TABLE 8
DAVIS COUNTY FINANCIAL REPORT, MAY 31, 1980

Resources

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount in treasury</td>
<td>$1451.64</td>
</tr>
<tr>
<td>Due from A. Stayner</td>
<td>407.10</td>
</tr>
<tr>
<td>&quot; Jos. Egbert</td>
<td>17.18</td>
</tr>
<tr>
<td>&quot; John W. Hess &amp; Co.</td>
<td>130.00</td>
</tr>
<tr>
<td>&quot; J. Crossley</td>
<td>10.00</td>
</tr>
<tr>
<td>&quot; J. W. Fox</td>
<td>13.45</td>
</tr>
<tr>
<td>&quot; C. W. Stayner</td>
<td>7.84</td>
</tr>
<tr>
<td>&quot; John Gailey</td>
<td>50.00</td>
</tr>
<tr>
<td>&quot; Wm. Reeves (ex-Assessor and Collector)</td>
<td>2325.99</td>
</tr>
<tr>
<td>&quot; H. D. Haight (ex-Sheriff)</td>
<td>44.15</td>
</tr>
<tr>
<td>&quot; L. Hammon</td>
<td>25.00</td>
</tr>
<tr>
<td>&quot; L. M. Grant</td>
<td>18.00</td>
</tr>
<tr>
<td>&quot; Wm. S. Lewis</td>
<td>2.00</td>
</tr>
<tr>
<td>&quot; roads account</td>
<td>.50</td>
</tr>
<tr>
<td>&quot; A. Rose</td>
<td>1.00</td>
</tr>
<tr>
<td>&quot; L. Hammon, Hooper pound</td>
<td>.25</td>
</tr>
<tr>
<td>&quot; suspense account</td>
<td>804.30</td>
</tr>
</tbody>
</table>

Liabilities

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due to orders outstanding</td>
<td>$317.14</td>
</tr>
<tr>
<td>&quot; expenses (contingent)</td>
<td>60.00</td>
</tr>
<tr>
<td>&quot; Coroner</td>
<td>13.00</td>
</tr>
<tr>
<td>&quot; Schools account</td>
<td>302.57</td>
</tr>
<tr>
<td>&quot; Wm. Brown</td>
<td>23.00</td>
</tr>
<tr>
<td>&quot; Justice of the Peace, Centerville</td>
<td>8.00</td>
</tr>
<tr>
<td>&quot; criminal contingent account</td>
<td>44.15</td>
</tr>
<tr>
<td>&quot; Justice of the Peace, Farmington</td>
<td>4.00</td>
</tr>
<tr>
<td>&quot; Z. Snow</td>
<td>25.00</td>
</tr>
<tr>
<td>&quot; Joseph Bargon</td>
<td>13.65</td>
</tr>
<tr>
<td>&quot; Wm. R. Smith</td>
<td>18.55</td>
</tr>
<tr>
<td>&quot; road contingent account</td>
<td>490.13</td>
</tr>
<tr>
<td>&quot; elections account</td>
<td>46.34</td>
</tr>
<tr>
<td>&quot; C. Layton</td>
<td>29.40</td>
</tr>
<tr>
<td>&quot; H. D. Haight</td>
<td>15.00</td>
</tr>
<tr>
<td>&quot; Kaysville pound</td>
<td>18.00</td>
</tr>
<tr>
<td>&quot; Balance favor county</td>
<td>3881.07</td>
</tr>
</tbody>
</table>

$5309.00
TABLE 8—Continued

Receipts

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance favor county, June 1, 1879</td>
<td>$4758.54</td>
</tr>
<tr>
<td>Received from taxes account</td>
<td>$3412.58</td>
</tr>
<tr>
<td>&quot; fines account</td>
<td>$206.50</td>
</tr>
<tr>
<td>&quot; license account</td>
<td>$55.00</td>
</tr>
<tr>
<td>&quot; poundage account</td>
<td>$39.40</td>
</tr>
<tr>
<td>Total</td>
<td>$8472.02</td>
</tr>
</tbody>
</table>

Disbursements

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>To criminal expense account</td>
<td>$532.00</td>
</tr>
<tr>
<td>&quot; roads account</td>
<td>$1300.00</td>
</tr>
<tr>
<td>&quot; Z. Snow</td>
<td>$50.00</td>
</tr>
<tr>
<td>&quot; expense acct. (purchase of safe, printing,</td>
<td>$663.00</td>
</tr>
<tr>
<td>fuel, postage, stationery, etc.)</td>
<td></td>
</tr>
<tr>
<td>&quot; elections account</td>
<td>$238.70</td>
</tr>
<tr>
<td>&quot; relief account</td>
<td>$6.00</td>
</tr>
<tr>
<td>&quot; board of examination</td>
<td>$25.00</td>
</tr>
<tr>
<td>&quot; repairs on Court House and lot</td>
<td>$112.30</td>
</tr>
<tr>
<td>&quot; Chester Call, Supt. Dist. Schools</td>
<td>$114.30</td>
</tr>
<tr>
<td>&quot; E. T. Clark, Treasurer</td>
<td>$150.00</td>
</tr>
<tr>
<td>&quot; water commissioners, expense</td>
<td>$225.00</td>
</tr>
<tr>
<td>&quot; court expense</td>
<td>$740.30</td>
</tr>
<tr>
<td>(Judge Wm. R. Smith, $56.00; Selectmen R.</td>
<td></td>
</tr>
<tr>
<td>Hyde, $25.00; J. Miller, $9.30; H. D.</td>
<td></td>
</tr>
<tr>
<td>Haight, $30.00; Wm. Brown, $76.60; C. Lay-</td>
<td></td>
</tr>
<tr>
<td>ton, $46.20; Clerk, Joseph Barton, $500.00)</td>
<td></td>
</tr>
<tr>
<td>&quot; rent of pounds</td>
<td>$84.00</td>
</tr>
<tr>
<td>&quot; indigent persons</td>
<td>$342.75</td>
</tr>
<tr>
<td>Total</td>
<td>$4590.95</td>
</tr>
</tbody>
</table>

Balance in favor county

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance in favor county</td>
<td>$3881.07</td>
</tr>
<tr>
<td>Total</td>
<td>$8472.02</td>
</tr>
</tbody>
</table>

Source: County Financial Reports for the years 1880 and 1881, pp. 9-11.
CHAPTER VI

A PECULIAR SITUATION

One of the unusual problems growing out of the Mormon-"Gentile" conflict in early Utah history was that of the jurisdiction of the probate court. It is deemed important to include a discussion of it here because of the direct effect it had upon the administration of justice in Utah's counties.

It was in 1852 that the powers of the probate court were defined by the territorial legislature.¹ The law provided that a probate judge for each county should be elected by the legislative assembly and commissioned by the governor. The judges were to hold office for four years and in case of vacancy the governor could appoint and fill the office until the assembly met and elected someone.

Regular sessions of the court were to be held on the second Monday of March, June, September, and December of each year and were to continue for one week or until all pending business was disposed of, although the court was considered by law as always open. An exception to the rule occurred whenever the district court was to sit in a county on the days appointed for the probate court, the latter then being required to hold court on the preceding Monday. If the judge were required to be out of town on legal business on the appointed days, court could be held the following Monday or at a time appointed by the judge.

The probate judge had jurisdiction in the probate of wills, the administration of estates of deceased persons, and in the guardianship of minors, idiots, and insane persons. The controversial part of the law was section 30, which added to the authority of the court as follows:

The several Probate courts, in their respective counties, have power to exercise original jurisdiction both civil and criminal, and as well in Chancery as at Common Law, when not prohibited by legislative enactment; and they shall be governed in all respects by the same general rules and regulations as regards practice as the District courts. 2

Appeals from the decisions of the probate court could be made to the district courts and the clerk was required to file a transcript of the proceedings in such cases with the clerk of the district court within twenty days from the day of appeal.

The law provided that the probate judge should appoint the clerk of probate, who should have his office at the county seat and should attend all sessions of both the probate court and the county court. The clerks of both the probate courts and the district courts were required to submit annual reports of the number of convictions in their courts, show the character of the offense, the sentence imposed, occupation of the convict, whether he could read or write, and his general habits. They were also to report the expenses of the county for criminal prosecution.

Thus the probate courts in the territory of Utah were given the power to exercise original jurisdiction in both civil and criminal actions unless prohibited by legislative enactment. This had the unusual effect of giving them concurrent jurisdiction with the U.S. District Courts in all civil and criminal cases. Criminal jurisdiction,

2Tbid., p. 43, sec. 30.
of course, was not an ordinary privilege of the probate court and this bestowal of authority was soon to cause serious controversy between the two main factions in early Utah. That this was a legal dispensation, however, seems unquestionable in view of the fact that the organic act for the territory declared that the jurisdiction of the probate courts should be "as limited by law," the term "law" evidently meaning that which was passed by the territorial legislature. Furthermore, several United States judges who came to the territory agreed that it was within the power of the legislature to confer such jurisdiction.

In effect, this law gave the Mormon church extensive influence in civil affairs. Not that the church had, or attempted to get, any direct place in territorial or county government, but the fact remains that the probate judges were often Mormon Bishops or else held some other important church position and hence were strongly influenced by church ideology and practice. Thus, the probate judge, because of his position in the community, was usually the most influential man in any of Utah's early counties.

In the disputes which were to follow, the Gentiles naturally alleged that these powers were conferred upon the probate judges in order to nullify, as far as possible, the authority of the higher courts. In any event, this was indeed a strategic maneuver on the part of the Utah

5See chapter VIII.
6Hubert Howe Bancroft, History of Utah (San Francisco: The History Company, 1890), pp. 487-488.
legislature, for now all cases could be tried before judges who were men of the community instead of before Federal judges from the East who were not in sympathy with the local problems and did not understand the Mormon philosophy of life. The district courts, to be sure, had appellate powers over the probate courts but, as will be seen, comparatively few cases ever reached certain of the Federal judges until after criminal jurisdiction in the probate courts had been withdrawn by Congress.

Mormons, on the other hand, argued that these powers were necessary in the probate courts for it was impossible for justice to be had in the counties at the hands of Federal officials. 7

Remembering that until 1853 there was no functioning Territorial Supreme Court and only one U.S. judge to serve all the districts, 8 it is not difficult to see reason behind this claim.

Three U.S. judges, Lemuel G. Brandenbury, Perry E. Brocchus, and Zerubbabel Snow, had been appointed and had arrived in Utah in July, 1851. The judges inquired as to why the territorial legislature had not been formed. Governor Brigham Young explained that because there were no mails during the winter the news of the official passage of the organic act had not arrived until March. The Governor soon issued a proclamation defining the three judicial districts of the territory and assigning the judges their duties, as called for in the law. He also called for an August election to bring the territorial legislature into existence.

Two of the judges were so far out of sympathy with the Mormon community that they quickly made themselves highly unpopular. A

7 Ibid., p. 488

conference of the church was held early in September and the new judges, along with B. D. Harris, Federally appointed secretary, were honored with a request to sit on the platform with the church leaders. Justice Brocchus, however, made his invitation to speak into an opportunity to rebuke and correct the community because of its religious and social institutions. Brocchus and Brandenbury, along with Secretary Harris, finally left the territory, taking all the government funds with them and leaving Justice Snow as the sole Federal judge. Thus it was felt necessary by the legislature to authorize him to hold United States Courts in all districts and at the same time to grant criminal and civil jurisdiction to the probate courts.

The problem of "run-away" judges did not end here. Others were equally at odds with the Mormons and their institutions and sometimes left after hearing only a few or no cases. Justice Charles B. Waite left the territory in 1863 after holding only one term of court at which there was not a single case on the docket. Probate Judge George W. Bean records the following concerning his court trying criminal cases:

The Legislature of 1865-66 . . . chose me to succeed the Honorable Zerubbabel Snow, as Probate Judge of Utah County.

. . . It will be remembered that District Judge Cradlebaugh dismissed the Court and, as we say, "Flew the Coop" as he never returned, and hence the Probate Court had to take over criminal cases.

I went about my duties, appointed J. B. Milner as prosecuting Attorney, L. John Nuttall, Clerk; Wm. B. Pace, Sheriff, and we soon got in line.

In due time the question of jurisdiction came up, and crime became more frequent and desperate since the army days,

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9 Ibid., pp. 320-321.
10 Ibid., pp. 323-325.
11 Neff, op. cit., p. 704.
with some few men. Of course, men accused of cattle stealing, selling liquor to Indians, hiring them to steal cattle, etc. were tried in our Court until District Judges could be brought for the various districts according to population and politics. We had Grand Juries and parties were tried and indicted and punished the same as in U. S. District Courts.12

Not only were there some judges who left Utah territory in disgust, but many of those who remained were antagonistic toward the Mormons and openly tried to set aside the jurisdiction of the probate courts. Judge C. M. Hawley, for instance, holding court in the Second District at Beaver, about 1870, held that the probate courts had no jurisdiction in criminal cases and ruled against a certain probate court decision. This action had the effect of releasing from custody Morgan L. Peden, who had been convicted of assault with intent to kill Isaac Riddle and had been sentenced to two and a half years in prison.13

It was the issue of polygamy which particularly irritated most of the judges, yet they often found that they could do very little about it even though, after 1862, there existed a Federal statute against it.14 The naturalization of aliens was another of the civil functions which had been granted the probate courts. This was especially important because of the fact that many polygamists were petitioning for, and receiving, naturalization papers. The district courts, on the other hand, often refused such petitions. U. S. Judge James B. McKean, in the 1870's, went so far as to inquire of applicants whether or not they were polygamists or believed in polygamy. Any answer which would indicate

14i.e. the "Morrill Act."
the affirmative was construed by him as grounds for refusing the petition. 15 Says Mormon historian Roberts:

Under the practices of the federal courts of Utah, in this period, in the matter of naturalizing aliens, "no 'Mormons' need apply," might as well have been posted over the court entrance, unless he was willing to deny his religious faith. 16

This conflict was one of the causes of the "Utah War." Bancroft declares that "the official who did more than any other . . . to bring about the Mormon war was Associate Judge W. W. Drummond." 17 Coming to Utah in 1854, Drummond immediately began to criticize its laws and institutions, especially polygamy, and he was the first judge to challenge the legality of the probate court powers as defined in 1852. He declared that he would set aside the findings of these courts in all cases except those which lay strictly within their jurisdiction.

The 1860's saw a high point in the conflict. Justice Thomas J. Drake, holding court in Provo, had refused to recognize the right of the probate courts to issue naturalization papers. 18 Justice Waite, with the apparent approval of Drake and Governor Stephen S. Harding, was attempting to secure Congressional amendment of the act which created the territory by limiting criminal jurisdiction in the probate courts and denying them jurisdiction in civil actions. 19 The bill, which was sent to

16 Ibid., p. 388.
17 Bancroft, op. cit., p. 490.
19 Neff, op. cit., pp. 703-704.
Washington and introduced in the Senate, further provided for the
organization of a militia in Utah under the command of the governor (who
was a Federally appointed official). The Mormons were naturally indignant
at such a move and at a mass meeting in the Tabernacle, March 3, 1863,
called for the resignation of the Federal officers and sent a petition
for their removal to President Lincoln. The judges, of course, wrote
Lincoln their opinion that the organic act was entirely inoperative and
they refused to hold any terms of the District Courts until supported by
military power. This, they felt, should be at least five thousand well-
armed men. But the government failed to meet their request and shortly
thereafter Judge Waite left the territory and established himself in
Idaho.

That extensive criminal prosecution was carried on in the
probate courts is well illustrated by an examination of the court records
and also by remarks of men who were participating in the proceedings.

George W. Bean reports for the year 1866:

I accepted the office of Prosecuting Attorney for Utah
County and proceeded to punish the offenders against the
Laws, in taking unlawfully, many cattle belonging to the
Government from Camp Floyd and elsewhere. I prosecuted before
Judge Aaron Johnson, (Bishop) of Springville, being the Probate
Judge, and the U. S. Courts lying dormant, it was considered
necessary for the public safety, that criminals be prosecuted
in the Probate Court. There were several men and boys of the
County who resented the lawless actions of Cradelbaugh and the
soldiers and became reckless and made bad records in grand
larceny, robbery and other crimes. I set to work and kept
the Court going most of the year, and prosecuted one hundred
and two cases and convicted all but two. The punishments
were mostly fines from $10.00 to $200.00 each, as imprison-
ment seemed to be an expense and no benefit accruing. 20

The history of Weber County shows that here, too, numerous civil suits,

habeas corpus cases, and all sorts of crime from misdemeanor to murder were tried before the probate judge. 21

The probate court records of Utah County show that before 1874 many kinds of criminal cases were tried in that court. An unusual example was that of Daniel Hopkins, tried on March 27, 1860. Hopkins was accused of passing false money and pleaded guilty, acknowledging that he received two dollars in beer, eight dollars in specie, and a pair of boots for the false coin. The jury, however, for some unexplained reason, found him not guilty. 22 In other cases Joseph Thomas was fined one hundred dollars on March 28 for resisting an officer, 23 and two days later John Barnum was sentenced to two years in the penitentiary for grand larceny. 24 In June, 1864, Luke Redd and Emma Ainge were tried for "lewdness." They were fined two hundred and fifty dollars and one hundred dollars, respectively. 25 In an indictment for assault, Riley Stewart was fined one hundred dollars on February 6, 1866. 26

The records show that cases were often referred to the probate court from a justice's court. On April 3, 1860, the justice of the peace of Provo heard the case of Provo City vs. Thomas Brown for breaking into a grocery store. He ordered the case to be taken to the probate court 27 and a transcript of the proceedings in the justice's court was

21Tullidge, op. cit., p. 335.
22Utah County, Probate Record (1859-1866), pp. 33-34.
23Ibid., pp. 34-35.
24Ibid., pp. 40-41.
26Ibid., p. 502.
27Ibid., p. 43.
put into the probate court record. Similar treatment was given to Thomas Fern, Lamoni Colton, and Charles Jarvis. On April 17, Brown, Fern, and Colton were tried separately from Jarvis, at their request, before six jurors. They were found guilty and fined one hundred dollars, seventy-five dollars, and seventy-five dollars, respectively, plus ten dollars each for costs. Jarvis was tried and found guilty of grand larceny. He had to pay a forty-dollar fine plus ten dollars costs and was sentenced to four months in the penitentiary.

The Utah County records also show that the probate court was active in granting petitions for U. S. citizenship. Samuel S. Jones received his on May 21, 1864, and on February 9, 1866, a number of people who had been citizens of England were now made United States citizens.

The details of cases brought before the probate courts were sometimes rather humorous. Such an example is found in the journal of John Woodhouse, who was Beaver County clerk in 1859, and who tells the story of an unusual divorce trial. The suit concerned a man who had gone into town with his sons to buy material for some shirts. Finding that he did not have enough money for all of them, he bought the material anyway and planned to have his wife make the shirts two inches shorter than usual. His wife, however, was extremely independent and refused to

\[28\] Ibid., pp. 51-52.

\[29\] Ibid., pp. 53-54.

\[30\] Ibid., p. 313.

\[31\] Ibid., p. 488.

make them any shorter. She wanted to make them longer, rather, to allow for shrinkage. A quarrel ensued and she finally sued for divorce. When the case came to court, and time came to divide the property, each party wanted the other to have the cow and another argument commenced. The court finally adjourned in order to let them settle the matter themselves. A few days later Woodhouse went to the workshop of the defendant but was told that they couldn't decide what to do so they wanted to let the matter drop and stay as they were. This, of course, was all right with the clerk but the family still had to pay the costs incurred, including the clerk's two-dollar fee. The defendant had no money so he gave Woodhouse a new wheelhead because his wife needed one and was told to see the judge about the rest of the costs.

A final example of criminal prosecution before a probate judge is found in the Iron County records. On December 30, 1868, a grand jury found an indictment against James H. Major for manslaughter. He had thrown a plane at J. H. Kimmel, fracturing his skull and killing him. Major was finally convicted of manslaughter and sentenced to two years at hard labor in the Utah penitentiary and a fine of two hundred dollars plus court costs. The latter came to two hundred and ninety dollars.

It is interesting to note that the early probate judges often served in that capacity without financial remuneration, thus helping to keep down the cost of criminal prosecution within the counties. Joseph Holbrook in Davis County and F. D. Richards in Weber both

33Iron County, County Court Minutes, Book B, p. 120.
34Carr, op. cit., p. 358.
35Tullidge, op. cit., p. 336.
served their full terms without pay. That expenses for criminal prosecution were apparently kept low is further illustrated by the Iron County financial report of 1874. From total expenditures of $3,282.89 only $574.10 was spent on criminal prosecutions.\(^{36}\) From total expenditures of $11,688.61 in Utah County, $1,164.05 was listed for criminal prosecution.\(^{37}\) Davis County reported $533.40 "juror's fees" and $179.05 "Sheriff's fees, and criminal expenses" from a total of $3,127.00 spent.\(^ {38}\)

All kinds of cases, then, from murder down, were conducted in Utah's probate courts, even in areas of mixed (Mormon and non-Mormon) population, such as Weber County. Such litigation was often carried out here in both the U. S. District Court and the county probate court.\(^ {39}\)

It must be observed at this point that one possible factor contributing to the hostility of the U. S. Judges toward the probate judges was the apparent distrust by the Mormons themselves of the Federal courts. As will be shown in the discussion of church influence on county government, the faithful saints were often admonished to avoid taking their grievances to law but to go to the Bishop's Courts and High Councils instead. Thus many cases which would ordinarily be tried in a court of law were handled entirely apart from the law by church tribunals.

In 1874 the problem of the probate courts in Utah was extensively aired by Congress and the resultant bill was a final victory for those

\(^{36}\) County Financial Reports for the years 1874 and 1875, p. 8.

\(^{37}\) Ibid., pp. 23-24.

\(^{38}\) Ibid., pp. 6-7.

\(^{39}\) Tullidge, op. cit., p. 334.
who wished to take away this questionable jurisdiction.

The bill (H. R. 3089) was evidently presented to a Congress with preconceived prejudices against Utah which most likely came from the railings and denunciations of the Federal officials who had left the territory in disgrace or disgust. Said Representative Lorenzo Crounce of Nebraska, who was one of Utah's few friends in the House:

I regret, sir, the sentiment that I see displayed around me. Within the hearing of my voice, when I was contending here that this bill should be submitted to proper consideration by the House and that the previous question should not be insisted on without full discussion of its several provisions, I heard gentlemen say that they did not care what was in the bill; that they were going for it anyhow. Sir, if we act in such a spirit as that, what hope is there for any people who are to be run by the United States Government?\footnote{U. S., \textit{Congressional Record}, 43rd Cong., 1st Sess., II, Part 5, 4468.}

Such sentiment evidently continued to exist for when the question was taken there were 159 yeas to 55 nays and 75 not voting.

The bill was presented by Representative Luke P. Poland, its author, with a bitter denunciation of everything Utah had done with respect to its courts. He charged that the territory had kept itself aloof from all the rest of the United States, that the Federal officials who had been sent there had been driven away and that these officials had never been allowed to exercise any authority as officers of the United States over that territory. He further charged that the territorial legislature, "filled entirely by Mormons, controlled entirely by Brigham Young and the 'twelve apostles'," elected territorial officials to take the place of all Federal officers, including the offices of attorney general, marshall, and, of course, probate judges to checkmate the power of the United States. All Federal officials, he
claimed were "the merest figure-heads."\textsuperscript{41}

That the real intent of Congress was aimed at the more effective prosecution of polygamy is seen from the following excerpt:

Mr. McKee. Does it repeal the law b. which the Mormon probate judges are elected by the territorial legislature?
Mr. Poland. No, sir; it allows them to elect probate judges, but confines the authority and duty of probate judges to the settlement of estates. It takes away from the probate judges the trying of all cases, criminal and civil.
Mr. McKee. But it still leaves them the power to select jurors, (that is, in the District Courts) and every one of these probate judges is a Mormon bishop.
Mr. Poland. That is, it leaves them jointly, the clerk of the district court and the judge of probate to select a jury alternately.
Mr. McKee. Then these Mormon bishops will still have the power to select jurors.
Mr. Poland. The bill provides . . . that in prosecutions for bigamy it will be good cause of challenge that the party practices or believes in polygamy.
Mr. McKee. None the less polygamous bishops will have the selection of the jury . . . \textsuperscript{42}

Thus the continued pattern of debate against the Utah courts was criticism of the Mormon heirarchy which, these men felt, were doing all within their means to put Federal power into the hands of local county officials who were in turn controlled by the church and would protect its peculiar institutions.

Coming to the aid of Utah, Representative Crounce tried to show that Utah had done only that which any territory might be expected to do in order to administer its own laws and that the proposed law was inconsistent with the principles of the Constitution.\textsuperscript{43}

An able defense of Utah's position was finally given by her

\textsuperscript{41} Ibid., 4467.
\textsuperscript{42} Ibid., 4468.
\textsuperscript{43} Ibid., 4469.
representative, George Q. Cannon, in a very limited rebuttal time allotted him. If this legislation were passed, he argued, then the same reasons existed for similar legislation for all the territories of the United States. All of them had elected their own local officers, sheriffs, county attorneys, etc., and many had probate courts which possessed jurisdiction sufficiently extensive as to be open to the same objection being made against the courts of Utah. The territory of Colorado he cited as one example.

In answer to the charge that Federal officials had been driven away, Cannon merely challenged the accuser to produce a "single item of evidence to sustain the charge. . . ."

Speaking specifically of the power of the probate courts, he next showed why he considered it wise and proper for the legislative assembly to confer upon them the jurisdiction complained of. Said Cannon:

It will be remembered that what is now the State of Nevada once formed a part of the Territory of Utah. At the present time that Territory extends three hundred and sixty-four miles east and west. Its inhabitants are settled mostly in towns and villages. For this Territory and population Congress has provided three courts; first district court, held at Provo; second district court, held at Beaver; third district court, held at Salt Lake City. Of these courts the first two mentioned hold one term a year, and the last mentioned two terms a year. The time during which the first and second district courts have been in session, up to within the last three years will not average two days in each year, and there has been a

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Tbid., p. 4470. We might also cite the Territory of Montana to which the Federal Government had given civil and criminal jurisdiction in the probate courts: "The probate courts of the Territory of Montana, in their respective counties, in addition to the probate jurisdiction, are authorized to hear and determine civil cases wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury." U. S., Statutes at Large, XIV, p. 426.
year or more at times when no district court has been held outside of Salt Lake. The district court in Salt Lake has been in session but a small part of the time.

Some of the judges appointed in years past to the first and second districts never saw the places appointed for holding their courts. Recently the judges of these districts have held courts regularly in their districts, and the judge of the first district has a residence in his district, and probably the judge of the second in his also; but of this I am not certain. If he has, he is, I believe, the first judge who has resided there. The probate courts had the efore the necessity to be endowed with extensive jurisdiction as the people would have been compelled, to punish crime, to have recourse to lynch law. But supposing these courts had been in regular session; Saint George, a city of two thousand ... is situated in the southern portion of the Territory in the second judicial district, and one hundred and twenty miles from Beaver, where the court is held; the facilities for traveling would enable a citizen of Saint George to arrive at Beaver in about three days. Would it not, under these circumstances, be highly inconvenient for him to transact any business in the district court. ... Other towns in the Territory are similarly situated, ... and, without local courts of some kind, they are wholly without protection by judicial authority in property or person. Under these circumstances, can it be said that the Legislature of Utah acted unwisely in conferring jurisdiction on the probate courts? Would they not have fallen far short of their duty had they neglected to throw around their infant settlements, so widely separated, such protection as the probate courts have afforded?45

In attempting to meet the objection that the probate courts were highly prejudiced in favor of the Mormons, Cannon produced a list of eighty-four civil cases which had been tried by jury in Salt Lake County and which involved Mormons and non-Mormons. Out of these, fifty-nine were decided in favor of non-Mormons and dissenting Mormons, while only twenty-five were decided in favor of Mormons, thus showing how fair administration of justice had been in these courts. Replying to the criticism that Mormon bishops were judges, Cannon justified it by picturing Utah's unique ecclesiastical and political situation:

45U. S. Congressional Record, 43rd Cong., 1st Sess., II, Part 5, 4470-4471. (Italics mine.)
Sir, there is probably no officer in the Utah Territory, if he belongs to the Mormon people, who does not hold some position in the Church. The Mormon people do not believe in salaried preachers; but they believe it to be the privilege of every worthy man of the organization to be an elder, and, when called upon, to make himself useful in preaching. Doubtless many gentlemen about me who have visited Utah Territory will recollect, if they passed a Sabbath there, that elders were very frequently called from the body of the congregation to preach from the stand without any preparation whatever. Bishops, probate judges, men of different vocations in the community, are thus called upon to speak to the people, so that if you say that a man must not exercise political functions in Utah because he is an officer in the church you exclude from all offices in the Territory every respectable Mormon. 46

But despite the eloquent pleadings of Mr. Cannon the vote was overwhelmingly in favor of the bill and after a Senate amendment it was signed by the President on June 22, 1874. Thus, the extensive powers of Utah's probate court's, and hence the influence of the county judge, in civil and criminal affairs was effectively limited.

Did the legislature of the Territory of Utah actually intend to set aside the power of the U. S. Courts when it gave such extensive justice to the probate courts? Historian Tullidge declares emphatically that it did not. He cites an 1853 letter of Judge Snow which in turn referred to a report on court expenses prepared by the judiciary committee of the Utah legislature. This report took the position that, because the probate courts were trying cases which ordinarily should have been tried by the U. S. District Courts, the United States should be required to pay the expenses of these courts. The report concluded by actually recommending that the laws of Utah be so amended as to take away the civil and criminal jurisdiction of the probate courts and to abolish the offices of territorial marshall, attorney-general, and district attorney.

46 Ibid., p. 4471.
6. The probate courts evidently did their work effectively, fairly, and at the comparatively little cost to the commonwealth.

7. The "Poland Bill" (1874) withdrew the jurisdiction in question but confirmed and made valid the previous powers and decrees of the probate courts. 49

Thus ended the controversy over the criminal jurisdiction of the probate courts. The probate judge, however, still remained "under fire" so to speak, until 1887 when the Edmunds-Tucker Act made his office appointive by the President of the United States. 50 The same act also vested in the district courts exclusive jurisdiction in the granting of divorces, thus displacing the probate court even more. In 1896, when Utah became a state, the probate court, and hence the office of probate judge, was finally abolished.

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49 U. S., Statutes at Large, XVIII, 234-235.

50 U. S., Statutes at Large, XXIV, 639.
so that the United States, by her judges, attorneys, and marshalls, could execute the laws of the territory.47

In conclusion, a few important facts stand out concerning the probate courts from 1852 to 1874:

1. The conferring of original jurisdiction in civil and criminal affairs on the probate courts in Utah gave local county officials unusual powers to prosecute offenders against both local and United States laws.

2. Largely because of the crusade against polygamy, Federal judges and other government officials criticized the territory for its action and tried for a quarter of a century to take away this power.

3. It appears that this unusual civil and criminal jurisdiction was absolutely needed in order to achieve proper administration of justice in the counties of Utah during the territory's first decade of history.

... even up to 1870 there were seldom more than one or two U. S. judges in the Territory at the same time... (The judges were constantly "running away" or being removed by the President... oftentimes they would simply visit their district, open court, adjourn on the first and second day and go home; ...(and the U. S. department did not furnish sufficient money "to run" U. S. Courts....)48

4. Apparently the legislators of Utah did not intend that probate court jurisdiction in civil and criminal affairs should actually set aside the legal powers of the United States but their action was often interpreted to mean just that.

5. It is generally conceded that this dispensation of power by the legislature was within its legal authority.

47Tullidge, op. cit., pp. 326-327.

48Ibid., pp. 327-328.
CHAPTER VII

ON THE SIDELINES

Although the county court was the basic unit of government the management of county affairs naturally took many additional officials. The power of these other members of the team varied considerably but generally grew with the development of the government as a whole. Still calling signals, however, throughout the entire period was the county court for most of the additional officers remained responsible directly to the court and were required to report to it regularly.

The following pages will present a brief discussion of the development of each of the major offices outside the county court and the probate court.\(^1\) All the officers mentioned here except the fence viewers and the physician to the county poor were required, before entering upon their duties, to take oaths of office and to file bonds assuring the faithful performance of their duties.

The County Clerk

Created in 1850 by the State of Deseret, the office known as clerk of the county court remained throughout the territorial period. The territorial legislature specified no term of office but provided

\(^1\)It is not deemed necessary here to discuss in detail every reference to these officials recorded in the territorial laws. Rather, the author has attempted to present the major responsibilities of each office and the major changes in structure and responsibility as they occurred. Several laws did nothing more than repeat with no significant change the authority already given and thus are not mentioned here.
that the office should be filled by the clerk of the newly created probate court\textsuperscript{2} who was appointed by the probate judge.\textsuperscript{3} In 1880, however, the office of clerk of the county court was made an independent office, elective for two years, and the clerk was required to act as ex-officio clerk of the probate court.\textsuperscript{4} Thus not only the judge but also the county clerk was officially connected with both courts during the entire period. It is interesting to note that the change from an appointive to an elective status for this office follows the pattern being set throughout the United States at that time\textsuperscript{5} and that this change was also made with respect to other county officers.

The two terms, "county clerk" and "probate clerk," became synonymous with the terms, "clerk of the county court" and "clerk of the probate court," by an act of 1880.\textsuperscript{6}

The salary of the county clerk varied with the county but it appears that by 1890 the details of his job had become so numerous in most counties that it required his full time. In Utah County, for instance, a committee inquiring into the clerk's salary discovered that, in addition to his entire time, the duties of his office required the services of an assistant for about nine months of each year.\textsuperscript{7} They also found that his annual receipts from probate business amounted to six

\begin{itemize}
\item \textsuperscript{2}Utah, Acts, Res. and Mem. . . . (1852), p. 45, sec. 35.
\item \textsuperscript{3}Ibid., p. 44, sec. 33.
\item \textsuperscript{4}Utah, Laws . . . (1880), p. 66, sec. 1.
\item \textsuperscript{5}See p. 5.
\item \textsuperscript{6}Utah, Laws . . . (1880), p. 49, sec. 1.
\item \textsuperscript{7}Utah County, County Court Minutes, Record C, p. 453.
\end{itemize}
hundred dollars, and from marriage licenses, $475. His salary was nine hundred dollars per year, which gave him a total income of $1,975 annually.

Among the chief duties of the county clerk at the beginning of the territorial government were the following: to keep a record of all proceedings of the county court, affix his seal to all papers, issue processes and deliver appeal transcripts, report fiscal affairs of the county, settle with the road commissioner and the assessor and collector, receive claims against the county, and prepare election notices. In 1853 he was given the additional responsibility of counting election votes along with a member of the county court. 6 In 1854 he was required to fill out the tax levy each March and to deliver it to the assessor and collector. 7 In later years he was required to make an annual report of all property in his care to the county treasurer 8 and to act as an auxiliary recorder of marks and brands. 9 He was further required to keep an account of all receipts and expenditures and to give an annual financial statement to the county court. 10 He was also authorized to take and certify legal acknowledgments and to administer oaths. 11

6 Utah, Acts and Res. . . . (1853), p. 11, sec. 7. This responsibility was later given to the judges of election.

7 Utah, Acts and Res. . . . (1854), p. 9, sec. 10.


10 Utah, Laws . . . (comp. 1866), p. 175, sec. 6.

Acting as clerk of the probate court, this officer had many additional duties. He was required to keep a full record of the proceedings of the probate court and a probate business book.\(^1\) He was further required to report annually to the secretary of the territory the number of convictions for all crimes and misdemeanors in that court as well as the type of crime, the sentence, and certain information about the convict.\(^2\) He was to record and file legal documents, such as wills,\(^3\) will contests,\(^4\) petitions for letters of administration and objections to such petitions,\(^5\) resignations of executors and administrators,\(^6\) transcripts of judgments,\(^7\) incorporation agreements and bonds of corporation officials\(^8\) and marriage licenses.\(^9\)

It can be readily seen that as the population of the territory grew and governmental responsibility increased the job of the county clerk became a most important part of the county government.

**County Recorder**

Another office continuing from the State of Deseret was that of county recorder. His duty, as the name implies, was mainly a recording

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1\(^1\)Utah, Acts, Res. and Mem. . . . (1852), pp. 44-45, secs. 33, 38.

15\(^2\)ibid., p. 44, sec. 34.

16\(^3\)Utah, Compiled Laws . . . (1876), p. 286, secs. 24-27.

17\(^4\)ibid., p. 285, sec. 18.

18\(^5\)ibid., p. 291, secs. 55-57.

19\(^6\)ibid., p. 307, sec. 132.

20\(^7\)ibid., p. 307, sec. 132.

21\(^8\)ibid., p. 223, secs. 3, 4.

22\(^9\)Utah, Laws . . . (1888), p. 89, sec. 3.
duty and changed little from that given him by the original State of Deseret. In later years, however, there existed the separate office of district mining recorder and this official recorded notices of location of mines, lodes, veins, and tunnel sites as well as the mining rules and regulations in force.\textsuperscript{23} The county recorder was to record the mining rules and regulations of the several districts in his county.\textsuperscript{24}

The term of office of the county recorder was changed in 1886 from four years to two.\textsuperscript{25} A law of 1888 went into great detail describing how various instruments should be recorded and filed. It also indicated that the recorder should keep the following records:\textsuperscript{26}

(1) An "entry book" in which would be recorded details of any instrument of writing immediately upon the receipt of it.

(2) A "grantor's index"

(3) A "grantee's index"

(4) An index to each book of record

(5) An "abstract book," which showed by tract every conveyance of property and a true chain of the title of each tract.

(6) An "index to recorded maps, plats and subdivisions."

\textbf{Justice of the Peace}

The office of justice of the peace was also a carry-over from the provisional government of Deseret and continued with few structural changes. A territorial law of 1852\textsuperscript{27} further defined the powers and

\textsuperscript{23}Utah, \textit{Compiled Laws} . . . (1876), p. 349, secs. 1, 3, 4.

\textsuperscript{24}\textit{Ibid.}, p. 349, sec. 2

\textsuperscript{25}Utah, \textit{Laws} . . . (1886), p. 51, sec. 2.

\textsuperscript{26}Utah, \textit{Laws} . . . (1888), pp. 150-151, sec. 7.

\textsuperscript{27}Utah, \textit{Acts, Res. and Mem.} . . . (1852), pp. 48-52.
duties of this office. One justice of the peace was to be elected every
two years in each precinct but the county court, at its discretion, could
authorize more. The justice was to keep a record of all proceedings
laid before him and, in case of appeal, transmit a copy of these records
to the clerk of the court to which the appeal was made.

The justice of the peace had jurisdiction in all civil cases in
which the amount in controversy did not exceed one hundred dollars. If
both parties agreed, however, it was legal for the justice to try cases
extended to any amount. All suits of this nature had to be brought in
the precinct where the defendant resided and the decision of the justice
ended the affair. Criminal jurisdiction extended to cases arising in
his county in which the punishment imposed by law did not exceed one
hundred dollars fine or six months in prison or both.

It was possible for trial in a justice's court to be held before
a six-man jury, but the party demanding the jury was required to deposit
a fee with the court. Appeal from the justice's court was to the
probate court and the justice was required to file a certificate of all
convictions with the judge of the probate court.

The justice of the peace also continued to act in the capacity
of coroner until that office was created in 1868.

In 1874 the Federal government took criminal jurisdiction away
from the probate courts and by the same law increased the civil jurisd-
diction of the justice's court to cases involving up to three hundred
dollars. 28 In 1878 the territory extended criminal jurisdiction of the
justice of the peace to include cases punishable by three hundred

28 U. S., Statutes at Large XXIII, 253-256.
dollars fine, six months in jail, or both.  

Justices of the peace were elected in each city as well as in each precinct of the county. Precinct justices presented claims for payment of trial expenses to the county court. In Utah County, however, where numerous incorporated cities existed by 1890, questions sometimes arose as to whether the county court was required to pay expenses of criminal prosecution if carried on in a city court. With the advice of the county attorney such claims were usually allowed.  

Coroner

The office of coroner was created by the territorial legislature in 1868, previously the duties had been performed by the justice of the peace. The office was now elective for two years. The coroner was to perform all the duties of the sheriff in his absence and in case the sheriff was involved in the affair in question. He was to hold an inquest upon the bodies of any persons supposed to have died from unlawful means and was to do this in the presence of three qualified electors. If it was found that a crime had been committed the coroner could also issue warrants for the arrest of the persons believed to have committed it.  

Sheriff

Created in 1850 by the State of Deseret, the office of sheriff  

29 Utah, Laws, Mem. and Res. ... (1878), p. 6.  

30 Utah County, County Court Minutes, Record C. pp. 241, 423, 424, 523.  

31 Utah, Acts, Res. and Mem. ... (1868), pp. 32-35.
continued as part of the county government in the Territory of Utah. The
term of office was reduced in 1854 from four to two years\(^{32}\) and thus
followed a general pattern being set for most county officers in Utah.\(^{33}\)
He could appoint any necessary deputies but was responsible for their
acts.\(^{34}\)

The sheriff of a county where district court was held was required
to attend all sessions of that court.\(^{35}\) It was the particular duty of the
sheriff and his constables to execute all orders, processes, and require-
ments of any court in the county but he was to be given reasonable com-
ensation for doing so.\(^{36}\)

When a new county was created the sheriff of an adjoining county
was sometimes empowered to set up the initial organization.\(^{37}\)

In 1859 the sheriff was required to participate in the drawing of
names for jurors for the district court.\(^{38}\) In 1861 he was given the
right to pursue anyone escaping from him into any county of the terri-
tory.\(^{39}\)

The responsibility of acting as jailor of the county jail was

Sheriffs and Constables," sec. 1.

\(^{33}\)Since statehood many of these offices, including the office of
sheriff, have gone back to a four-year term.

\(^{34}\)Utah, Acts and Res. . . . (1854), p. 20, sec. 3.


\(^{36}\)Utah, Acts and Res. . . . (1854), p. 20, sec. 4.


delegated to the sheriff in 1872.\textsuperscript{40} He was further authorized to appoint a matron for female inmates of the jail and was required to keep a register of all inmates. In running the jail he was still under the direction of the county court, for the same act made the selectmen ex-officio directors of the jail.\textsuperscript{41} They were to visit it at least once every three months, examine it, and give necessary instruction to the sheriff. They were to be allowed free access to all parts of the jail and to all books and documents.

**Constable**

Although the government of the State of Deseret had provided for the election of two constables in each precinct, the territorial legislature required the election of only one unless the county court determined that more than one was necessary to the best interests of the precinct.\textsuperscript{42}

The main purpose of the constable seemed to be to execute the orders of the courts along with the sheriff.\textsuperscript{43} He also served processes and collected fines and paid them into the treasury.\textsuperscript{44} In 1870 he was given the responsibility of removing and burying dead animals found near public streets\textsuperscript{45} and in 1890 he took over all the duties previously performed by the precinct poundkeeper.\textsuperscript{46}

\textsuperscript{41}Ibid., p. 7, sec. 5.
\textsuperscript{43}Utah, Acts and Res. . . . (1854), p. 20, sec. 4.
\textsuperscript{44}Utah, Acts, Res., and Mem. . . . (1852), pp. 49-50, sec. 6, 10.
\textsuperscript{46}Utah, Laws . . . (1890), p. 83, sec. 3.
Poundkeeper

The State of Deseret had created the office of estray poundkeeper but had specified no particular term of office. This was changed when, in 1866, the territorial legislature provided that a poundkeeper should be elected in each precinct every two years and that a county poundkeeper should be elected for a similar period.47

In 1852 the duties of the poundkeeper were slightly amplified when the legislature authorized him to examine passing droves and trains of cattle and to take custody of all improperly branded cattle.48 It further allowed him to sell stray animals after trying every required means of finding the owners. In 1866 the county poundkeeper was required specifically to sell such animals at public auction.49 He was to register the disposal of all animals, together with the amount sold for and all costs and damages, and report semiannually to the county court. Both county and precinct poundkeepers were required to keep account of all funds paid to them and to pay such funds into the county treasury twice a year.50

In 1872 the structure of this office was slightly changed when the precinct poundkeeper was now to be appointed by the county court. In addition, the court was to create district pounds, consisting of one

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50Ibid., p. 213, sec. 15.
to four precincts, and the precinct poundkeeper in the place where the district pound was established was to be the district poundkeeper. The district poundkeeper now had the job of selling impounded animals. All poundkeepers were required to keep a record of all receipts and disbursements and give a complete report to the county court semi-annually.

Originally the funds from pounds was to be given into the Perpetual Emigrating Fund for the Poor, but in 1866 this income was to be given to the county school fund. In 1890 the functions of the precinct poundkeeper were turned over to the constable.

**Prosecuting Attorney**

The office of prosecuting attorney, now known as county attorney, was created by the State of Deseret and was a four-year elective office. This was changed in 1852, however, by the territorial legislative assembly which provided that the prosecuting attorney should be appointed by the probate judge for a term of two years. In 1888 the office again became elective, this time for a two-year term.

The duties of the prosecuting attorney were further defined in 1852 by the territorial legislature. He was required to prosecute all criminal offenses before the probate court and to attend to all legal business of the county. In 1866 he was allowed to appoint such deputies

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54 *Utah, Laws . . .* (1890), p. 83, sec. 3.


as were necessary.\textsuperscript{57}

A further duty of the prosecuting attorney was to give legal advice to the county court and to all other county and precinct officers.\textsuperscript{58} That the county courts took advantage of this stipulation and sought such advice seems evident for Utah County, at least, often asked the attorney's opinion on the legal responsibility of certain officers.\textsuperscript{59}

It is interesting to notice that when Utah became a state this was the only county officer specifically provided for in the Constitution.\textsuperscript{60}

\textbf{County School Officials}

It was in 1852 that the territorial legislature authorized the county court to divide the county into school districts and to provide for the election of a board of school trustees in each district. Three trustees were to be elected and they could appoint their own clerk. It was their duty to superintend the schools, as well as the erection of school houses, and the clerk was to report annually to the county court the number of scholars in their respective districts.\textsuperscript{62} They also had the power to assess and collect taxes on all personal property for school purposes and to sell the property of anyone refusing to pay such tax.\textsuperscript{63} Until 1876, however, such tax could only be levied by consent of


\textsuperscript{58}Utah, Laws . . . (1888), p. 184, sec. 4.

\textsuperscript{59}Utah County, County Court Minutes, Record C, pp. 447, 423, 453.

\textsuperscript{60}Utah, Constitution, Art. VIII, sec. 10.


\textsuperscript{62}Ibid., p. 97, sec. 2.

\textsuperscript{63}Ibid., p. 98, sec. 4.
the voters of the district. This board was the fore-runner of the present board of education.

Also provided for in this early law was the appointment by the county court of a board of examination.\textsuperscript{64} This board was to consist of three men and was to determine the qualifications of all school teachers and to certify all competent applications of good moral character. It appears that this board gradually lost authority in the years of school development.

The school trustees were responsible to the county court, as were all other county officials. In 1854, however, it appears that some administrative supervision came from the territory for the legislature provided for the appointment of a superintendent of common schools for the Territory of Utah who was to report annually to the regents of the University of the State of Deseret on the number and conditions of common schools in the territory.\textsuperscript{65} This procedure was changed in 1865 when a law was passed requiring the legislature to appoint the territorial superintendent who was now to report directly to it.\textsuperscript{66} Thus the legislative assembly became the final source of all school control.

Much of the direct responsibility for the operation of the school system was taken from the board of trustees in 1860 with the creation of the office of county superintendent of common schools.\textsuperscript{67} This was to be an elective office for a period of one year.

\textsuperscript{64}Ibid., p. 97, sec. 3.


The duties of the superintendent of schools were to take general supervision of schools in the county, visit each school at least once a year and see that the trustees were diligent in their duties, superintend all business matters, keep correct account of all school funds, audit school accounts, and make annual reports to the territorial superintendent of common schools.  

The same law required the school trustees to visit their schools every sixty days, to take an annual census of the children between six and eighteen, and to report on the condition of the schools to the county superintendent. School teachers were required to make quarterly reports to the county superintendent.  

It should be observed here that, although it appears that much responsibility had been taken away from the county court, the court still had considerable interest and responsibility in school affairs.  

In 1865 the county superintendent was authorized, in connection with the territorial superintendent, to decide on textbooks, school terms, and holidays.  

The functions of these various offices changed only slightly during the remainder of the territorial period. In 1866 the board of trustees was authorized to appoint an assessor and a collector of school taxes, although he could be one of their number, but in 1886 this

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68Ibid., p. 23, sec. 3.
69Ibid., p. 23, sec. 4.
70Ibid., p. 24, sec. 5.
71See p. 84.
function was taken from them entirely with the provision that school taxes were to be assessed and collected by the county assessor and collector.\textsuperscript{74} In 1892 they were required to supervise elections on bond issues\textsuperscript{75} and to send yearly reports to the county superintendent.\textsuperscript{76}

In 1868 the county superintendent was authorized to institute proceedings, if necessary, against any poundkeeper not paying into the county treasury the school funds due.\textsuperscript{77}

By 1890 the term of office of the county superintendent had been increased to two years.\textsuperscript{78} It became his responsibility to ascertain the correctness of school district boundaries\textsuperscript{79} and his duties had now become extensive enough that he was authorized to appoint a deputy.\textsuperscript{80} An additional requirement given him was to hold an annual teachers' institute and he was to be the chairman of the county board of examiners.\textsuperscript{81}

\textbf{County Health Officers}

As indicated in an earlier chapter,\textsuperscript{82} the county court was given the responsibility of the general health and welfare of the citizens of the county and thus, in effect, formed the beginning of a county board

\textsuperscript{74}Utah, \textit{Laws} \ldots (1886), p. 15, sec. 6.
\textsuperscript{75}Utah, \textit{Laws} \ldots (1892), p. 121, sec. 91.
\textsuperscript{76}Ibid., p. 112, sec. 49.
\textsuperscript{77}Utah, \textit{Acts, Res., and Mem.} \ldots (1868), p. 41, sec. 5.
\textsuperscript{78}Utah, \textit{Laws} \ldots (1890), p. 112, sec. 8.
\textsuperscript{79}Ibid., p. 112, sec. 10.
\textsuperscript{80}Ibid., p. 114, sec. 19.
\textsuperscript{81}Ibid., p. 114, secs. 20-21.
\textsuperscript{82}See p. 78.
of health. This became more specific in 1857 when the court was authorized to locate quarantine grounds and make quarantine regulations to prevent the introduction or spread of contagious disease. In 1882, however, this law was repealed and the court was to appoint a quarantine physician who was to act with the court as a board of quarantine. The board had authority to locate quarantine grounds and make and enforce such regulations as it deemed necessary. It was authorized, if necessary, to remove infected persons from their homes and disinfect the premises or, if the person remained home, to require the display of a yellow flag.

In 1888 the county court was to appoint a suitable graduate of medicine as a physician to the county poor. This was the beginning of the present office of county physician. The full responsibility, however, for the care and maintenance of the indigent sick and otherwise dependent poor remained with the county court.

Judges of Election

In 1852 the territorial legislature enacted election laws similar to those of the State of Deseret and provided for the appointment of three judges of election in each voting precinct. The judges were to appoint a clerk who was responsible for recording the names of all voters. This law, however, replaced the ballot method of voting with oral voting and provided that one judge should be designated to "cry" the name of each elector as he voted. The judges were required to preserve

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84Utah, Laws . . . (1882), p. 23, sec. 2-5.
order at the polls and could punish disorderly persons with fines up to
one hundred dollars. They were further responsible for deciding upon the
legality of all votes cast and for certifying the number of votes for
each candidate.

A change was made in 1853 when the number of judges of election
was reduced to one and the senior justice of the peace was designated as
that official. In his absence, however, the first six electors assem-
bled could appoint a judge. The judge was to appoint a clerk and furnish
the necessary stationery and the ballot box. Voting was now to be by
ballot and the judge was responsible for sealing the ballot box and
transmitting it, together with the list of electors, to the county clerk.

Completely revising the election laws in 1878, the legislature again provided for three judges of election in each precinct to be
appointed by the county court. One judge was to be designated to
preside and the others were to act as clerks. They were required to
keep one key to the ballot box and to examine the ballot box before the
polls opened. The clerks were required to register each voter properly
and the presiding judge was to deposit each voting envelope in the
ballot box. The judges were further responsible for counting the votes
and forwarding the results, together with the ballot box, to the clerk
of the county court.

A further legal change came in 1882 when the Edmunds Law

\[87\text{Utah, Acts and Res. ... (1853), p. 10, sec. 3.}\]
\[88\text{Ibid., p. 10-11, secs. 7.}\]
\[89\text{Utah, Laws, Hist., and Res. ... (1878), pp. 31-33, secs. 9-17.}\]
declared all election offices vacant, subject to being filled by appointees of the Utah Commission. 90 In 1887 the Edmunds-Tucker act required all election officials to take an oath declaring themselves to be free from polygamous living and to administer such oath to all electors as a qualification for voting. 91 This Federal legislation, however, evidently had little effect on the actual functions of the registration officers.

**County Surveyor**

Created by the State of Deseret, the office of county surveyor was continued by the territorial legislature which, in 1852, reduced the term of office from four years to two and made it elective instead of appointive. 92

The county surveyor was in charge of all surveys made in the county 93 and, within thirty days after completing a survey, was required to send true copies to the surveyor general and to the county recorder. 94 He was authorized to make as many as two resurveys should a dispute arise between the parties involved. 95

The surveyor was required to keep a book in which was recorded all the blocks and lots of every survey made by him. 96 He was also

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90U. S. Statutes at Large XXII, 30-32, sec. 9.
91Ibid., XXIV, 639, sec. 24.
95Ibid., p. 95, sec. 6.
required to keep and file with the county recorder a record of all certificates given by him which included the number of the block and lot, the size, and the name of the person to whom the certificate was given. No certificate was valid unless thus filed and signed by select-man. By 1888 it appears that the surveyor was required to keep these records himself and to produce an accurate copy upon application of any person who had paid the necessary fees. 97

The surveyor was also to make a corner of stone or wood at the southeast corner of each survey and to record it on his diagrams. 98 In 1861 he was authorized to appoint such deputies as were necessary whose surveys, when certified by him, were to be as valid as his own. 99 He was further authorized, in 1888, to employ the necessary chainmen and markers. 100 He was not allowed to survey any land in which he was personally interested. 101 If land were located in more than one county, it could be surveyed by the surveyor of any county in which it was located and the survey was equally valid in all the counties where the land was. 102

**County Road Commissioner**

The office of county road commissioner had been created by the State of Deseret in 1850 and remained a part of the territorial government

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97 *Utah, Laws . . .* (1888), p. 181, sec. 3.
until 1886. Being appointed by the county court, the road commissioner was under the direct control of the court. Also created by the provisional government of Deseret was the office of precinct road supervisor. Subsequent compiled laws, down to 1886, always quote this 1850 legislation but leave out section 9 which refers to the latter office. It appears, however, that the precinct road supervisor was a part of the county organization for he is often referred to in county court minutes.

The duties of the county road commissioner were to locate all county roads upon the "most judicious" routes, make contracts for their improvement, and make a full report of all their proceedings at each regular session of the county court. He was appointed for a two-year term and a county could have more than one if necessary. The commissioner was authorized to collect and disburse road taxes and had the duty of prosecuting delinquent taxpayers and delinquent precinct supervisors. Taxes could be paid either in cash or by working on the roads. It was also the commissioner's responsibility, until given to the county court in 1876, to locate estray pounds in each precinct.

It was the duty of the precinct supervisors, who acted under the direction of the county commissioner, to call out and expend the poll tax in their precincts and to keep the roads in repair. They

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103 Utah, Compiled Laws . . . (1876), pp. 100-101. All other compilations quote the law just the same way.

104 Ibid., p. 101, secs. 5-7.


106 Ibid., p. 23, sec. 1.

were also to assist in the prosecution of delinquent taxpayers.\textsuperscript{108}

In 1886 a new act pertaining to highways was passed which largely modified the position of county road officials.\textsuperscript{109} It remained the duty of the county court to divide the county into convenient road districts, cause surveys to be made, and procure right of way for public highways. The offices of county road commissioner and precinct supervisor, however, were evidently consolidated under one position, that of district road supervisor. A supervisor was to be appointed biennially for each district and he was in direct charge of all public highways within the district. He was to build highways and bridges, repair them, remove obstructions, and collect the poll tax or superintend the labor expended in place of the tax. The court was to furnish each supervisor with the necessary blank receipt books so that he could issue a receipt upon payment of taxes. Each supervisor was to give to the county court an annual written report containing such information as the name of each person assessed in his district, amount of collected and delinquent taxes, amount and kind of labor expended on roads, and a general description of the roads in his district.

It might appear from the foregoing essay that the county court had little to do with public roads after these officials were established. A study of several court minutes,\textsuperscript{110} however, reveals that this body kept a very active interest in road problems and exercised direct control over the road commissioners and supervisors.

\textsuperscript{109}\textit{Utah, Laws }... (1886), pp. 23-30.
\textsuperscript{110}See p. 51.
Fence Viewers

The position of fence viewer had been created by the provisional government of Deseret in 1851. Two or more fence viewers were to be elected in each precinct and they were to execute all laws concerning enclosures and trespasses.

In 1870 the territorial legislature reduced the fence viewers' term of office from four years to two.\textsuperscript{111} They were to examine fences in their precinct and determine upon lawful fences. A "lawful fence" was defined as being a fence four and a half feet high, in good repair, consisting of rails, poles, boards, stone, or other suitable material or any fence of any description which, in the judgment of two or more fence viewers, was equal thereto.\textsuperscript{112} The owners of any animals which broke through or over such fences were held liable for all damages.

Fence viewers were authorized to assess the parties whose interests they served twenty-five cents per hour for their services.

Fish and Game Commissioner

The office of fish and game commissioner was created by the territorial legislature in 1882.\textsuperscript{113} He was to be appointed annually by the county court and it was his duty to enforce all laws for the protection of fish and game. Several laws for this purpose were established by the same act, one of them tending to provide for the enforcement of fishing regulations. One-half the fines collected for

\textsuperscript{111}{Utah, Acts, Res., and Mem. ... (1870), pp. 127-128, secs. 1-2.}
\textsuperscript{112}{Utah, Acts, Res., and Mem. ... (1869), p. 3, sec. 4.}
\textsuperscript{113}{Utah, Laws ... (1882), p. 41, sec. 11.}
violation of these laws was to be paid to the informant, the other half into the county treasury. The commissioner was required to make an annual report to the county court.

Details concerning this office were changed slightly in 1890 when the legislature provided that the commissioner should be appointed for a four-year term.114 He was now to report semiannually to the county court and all fines collected by him were to be paid into the county treasury. The commissioner was further authorized to take fish from any public waters at any time for the purpose of propagation or inspection and was required to report his official doings annually to the territorial commissioner.115

The commissioner's term of office was again changed in 1894 when it was reduced to two years.116 This law said nothing about requiring him to report to the county court, although this body still appointed him, but indicated that he should perform his duties under the direction of the territorial commissioner and continue to report annually to him.117 The same law required the commissioner in Utah County to be present, either in person or by deputy, whenever a haul was made with seines in Utah Lake.118

Bee Inspector

Beginning in 1890 it became the duty of the county court to

115Ibid., p. 22, sec. 5.
117Ibid., pp. 133-134, secs. 4-5.
118Ibid., p. 135, sec. 10.
appoint biennially from among the bee-keepers of the county one or more inspectors of bees. It was the inspector's duty to inspect places where foul brood was suspected to exist and, if it was found, to instruct the keeper to burn or bury the infected hives. In 1890 the inspector was authorized to take charge of the infected bees himself and to give them proper treatment for cure at the expense of the owner. He was allowed to destroy whatever was necessary. It became his duty in 1892 to visit all the hives in the county at least once a year.

Taking into consideration these several offices established by the territorial legislature, county government is viewed as a team centering around the leadership of the county court and depending on the court for efficient coordination. The structure became more complex as official responsibilities grew and as increased county population and activities demanded new officials. Some of the early county officials held offices appointive by the county court, but by the end of the territorial period most of them were elected by the people of the county. All of them, however, remained responsible to the court and a few, such as the surveyor and the school superintendent, had a further direct responsibility to territorial officials.

\[119^{119}\] Utah, Laws ... (1880), p. 8, secs. 1-4.
\[120^{120}\] Utah, Laws ... (1890), p. 17.
\[121^{121}\] Utah, Laws ... (1892), p. 51.
CHART 1
COUNTY GOVERNMENT, 1854

Indicates line of responsibility.
Indicates power of selection.
CHART 2
COUNTY GOVERNMENT, 1890

U. S. President → Territorial Legislature → Utah Commission → Territorial Supreme Court

Probate Judge → Election Judges → Probate Court

Probate Judge → Road Supervisors → Quarantine Physician

Probate Judge → Physician to the Poor → Pound Keeper

Probate Judge → School Trustees

Probate Judge → Supt. of Schools → Fish & Game Commissioner

Probate Judge → Recorder → Assessor

Probate Judge → Assessor → Collector

Probate Judge → Recorder → Bee Inspector

Probate Judge → Photographer → Fence Viewers

Probate Judge → Surveyor → Coroner

Probate Judge → Justice of the Peace

Probate Judge → Clerk

Probate Judge → Sheriff

THE PEOPLE

→ Indicates line of responsibility.

→ Indicates power of selection.
CHAPTER VIII

THE CHURCH AND COUNTY GOVERNMENT

On March 12, 1870, a special meeting of the bishops of Utah County was held in the city of Provo. Also in attendance was George W. Bean, the county probate judge. Bishop A. O. Smoot, who presided over this group of the most influential men in the county, announced that the object of this gathering was to unite the minds of the bishops to use their influence for the erection of a court house in Provo and to "talk over the general interests of the County."¹ As the meeting progressed these men discussed freely the problem of the court house, county taxes, the desires of the President of the church in the matter and finally concluded by voting to use their influence with the people to bring about a special county tax.

In any place but the Territory of Utah, such an assembly would indeed have been an unusual thing. The official interest taken by the officers of the L. D. S. church in their county government and the surprising harmony which existed between the county government and the dominant ecclesiastical authority is an interesting reflection of a unique social and political drama.

Most of Utah's citizens belonged to the Mormon church, which was an organization with no professional ministerial class. Thus it was necessary for all faithful members to take an active part in the

¹"Bishop's Meetings, Utah Stake, 1866-July, 1875," p. 325. MS on microfilm in Brigham Young University Library.
government of the church, and it appears that those men who were most active in church affairs were also the most influential in county government and politics. This was especially true in the first half of the territorial period, for during this time the problems of colonization, road building, irrigation, and public welfare were uppermost in the minds of all the people. It was only natural that the county and the church should work together to solve their common problems. This chapter will present a picture of the very direct influence which religion and religious leaders had on some of Utah's early county governments.

Utah's early colonies were nearly always located and settled under the direction of the church. Until counties were fully organized, therefore, the necessary civil functions of the locality were under the direction of local bishops and elders. In Provo, a meeting of the "branch" of the church was held on July 2, 1849, and

... the following laws were enacted for the Suppression of gambling with the Indians that a fine of not less than 25¢ nor over $100. Shall be enforced upon any person found guilty of the same and to fine persons for Shouting (shooting) in or near the fort so as to Endanger lives, thereby.²

Davis County operated without civil government for a period of three years,³ and even after the legislature had set up the machinery for county organization it took time to put it into complete operation. As late as 1857 the bishop of North Cottonwood Ward conducted a meeting of the people at which the ward was divided into school districts and a tax was levied for the support of the schools.⁴ Thus did all the

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²"Early History of Provo 1849-1872," p. 23. MS on microfilm at Brigham Young University Library.
³Tullidge, op. cit., p. 68.
⁴Loc. cit., Tullidge quotes here from the North Cottonwood Ward Record.
original counties function under control of the church until county
government was working smoothly.

A typical probate judge held a position of unusual prominence
in early Utah. This is true not only because of his civil authority but
also because of the fact that he often held an important office in the
church. Thus Franklin D. Richards, one of the Twelve Apostles, was
sent by Brigham Young in 1869 to take over the spiritual affairs of
Weber County and, at the same time, he was appointed probate judge. 5
He served in the latter capacity until 1883. 6 His son, F. S. Richards,
became the prosecuting attorney. Joel Grover, who was in the Juab
Stake Presidency after 1871, was made a county selectman in 1875 and
appointed judge in 1878. 7 Silas Smith served as bishop in Paragonah,
Iron County, for "several years" after 1857 and in 1864 was made
probate judge. 8 In Salt Lake County, Elias Smith held the judgeship
from 1852 to 1882. 9 During that interval he served as president of the
High Priests of the entire church (1870-1877) and later as president of
the Salt Lake Stake High Priests Quorum (1877-1888). 10 His son, Elias
A. Smith, succeeded him as judge, serving until 1889, then became a
selectman from 1889 to 1891. 11 The latter was a member of the Stake

5 Ibid., pp. 334-335.
6 Andrew Jensen, Latter-day Saint Biographical Encyclopedia (Salt
Lake City: The Andrew Jensen History Company, 1901, 1914, 1920), Vol. I,
p. 120.
7 Ibid., Vol. I, p. 515.
High Council during that time. In Davis County, William R. Smith was chosen probate judge in 1874 and served until 1883. During that time (1878) he was made president of Davis Stake, having previously been bishop of Centerville Ward.  

Judge Aaron Johnson, who was Utah County judge in 1861, was also bishop of Springville. When Carson County (now in Nevada) was first organized one of the Apostles, Orson Hyde, was sent there specifically to organize it and to become the first probate judge.  

It is evident, then, that the church was in a good position to have a very direct influence on the policies of county government because of the fact that the leaders of both organizations were often the same men. It is significant to note that the same arrangement even extended into the Territorial Legislature. John Brown records an interesting observation on the first session of this body, at which he was a member.  

A large portion of the chief men of Israel were members of the Legislature. All being intimately acquainted we had a very agreeable time. After the adjournment, before separating, we had a Grand Legislative Party, consisting of the members and a few invited guests. It was like a prayer meeting, although we had music and dancing.  

President Brigham Young was vigorously of the opinion that the church should exercise a strong influence in policies followed by the

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14 Effie M. Mack, Nevada, a history of the state from the earliest times through the Civil War (Glendale, Calif.: The Arthur Clark Company, 1936), pp. 154-155.  
15 John Z. Brown (arr.), Autobiography of Pioneer John Brown (Salt Lake City: Stevens and Wallis, 1941), p. 120.
county courts in settling and developing the territory and evidence shows that this influence was felt. In exploiting Utah's timber resources, for example, several alternative plans were available.  

As described in an earlier chapter, the policy followed by the county courts was to give control of canyons to selected individuals or groups. These groups were responsible for controlling and developing the canyons and could charge a toll on roads built into the canyon in order to compensate for their investment. This system had been proclaimed as the law of the Territory at the General Conference of the Saints in October, 1852. Said Brigham Young on that occasion:

Now I am going to have an expression from this Conference, with regard to the plan that we, as a community, shall adopt; not as a county, not as the Legislature of Utah, not as civil and military officers, but as officers and members of the Church of Jesus Christ of Latter-day Saints. . . . We do not own the canyons, but the plan is—let them go into the hands of individuals who will make them easy of access, by paying them for their labor. . . . put them in the hands of individuals to make good roads in them, and obtain their pay by taking toll from those who use the roads, at a gate erected for that purpose at the mouth of each kanyon. . . . If you are in favor of this motion, as Latter-day Saints, signify it by the uplifted hand. (Unanimous.)

Let the judges in the county of Great Salt Lake take due notice, and govern themselves accordingly. The same thing I say to the judges of any of the other counties of the territory. . . . Now this is my order for the judges to take due notice of; it does not come from the Governor, but from the President of the Church. . . .

The county courts found it necessary to call officially on the church for assistance in many important problems. Reference has already been made to the fact that bishops were often appointed water

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masters and herd ground supervisors. Not only these but many other responsibilities came to various bishops by direct request of the court. It was natural that the county officials should turn for assistance to men with proven ability and who commanded the respect of the citizens. Thus the bishops were in a very good position to carry out the wishes of the county court.

Bishops were sometimes given the power to control all water, mill, and road privileges in certain canyons. The Provo Canyon Road, for instance, seems to have been controlled by the bishops of the area. In 1855 Davis County gave the "Bishops of the several wards" the right to control all the water powers, grants of canyons, etc., so far "shall be deemed for the general welfare of the public." Utah County, in the same year, disannulled all the grants previously given in American Creek Canyon and ordered that

... David Evans, L. S. Hurrington, and Henson Walker and their successors in office as Bishops of those Wards ... be a Committee to adjust and control the same as agents for the people, & in behalf of the County.

In 1864 the Davis County court referred a petition for the use of a certain spring to the "North Kanyon Ward committee on streams and springs." It is interesting to notice how often ecclesiastical
wards are referred to in the minutes of this particular county. In 1854 Centerville Ward petitioned for the right to become a voting precinct and the request was granted.\(^2^3\) In 1859 the court even authorized a change in the boundaries between Kaysville and Farmington Wards.\(^2^4\) In 1861 the court appointed certain persons from each of four wards to act as a committee to see that no surplus cattle were turned on "Big Range" in order to save the feed for winter.\(^2^5\) Thus the church policy of dividing its members into wards provided a most useful tool for the benefit of the county government. It even provided a convenient way to disseminate information. Davis County, in 1859, "required" the bishops of each ward to publish a certain notice to delinquent taxpayers.\(^2^6\)

Further evidence of the closeness between the county and church officials is seen in the wording and intent of a letter written by the Utah County Court on March 23, 1867:

To the Bishops and City Authorities of each precinct of this county,

Brethren

Having taken into consideration the necessity of building a Pound in each Precinct in the County for the use and benefit of the said Precincts and having contracted for the same.

We would respectfully introduce to you Bro. John G. Holman, contractor, and request your Co-operation in this matter in the furnishing a suitable and central location in your settlement for the above purpose free of cost. Believing that this will tend to the best good of our constituents,

We subscribe ourselves your Brethren,

\(2^3\) Ibid., p. 26.

\(2^4\) Ibid., p. 54

\(2^5\) Ibid., pp. 101-102.

\(2^6\) Ibid., p. 70.
County officials often called directly on the wisdom of the bishops by having them sit with the court and discuss county problems. On February 6, 1863, various bishops were at a special session of the Davis County court by invitation from the judge. The purpose of the meeting was to discuss liquor control in the county and the bishops were finally given the right to sanction any application for the right to sell liquor before the court would grant a license. On February 13, 1865, the bishops were again at court by request. This time they discussed the problem of holding a special election in the county concerning the new cattle law and, with the advice of the bishops, the court decided to hold the election. Utah County, on March 21, 1865, requested the bishops of the various cities and settlements of the county to take the feelings of the people relating to the boundaries of school districts and report the same to the court.

The Davis County court sometimes went to even higher authority for consultation on certain problems. On September 2, 1872, for example, the court appointed a committee to make inquiries regarding one hundred stray sheep in the possession of Daniel Wood of Bountiful. A few days later the committee reported that they had seen George B. Wallace, president of the High Council, and they were now waiting for an

27Utah County, County Court Minutes, Record A, p. 336.
28Davis County, County Court Minutes, Vol. 1, p. 107.
29Ibid., p. 126.
30Utah County, County Court Minutes, Record A, p. 261.
31Davis County, County Court Minutes, Vol. 2, p. 68.
"order" (1) from the High Council before taking further steps.\textsuperscript{32}

Officials in other counties also depended on church leaders for help and direction. In 1872 Joseph A. Young was sent to Sevier County under instructions from President Brigham Young to take charge and lead in the protective measures "about to be made for the safety and general advancement of that County."\textsuperscript{33} He was apparently to be the Stake President. George W. Bean was elected probate judge in 1874 and his journal illustrates the close cooperation which existed there between church and county leaders:

A firm, unyielding rule of action had to be adopted, but I had great support in the intelligent pride of President Joseph A. Young, and the reasonable, steady experience of Elder A. K. Thurber, who was now acting as Counselor to the President.\textsuperscript{34}

Even the advice of the President of the Church was occasionally required in the settlement of certain county affairs. In March of 1872 an argument arose in Davis County over the relocation of the county road south of Bountiful.\textsuperscript{35} 744 citizens had petitioned that the road not be changed from its present location and considerable controversy resulted. The court finally decided, after hearing both sides, to take more time in order to consider the matter fully. On September 30 the problem was aired again at which time several bishops of the county were officially in attendance.\textsuperscript{36} After a lengthy discussion it was finally decided to appoint a committee of two, one representing the county and the other

\textsuperscript{32}\textit{Ibid.}, pp. 68-69.

\textsuperscript{33}"Bishop's Meetings, Utah Stake, 1866-July, 1875," p. 247.

\textsuperscript{34}\textit{Horne, op. cit.}, p. 181.

\textsuperscript{35}\textit{Davis County, County Court Minutes, Vol. 2}, pp. 60-61.

\textsuperscript{36}\textit{Ibid.}, pp. 69-70.
representing the bishops, to present the matter fairly for both sides to President Brigham Young and that they would act strictly according to his counsel. Bishop Christopher Layton was appointed to represent the bishops and Joel Parish represented the court. They visited President Young and on December 31 the court heard their report which said that he thought the road "would be best at right angles." The court immediately appointed Bishop John Stoker, who had originally opposed the change, to assist the road commissioner in locating the county road according to the counsel of Brigham Young.

Considerable evidence of official church interest in county affairs is found in the minutes of the regular bishop's meetings in Utah County. Reference has already been made to the meeting of March 12, 1870, at which the building of a new county court house was discussed. This problem had previously received much attention by the bishops. On December 21, 1869, Bishop Smoot had spoken at length on the subject and indicated that the old court house was needed for offices by the Provo Woolen Factory. In a meeting on Sunday, February 27, 1870, President Brigham Young had publicly urged the people to build a new court house at Provo and illustrated that they could afford it because they did not pay as much tax as other places.

At the March meeting of the bishops, A. O. Smoot made note of the opposition that existed in some of the settlements of the county to

\[37\text{Ibid.}, \text{p.} \ 33.\]

\[38\text{At both places in the Davis County minutes where reference is made to President Young there is a pencil note in the margin which says "Leave out Prest. Youngs Name." There is no hint of who put this in or when, but evidently someone has been fearful of the charge that church and civil affairs were too closely connected.}\]

\[39\text{"Bishop's Meetings, Utah Stake, 1866-July, 1875," p.} \ 95.\]

\[40\text{"Early History of Provo, 1849-1872," p.} \ 181.\]
improvements in the city of Provo but indicated that this group, by coming together as "officers in the kingdom," could become united in their feelings and break down existing barriers.\textsuperscript{11} He further indicated that, as Judge George W. Bean was there, the bishops should express themselves freely as to what they could do in the matter. At the afternoon session of the meeting Judge Bean spoke and showed why the court house was needed.\textsuperscript{12} "I feel," he continued, "to submit the perfection of the plan to the wisdom of President Young." He believed that in the meantime they might be "preparing the minds of the people for the subject." He proposed an additional tax of one-half percent. William H. Winn, representing the bishop of Lehi, said that he felt it the right of the priesthood to dictate and that if President Young wanted a court house he would not oppose it. The people, he believed, could pay the extra tax, although some "might grunt at it." Other bishops from different sections expressed similar feelings, all of them evidently bowing to the authority of the President of the Church. A. O. Smoot even suggested to the county court that they submit the whole question to President Young. As the meeting adjourned it was moved by Judge Bean and carried by the group that they use their influence with the people to vote a special tax of one-half percent for the purpose of building a new court house.

The court house was finally completed and dedicated on October 14, 1873, with Brigham Young and others from Salt Lake City in attendance at the services.\textsuperscript{13}

\textsuperscript{11}\textquotedblright Bishop's Meetings, Utah Stake, 1866-July, 1875," pp. 325-326.  
\textsuperscript{12}Ibid., pp. 326-328.  
\textsuperscript{13}J. Marinos Jensen, op. cit., p. 226.
Another topic often discussed by the Utah County bishops was the school situation. Two problems seemed to present themselves most frequently; division of school districts and tax for school support. In January, 1869, the bishops of Provo city were complaining because they had only one school district where many felt they should have four. Bishop Smoot said that it appeared to him that all they had to do was to petition the city council or the county court, but S. S. Jones said that while he was a member of the council two such petitions had been presented and that the majority of the petitioners were in favor of one district. The discussion was continued at the meeting of July 20, at which time many of the bishops felt that each ward should be a school district. Nothing definite seems to have been done at this time but these discussions are significant in showing that the bishops certainly felt it a part of their responsibility to help settle such public affairs.

Church and civil authorities continued to urge upon the public the need for better schools and teachers. On November 28, 1869, George A. Smith criticized the people for having been "rather remiss" on school matters. He said that the time had now come, in view of President Young's counsel, to have a high school. In May, 1871, it was reported that the brethren of the First Ward in Provo had concluded to pay one-sixth of the school tax in order to insure the purchase of a lot. When the Brigham Young Academy was founded by the church in Provo in

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44 "Bishop's Meetings, Utah Stake, 1866-July, 1875," p. 38.
1875, Utah County officials supported it by declining an invitation to send some students to a school in Salt Lake City and by paying the tuition of twenty-six students to attend the academy. Thus the church and the county worked together well in promoting the interests of education.

On February 11, 1871, an interesting discussion with reference to the collection of school taxes was carried on among the bishops. Bishop A. H. Scott said that it had been decided in a public meeting that tax should be collected from the residents of the wards for their entire property assessment, whether or not the property taxes was situated in the district in which the owner resided. He said that there had been some who had wanted it collected contrary to this rule and so he wanted to know the mind of the bishops on the subject. Bishop Tanner then spoke and said that the law made it legal for the district assessor to tax and collect on property situated in the district in which he was the legal officer. It was generally understood among themselves, however, that for their own convenience they would collect otherwise. It was then made an official motion that all of the personal property of any resident situated within the limits of the city of Provo should be taxed by the trustees of the school district in which he resided. It can thus be seen that, in this area at least, the church had a very definite influence on civil officers and the way they conducted their responsibilities.

Another illustration of the influence of the bishops in financial

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48 Utah County, County Court Minutes, Record B, p. 275.


matters is seen in a meeting held on July 6, 1869.\textsuperscript{51} A committee had been appointed to report an estimate for enlarging the vestry and improving the meeting house block. The committee recommended a tax of two percent on the assessment of Provo City and a poll tax if deemed proper. It was finally moved and carried that all male persons over eighteen years of age whose city assessment did not reach four dollars or who were not assessed at all should be assessed to that amount. Thus were assessments for church purposes often worked right in with regular taxes, certainly a different system than that used elsewhere, or in the present day, to raise money for church projects.

The church exerted influence in the settlement of personal affairs between the people in Utah's counties. The saints were encouraged, in fact, to avoid taking their affairs to courts of law but to depend on the courts of the priesthood to settle them. The peculiar ecclesiastical system of the church allowed its members to take their disputes to bishop's courts, then to the High Council, and very extensive use seems to have been made of this device. Members of the church had always been taught to "stick together" and to avoid dealings with outsiders as much as possible. Brigham Young seemed to feel that church tribunals were competent to settle all the people's problems and he had a very strong resentment against the Federal courts as they were operating in Utah.\textsuperscript{52}

In the Utah County bishop's meeting of April 7, 1872, E. F. Sheets spoke of the spirit of the people for going to the law and criticized them for forgetting the provisions made by the Priesthood for the settlement of

\textsuperscript{51}\textit{Ibid.}, p. 61.

\textsuperscript{52}\textit{Neff, op. cit.}, pp. 700-703. \textit{Neff} gives several quotations from Brigham Young to this effect.
disputes. A study of the minutes of some of the early High Council meetings would undoubtedly reveal some interesting cases conducted by the church authorities.

It should be observed that the type of justice administered by these church tribunals was evidently extremely fair, so much so that "gentiles" sometimes took their claims there instead of to the courts of law. Andrew Jensen makes an interesting comparison between Elias Smith, early probate judge in Salt Lake County, and Daniel Spencer, who was the Stake President:

It was not his (Smith's) nature to administer unrighteously. In this quality of justice his peer was Daniel Spencer, who occupied an office in the Church analogous to that of chief justice of the State, and to whose ecclesiastical court--the High Council--Gentiles did in early days repeatedly take their cases for arbitration, in preference to "going to law," either in the Federal or probate courts. Elias Smith and Daniel Spencer may therefore be offered to the Gentile reader as the proper types of the judges of the "Mormon" Israel.

That the members of the church were taught to avoid outside influence is illustrated by a few typical excerpts from the minutes of public meetings held in Provo.

(October 11, 1866) Bp. E. H. Blackburn ... reviewed the recent teachings at conference, vis. to have no dealings with outsiders & c.

54 Horne, op. cit., p. 77.
55 The High Council minutes from several Stakes are located in the L. D. S. Church Historian's Office in Salt Lake City but are not available for public use.
(October 18, 1866) BP. M. Tannen. . . . as Gods people we should have no interest outside of Zion. Reasoned on the destructive policy of supporting outsiders. 58

(November 28, 1869) BP. Wm. Miller. Spoke on the necessity of the Priesthood dictating us in temporal matters.

BP. A. O. Smoot . . . illustrated the ruinous policy of sustaining the outside world. Will we hold the elements in our possession? 59

The expression "Policemen by law and by Priesthood" 60 typifies the feelings of local church authorities.

Aside from the fact that many county officials held important ecclesiastical positions, the church had other ways to influence county political affairs. In January, 1862, for instance, the Davis County court requested the bishops present to form a caucus and nominate one man for Senator at the next Legislative Assembly and two men for Representatives. 61 The bishops nominated John W. Hess as Senator and John Stoke and William R. Smith as Representatives, which names were subsequently presented to the people for their approval. On July 7, 1874, the Utah County bishops were told that it was the President's idea that they should "thoroughly conduct" the approaching election and that every man and woman should vote on that occasion. 62 They were further instructed to see that all ladies had a ride to the polls. On July 24 this was carried further when Bishop Smoot expressed the desire that they should poll a strong vote, especially for George Q. Cannon. 63

58 Ibid., p. 135.
59 Ibid., p. 171.
60 "Bishop's Meetings, Utah Stake, 1866-July, 1875," pp. 157-159.
61 Davis County, County Court Minutes, Vol. 1, p. 101.
63 Ibid., p. 322.
The main stress, however, was on the importance of exercising the franchise and he criticized those members who were lax in this responsibility. Such teaching as this has always been a major part of Mormon philosophy.

As late as 1890 the direct influence of the church was being felt in local elections, especially in areas of predominant Mormon population. In Hyrum, Cache County, a manuscript paper called "The Evening Star" was circulated by the Young Men's Mutual Improvement Association, an L. D. S. youth organization. In one of the manuscripts of 1890 the official nominees of the People's Party for the coming election were listed. The People's Party was the pro-Mormon party, as opposed to the anti-Mormon Liberal Party, and in these areas the People's candidates were always elected. Following is the significant excerpt from this issue of the "Star":

People's Tickets

County and City Election Aug. 4, 1890.

For County Clerk: -
C. D. W. Fulmer.

For Recorder: Wm. G. Farrell.
" Assessor and Collector: A. G. Barber
" Sheriff: Don Kimball.
" Treasurer: G. W. Thatchcer Jr.
" Selectman: W. D. Cranney.
" Surveyor: Ed. Hanson.
" Prosecuting Atty: I. C. Thoresen.
" Coroner: Alex. Lewis

Hyrum Precinct Officers:

For Justice of the Peace: A. M. Isrealsen
" Constable: Jas. H. Nielsen

Hyrum City Officers:

For Mayor: I. C. Thoresen
" Justices: A. M. Isrealsen and Louis Halvorsen

For Councillors:
George Nielsen, A. A. Allen Jr., N. J. Nielsen,
Charles Sorensen, O. M. Wilson
Jens Jensen and Eli Bradley.

For Recorder: H. H. Petersen Jr.
For Treasurer: A. A. Allen, Sen.
" Assessor and Collector: Jos McSmith.

The foregoing are the unanimous choice of the People's Party both in the County and City, respectively, and all electors of the party should make it a point to sustain these tickets by their ballot on Monday week, without fail! They are all good men and well qualified to ably fill the offices for which they have been named.

As it should be, according to democratic rule, they are nearly all new men; and if properly sustain by the people will make great advancement politically during the ensuing two years for which they will be elected on August 4th.

The retiring officers both county and city go out with the best of feelings of the party and thanks for their efficient service in the past. After a short rest they will be wanted again.

Distribution of, and rotation in, office is our Motto! 64

The slate of officers were apparently picked by a caucus of church leaders and the italicized expressions certainly indicate a confidence on the part of the church that their men will be elected and that after a short while the retiring officers will be used again.

"Distribution of, and rotation in, office is our Motto," but it was no mere chance rotation that occurred.

In summary, it can be seen that even after legal county machinery had been set into operation the church authorities continued to maintain a vital and active interest in the government and had a real influence on its conduct. That there was no direct legal connection is true, but the early settlers were practically unanimous in their devotion to the church and acquiescence in its policies, which made it impossible to conduct county business without its influence. Church authorities were considered to be divinely inspired prophets and that inspiration naturally

extended down to local bishops and elders. Further, local leaders were often placed in power as judges or selectmen and were thus in a position of unusual prominence and authority. This phenomenon should not be too harshly criticized, but, rather, should be recognized as a condition existing because of a unique religious and political situation. The functions of church and state were very close indeed in the early counties of the Territory of Utah.
APPENDIX A

An Act in relation to the Judiciary (February 4, 1852)

Sec. 1. Be it enacted by the Governor and Legislative Assembly of the Territory of Utah, That the Judicial District and the terms of the District Courts therein, respectively, shall remain as at present fixed until otherwise directed; Provided, the Judge of the District may hold special term or terms in any other County in such district at such times and places as the press of Judicial business shall require.

Sec. 2. The District Courts shall exercise original jurisdiction, both in civil and criminal cases, and as well in Chancery as at Common Law, when not otherwise provided by law. They shall also have a general supervision over all inferior Courts, to prevent and correct abuses where no other remedy is provided.

Sec. 3. The Sheriff of a County, wherein the Court is held, together with all necessary assistants must attend upon the sessions of the Court if required.

Sec. 4. The Clerk of each District or County, shall keep a record of the proceedings of the Court, under the direction of the Judge. He shall, from time to time, read over all entries therein in open Court, which, when correct, shall be signed by the Judge. Entries made in vacation shall be read and approved at the next term of the Court. The record is under the control of the Court, and may be amended, or any entries therein expunged at any time during the term of the Court at which it is made, or before it is signed by the Judge as aforesaid; but entries made, approved and signed by the Judge, cannot be altered only to correct an evident mistake.

Sec. 5. The Judges of the District Courts, respectively, shall report to the Legislature at each regular session thereof, all omissions, discrepancies, or other evident imperfections of the law which have fallen under their observation.

Sec. 6. The Judges of the Court may report their own decision, or the may appoint a reporter who shall hold his office at the pleasure of the Court, and all decisions or opinions, and all questions received on appeal, as well as motions, collateral questions, and points of practice, as they may think of sufficient importance, shall be reduced to writing and filed with the Clerk of the Court.

Sec. 7. Each of the Clerks must keep a complete register of all proceedings of the Court with an index to the same; and generally, they must
perform all the other duties ordinarily pertaining to their office.

Sec. 8. The said Courts may adopt all such rules as they may deem expedient, consistent with the law, the prime object of which shall be to carry out the purposes of the statutes, and to subserve the ends of justice, dispensing with all needless forms, and disregarding and abridging all technical pleadings with a view to the attainment of justice; all technical forms of actions and pleadings are hereby abolished.

Sec. 24. There shall be a Judge of Probate in each County within the Territory, whose jurisdiction within his Court in all cases, arising within their respective Counties under the laws of the Territory; said Judge shall be elected by the joint vote of the Legislative Assembly, and commissioned by the Governor; they shall hold their office for the term of four years, and until their successors are elected and qualified. They shall be qualified and sworn by any person authorized to administer oaths, and give bonds and security in the sum of not less than ten thousand dollars, to be approved by the Clerk of the District court or the Judge thereof, and filed in his office.

Sec. 25. In case of a vacancy occurring in the office of the Judge of Probate, the Governor may appoint and fill such vacancy until the next succeeding Legislative Assembly, or some subsequent one, shall elect one; said Judge of Probate so appointed shall qualify and give bond as above provided.

Sec. 26. The Probate Court shall be considered in law as always open; but for the transaction of business requiring notice, the Judge shall hold regular sessions on the second Mondays of March, June, September and December of each year, and shall continue at each session one week, or until the business ready for trial shall be disposed of.

Sec. 27. When the District Court is to sit in a County on any of the days appointed in the preceding section for the sessions of the Probate Court, the latter shall be held on the Monday preceding, and when the Judge is required by law to perform any duty which takes him from the County, on one of the appointed days, the session of the Court shall be holden on the following Monday, or such day as the Judge may appoint.

Sec. 28. The Judge of Probate has jurisdiction of the Probate of Wills, the administration of the estates of deceased persons, and of the guardianship of minors, idiots and insane persons.

Sec. 29. The Probate records shall be kept in books separate from those of other business of the Court.

Sec. 30. The several Probate Courts in their respective Counties, have power to exercise original jurisdiction both civil and criminal, and as well in Chancery as at Common law, when not prohibited by Legislative enactment; and they shall be governed in all respects by the same general rules and regulations as regards practice as the District Courts.
Sec. 31. Appeals are allowed from all decrees or decisions of the Probate to the District Courts, except when otherwise expressed on the merit of any matter affecting the rights or interests of individuals, the appeal shall be taken within thirty days from the day on which the decision was made, and shall be taken by claiming the appeal and filing, in the clerk of the Probate Courts office a bond with one or more sureties and a penal sum to be approved by the Probate Judge or Clerk; said bond shall be conditioned, that said appellant will prosecute the appeal with effect; that if the appeal be dismissed or the judgment below affirmed, he will comply with the judgment, and orders made by the Court below, and that he will pay all costs, and sums of money that may be adjudged against him in the Court appealed to, and will comply with the orders of that Court, the appeal shall be taken to the next term of the District Court in the County, or next nearest County, where the same shall be holden, if there be ten days between the day when the judgment was rendered, and the day of the sitting of the District Court.

Sec. 32. Within twenty days from the day of the appeal, and within five days in the case mentioned in the last paragraph of the preceding section, the Clerk of the Probate Court is required to file a transcript of the proceedings in the matter in which the appeal is taken, authenticated by the seal of the Probate Court with the Clerk of the District Court, who shall enter the same among the cases pending in that Court. Transcripts of the records and copies of the papers pertaining to the Probate Court, may be certified and signed by either the Clerk or the Judge.

Sec. 33. The Probate Judges in their respective Counties shall appoint a Clerk, who shall keep his office at the County seat, and who shall attend all sessions of the Probate Court, as also sessions of the county court, for the transaction of County business. It shall be the duty of the Clerk of the Probate Court, to keep a full and true record of all the proceedings in the Probate Court in session, entering distinctly each step in the progress of any proceedings; but such record shall be equally valid if made by the Judge.

Sec. 34. The Clerks of the District Courts and of the Probate Courts respectively, are hereby required to report to the Secretary of the Territory, on or before the first Monday of November of each year, the number of convictions for all crime, and misdemeanors, in their respective Courts, for the year preceding such report, shall show the character of the offence, and the sentence of punishment, the occupation of the convict, whether he can read or write, and his general habits, and also the expenses of the County for criminal prosecution during the year, including but distinguishing the compensation of the Prosecuting Attorney. The Clerks aforesaid shall also forward to the Secretary, copies of all reports made, of decisions, and opinions, which shall be reported, or filed in his office.

Sec. 35. The Probate Judge in connection with the select men, is hereby invested with the usual powers and jurisdiction of County commissioners, and with such other powers and jurisdiction as are conferred by law, and in this connection they shall be known as the County Court.
clerk of the Probate Court shall be the clerk of this Court, shall keep his office at the county seat, and shall attend by himself, or deputy, all sessions of the Court, keep the records, papers, and seal of the Court. The office of the County Court is to be kept open for business at all usual times.

Sec. 36. This court is authorized and required to take the management of all county business, and the care and custody of all the county property, except such as is by it placed in the custody of another, and shall have the control of all the books, papers, and instruments pertaining to their office; said court shall audit all claims against the County; draw and seal with the county seal all warrants or orders on the Treasurer for money to be paid out of the County Treasury, shall audit and settle the accounts of the Treasurer, and those of any other collector or receiver of county revenue, taxes, or incomes payable into the County Treasury, and those of any person entrusted to expend any money of the County, and to require them to render their accounts as directed by law.

Sec. 37. Said Court shall keep a book to be known as the County book, in which shall be recorded all orders and decisions made by them, except those relating to roads and probate affairs, and in which, orders for the allowance of money from the County Treasury shall state on what account, and to whom the allowance is made, dating and numbering the drawing on the Treasury each order, and said Court are to superintend the fiscal affairs of the county, and secure their management in the best possible manner.

Sec. 38. The County Court shall also keep a separate book for the entries of all proceedings and adjudications to the establishment, change, or discontinuance of bonds; and also separate books for Probate business. They shall keep an account of the receipts and expenditures of the County, and on the first Monday of May annually, cause a minute statement of them for the preceding year to be made, with an account of all debts payable to, and by the county, and the assets of the county; have a copy of the same posted up, one at the county seat, at the usual place of holding court, and at each of two other public places in the County; and shall cause the original to be filed in their office.

Sec. 39. The County Court has control of all timber; water privileges, or any water course or creek; to grant mill sites, and exercise such powers as in their judgment shall best preserve the timber, and subserve the interest of the settlements, in the distribution of water for irrigation, or other purposes. All grants or rights held under Legislative authority shall not be interfered with.

Sec. 40. The Judge of Probate, in connection with any two of the select men, shall constitute a quorum to do business; and the select men may transact business separately throughout the county, relating to the poor, insane, orphans, minors, or other important business, requiring immediate attention; business so transacted shall be reported at their next subsequent session, and approved by the court before becoming a matter of record. The select men may also hold session in the absence of the Judge of Probate.
Sec. 41. The County Court shall district their respective counties into road districts, precincts, school districts, or such other subdivisions as may become necessary or proper; locate sites for public buildings, and erect the same; select grand and petit jurors for their respective counties, and generally do and perform all such duties, as shall be required by the nature of their office, and as shall be required by law.

Sec. 42. The County Court shall hold sessions twice a year, to wit: on the third Mondays of March and September, and oftener if they deem it necessary. They have authority to determine the amount of tax to be levied for County purposes, and provide for the collection of the same.

Sec. 43. Whenever it shall become necessary to extend the credit of the County for the purpose of erecting public buildings, building bridges, and working roads, which may call for extraordinary expenditure, the County Court may submit the question, and the amount of funds proposed to be raised, and the manner of raising them, whether by tax or otherwise; said question when thus submitted, shall be voted upon by the people of the County at some regular election, previous notice having been given in regard to said question in the same manner as required in giving notice of elections; and the decision of the people shall be the law, so far as regards that particular question. If there should be an excess of funds thus raised for any particular purpose, the surplus may be paid into the County Treasury for County purposes.

Sec. 44. The Judges of the District and Probate Courts shall be conservators of the peace in their respective districts and counties throughout the Territory, and it is their duty to use all diligence and influence in their power to prevent litigation.

Sec. 45. Any matter involving litigation may be referred to arbitrators or referees, who may be chosen by the parties, or selected by the Court, as the parties shall elect; all such arbitrators have authority to subpoena witnesses, administer oaths or affirmations, and issue process as the Court. And when they shall have made their decision, shall report the case, if necessary to enforce the same, to the Clerk of the County in which the case has arisen, or when the case has not arisen in any Court, to the clerk of the Probate Court; and it shall be the duty of the clerk in whose office any such decision has been filed, to make a record thereof, and proceed in the same manner, as if the case had been prosecuted and decided in the usual manner.

Sec. 46. The Select men shall appoint a Supervisor or Supervisors for their respective Counties, who, under their directions shall collect and apply the Poll Tax, in their respective districts, and make return to the Select men, on or before the first day of February annually.

Sec. 47. Select men and Supervisors shall be governed in the discharge of their duties as prescribed for County Commissioners and Supervisors (so far as the same shall be applicable) in an Ordinance in relation to Road Tax and Supervisors.¹

APPENDIX B

An Act creating the office of Selectmen and prescribing their duties, also the duties of the County Courts (January 8, 1866)

Sec. 1.—Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That there shall be three Selectmen in each organized county within the Territory, whose term of office shall be three years. And at the organization of new counties there shall be elected, at the first general election, three Selectmen, as follows, to wit: The senior shall hold office for three years, the second for two years and the junior for one year; and thereafter one shall be elected each year, who shall hold his office for the term of three years and until his successor is elected and qualified: Provided that in each county now organized the Selectmen shall be elected in the same manner as provided for the continuation of the election of Selectmen in new counties.

Sec. 2.—Said Selectmen shall be sworn before the Clerk of the Probate Court and give such bonds as the Clerk shall approve, and the same shall be filed in the Clerk’s office, who shall give them a certificate of office under the seal of the Probate Court.

Sec. 3.—The Probate Judge in connection with the Selectmen shall be known as the County Court, any three of whom shall form a quorum to do business; and they are invested with such powers and jurisdiction as are or may be conferred by law. The Clerk of the Probate Court shall be the Clerk of this Court, shall keep his office at the County Seat and shall attend himself or by deputy all sessions of the Court, and keep the records, papers and seal of the Court. The office of the County Clerk is to be kept open during usual business hours.

Sec. 4.—This Court is authorized and required to take the management of all County business and the care and custody of all the County property, except such as is by it placed in the custody of another; and shall have the control of all books, papers and instruments pertaining to their office. Said Court shall audit all claims against the county, and cause the county seal to be affixed to all warrants or orders on the Treasurer for money to be paid out of the County treasury; shall audit and settle the accounts of the Treasurer and those of any other officer or receiver of County revenue, taxes or other dues payable into the County treasury, and those of any person entrusted to expend any money of the county, and to require them to render their accounts as directed by law.

Sec. 5.—Said Court shall keep a book to be known as the County Book, in which shall be recorded all orders and decisions made by them, except those relating to roads and Probate affairs. Orders for the allowance of
money from the County Treasury shall state on what account and to whom the allowance is made, dating and numbering the drawing on the Treasury each order; and said Courts are to superintend the fiscal affairs of the county and secure their management in the best possible manner.

Sec. 6.—The County Court shall also keep a separate book for the entries of all proceedings and adjudications relating to the establishment, change or discontinuance of roads; and also separate books for probate business. They shall keep an account of the receipts and expenditures of the county and annually on the first Monday of June, cause a minute statement of them for the preceding year to be made, with an account of all debts payable to and by the county and the assets of the county; have a copy of the same posted up, one at the County Seat, at the usual place of holding Courts, and at each of two other public places in the county, or published in some newspaper having general circulation in the county, and shall cause the original to be filed in their office.

Sec. 7.—The County Courts shall district their respective counties into road districts, precincts, school districts or such other subdivisions as may become necessary or proper; locate sites for public buildings and erect the same; have the control of all timber, water privileges or any watercourse or creek; to grant mill sites and exercise such powers as in their judgment shall best preserve the timber and subserve the interest of the settlements in the distribution of water for irrigation or other purposes. Grants or rights held under Legislative authority shall not be interfered with.

Sec. 8.—It shall further be the duty of said Courts to oversee the poor and provide for their maintenance; to take care, custody and management of insane persons, who are incapable of conducting their own affairs, and of their estate both real and personal, and to provide for the safe keeping of such insane persons, their maintenance and the maintenance of their families and the education of their children.

Sec. 10.—Said Selectmen shall make a report of all their proceedings to the County Court at their next regular session, as also a true report of all the affairs and situation of the poor or destitute and insane within their respective counties, and make such suggestions and recommendations as to them shall appear necessary for the action of the Court.

Sec. 11.—The sessions of the County Courts shall be held quarterly on the first Monday in March, June, September and December in each year, and oftener if they deem it necessary.

Sec. 12.—It is hereby made the duty of all County officers to deliver to their successors in office all books, papers, seals, or other public property in their possession.

Sec. 13.—The County Courts are hereby authorized and required to appoint all county and precinct officers not made elective by law, and to fill all vacancies of county and precinct officers, not otherwise provided for, that may occur between elections in their respective counties; and any person, so elected or appointed, failing to qualify within ten
days after receiving notice of his election, unless he shall previously notify the County Clerk that he does not accept the office, or, after qualifying, shall fail or neglect to fulfill the duties thereof, may be fined in any sum not less than five dollars nor more than one hundred dollars before any Court having jurisdiction.

Sec. 14.—An Act entitled "An Act creating the office of Selectmen and prescribing their duties," approved February 5, 1852, and sections 34 to 42, inclusive, of "An Act in relation to the Judiciary," approved February 4, 1852, are hereby repealed.¹

APPENDIX C

An Act supplementary to An Act entitled An Act creating the Office of Selectmen and prescribing their duties, also the duties of County Courts (February 12, 1878)

Sec. 1.--Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:—That each County in this Territory is hereby declared to be a body politic and corporate, and the County Courts shall have all the powers and perform all the duties heretofore conferred upon them by An Act of which this is supplementary.

Sec. 2.--The name of each County as designated in "An Act defining the boundaries of Counties and locating County Seats, approved January tenth, one thousand, eight hundred and sixty-six," shall be its corporate name, and it must be known and designated thereby in all actions and proceedings touching its rights, property and duties.

Sec. 3.--It shall have power: 1--To sue and be sued, plead and be impleaded; 2--To make contracts and to purchase and hold such real and personal property as may be necessary for the exercise of its powers; 3--To direct the use of disposition of its property, as the interests of its inhabitants require; 4--To levy and collect such taxes, for purposes under its exclusive jurisdiction, as authorized by the laws of this Territory.

Sec. 4.--No County shall loan money, nor in any manner loan or give its credit to or in aid of any person, company or corporation, unless it is expressly authorized so to do by law.

Sec. 5.--No County shall be allowed to borrow money, or voluntarily incur any indebtedness requiring the issuing of warrants or orders upon its treasury exceeding the amount of unpaid taxes of the current fiscal year and the amount in its treasury; and such borrowed money must always be made payable within one year from the time of making the loan.

Sec. 6.--No actions shall be commenced or maintained against any County, until the person or party having a claim, demand, or right of action, shall present the same to the County Court thereof, with proof of the correctness of such claim, demand or right; and until the same shall have been disallowed by said Court.

Sec. 7.--If any claim or demand against any County be presented to the County Court of such County for allowance, and the Court shall neglect or fail to audit the same within four months from the time the claim is presented, the claim or demand shall be deemed disallowed.
Sec. 8.—Whenever any claim or demand against any County shall be allowed in part and disallowed in part, the acceptance of the part allowed, without protest, shall be deemed a waiver of the part disallowed. If the claimant file his protest against the disallowance, he may, within one year and not afterward, bring suit for the part disallowed.

Sec. 9.—Whenever any judgment shall be rendered against any County by a court of competent jurisdiction, no execution shall be issued thereon, but by the party in whose favor the judgment is entered may obtain a duly certified transcript thereof, and file the same with the Clerk of the County Court, who shall enter the same in the County Court records; and unless the County Court shall, within three months thereafter take an appeal from said judgment, the claim must be paid as other allowed demands against the County.

Sec. 10.—All allowed demands against any County in this Territory must be paid out of the County Treasury in the order of their presentation.¹

¹Utah, Laws, Mem. and Res. . . . (1878), pp. 3-4.
APPENDIX D

An Act to Establish a Uniform System of County Governments
(March 8, 1888)

Counties as now organized or may be created are bodies politic.
Sec. 1.--Be it enacted by the Governor and Legislative Assembly of
the Territory of Utah: That the several counties of this Territory, as
they now exist, and such other counties as may be hereafter organized
according to law, are bodies corporate and politic, and as such have the
powers specified in this act, and such other powers as are necessarily
implied.

Powers, How Exercised

Sec. 2.--The powers of a county can only be exercised by the county
court, or by agents and officers acting under its authority, or authority
of law.

Name

Sec. 3.--The name of a county designated in the law creating it is its
corporate name, and it must be designated thereby in all actions and pro-
ceedings touching its corporate rights, property and duties.

Powers

Sec. 4.--It has power:
1. To sue and be sued.
2. To purchase and hold land within its limits necessary and proper
for county purposes.
3. To make such contracts, and purchase and hold such personal pro-
erty as may be necessary to the exercise of its powers.
4. To manage and dispose of its property as the interests of its
inhabitants may require.
5. To levy and collect such taxes, for purposes under its exclusive
jurisdiction, as are authorized by law.

Restrictions

Sec. 5.--No county shall in any manner give or loan its credit to, or
in aid of, any person or corporation. No county shall incur any indebt-
edness or liability in any manner, or for any purpose, to an amount
exceeding in any year the total amount of its income and revenue for the
two fiscal years immediately preceding the incurring of such indebtedness.
Any indebtedness or liability incurred contrary to this provision shall be
void.

Certain Contracts Void

Sec. 6.--All contracts, authorizations, allowances, payments and lia-
bilities to pay, made or attempted to be made, in violation of this act,
shall be absolutely void, and shall never be the foundation of a claim
against such county.

Penalty for Allowing Certain Claims

Sec. 7.--Any probate judge or selectman or any other officer, who
knowingly authorizes, or aids to authorize, or audits, or allows any
claim or demand upon or against the county, or any fund thereof, in viola-
tion of any of the provisions of this act, shall be liable in person and
upon their several official bonds, to any person damaged by such illegal
authorization, to the extent of his loss.

County Seats

Sec. 8.--The county seats of the respective counties of this Terri-
tory, as now fixed by law, are hereby recognized as, and declared to be,
the county seats of the respective counties, and may be removed as pro-
vided by law.

Sec. 9.--At the general election to be held in the year 1888, and
biennially thereafter, one selectman shall be elected in each county of
this Territory, whose term of office shall be two years and until his
successor shall be elected or appointed and qualified, and at the general
election to be held in the year 1889, and biennially thereafter, two
selectmen shall be elected in each county of this Territory, whose terms
of office shall be two years and until their successors shall be elected
or appointed and qualified; Provided, that theprobate judges and select-
men now holding office in the several counties of this Territory shall
continue in office, and exercise all the powers conferred by this act upon
the county courts, until the terms of office for which they were elected
shall expire, and their successors shall be elected or appointed and
qualified; except the selectmen whose terms of office would expire at the
general election in the year 1890, and their terms of office are hereby
shortened and shall expire at the general election to be held in the year
1889.

County Courts

Sec. 10.--Each county shall have a county court, consisting of the
probate judge of such county and three selectmen.
Qualifications

Sec. 11.--Each member of the county court must be an elector of the county for which he is elected or appointed, and must have been such for at least one year immediately preceding his election.

Vacancy, How Filled

Sec. 12.--Whenever a vacancy occurs in the office of selectman, the county court shall fill the vacancy by appointment, the appointee to hold office for the unexpired term. In case there should not be a majority of such court remaining in office, then the proper election officers who have charge of the conduct and management of county elections in any such county, shall forthwith order a special election to fill vacancies; and the persons so elected shall enter upon the duties of their office immediately upon their election and qualification, and shall hold office for the unexpired term.

Chairman

Sec. 13.--The probate judge shall, if present, preside at all meetings of the county court, and in case of his absence or inability to act, the members present must select one of their number to preside temporarily.

Any member of the court may administer oaths to any person when necessary in the performance of their official duties.

A majority of the members shall constitute a quorum for the transaction of business; but no act of the court shall be valid or binding unless a majority of the members concur therein.

Clerk of the County Court

Sec. 14.--The clerk of the court must:
1. Record all the proceedings of the court.
2. Make full entries of all their resolutions and decisions or questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Immediately after the adjournment of each meeting of the court, prepare and certify duplicate lists of all claims allowed and orders made for the payment of money, giving the name of the claimant or payee named in the claim or order, the amount and date of each claim or order, and the date of the allowance thereof, which said lists shall be countersigned by the probate judge, and thereafter said clerk shall deliver to and leave with the treasurer one of said lists, and return and file in his office the other list.
5. Keep an accurate account of all receipts and expenditures of his county, also of all debts payable to and by said county.

At the first session of the court held in each year the clerk shall
submit to the said court a statement showing the total amount received from each source of revenue during the fiscal year ending on the thirty-first day of December last preceding, the balance, if any, in the treasury at the close of the previous fiscal year; the expenditures during the fiscal year just closed, specifying separately the total amount paid to each officer and the total amount for each and every disbursement, the balance on hand, if any, together with a statement of all the debts payable to and by said county.

He shall, within thirty days after the auditing of such statement by the court, transmit a certified copy thereof to the auditor of public accounts, to be filed by him and furnished to the legislative assembly during the first two weeks of the next succeeding session.

He shall also file and preserve the reports of the county treasurer of the receipts and disbursements of the county.
6. Preserve and file all accounts acted upon by the court.
7. Preserve and file all petitions and applications and record the action of the court therein.
8. Authenticate with his signature and seal of the court the proceedings of the court whenever the same shall be ordered published.
9. Record all orders levying taxes; and or any rule or order of the court.

**Duty of the Court**

Sec. 15.--The court must cause to be kept:

1. A minute book, in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
2. An allowance book, in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering, and indexing the same through each year.
3. A road book, containing all proceedings and adjudications relating to the establishment, maintenance, change and discontinuance of roads and road districts.
4. A warrant book, to be kept by the clerk, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

**Regular Meetings**

Sec. 16.--The county court must be held at their respective county seats on the first Monday in March, June, September and December in each year, and oftener, if they deem it necessary.

**Special Meetings**

Sec. 17.--If at any time the business of the county requires a meeting of the court, a special meeting may be ordered by the probate judge or by
a majority of the court. The order must be signed by the probate judge or by the selectman calling such meeting, and must be entered in the minutes of the court. Five days notice of such meeting must be given by the clerk to the members not joining in the order. The order must specify the business to be transacted at such special meeting, and none other than that specified must be transacted at such special meeting.

All Meetings Must Be Public

Sec. 18.--All meetings of the court must be public and the books, records and accounts must be kept at the office of the clerk open at all times during business hours for public inspection, free of charge.

GENERAL PERMANENT POWERS OF COURT

Powers

Sec. 19.--The county courts in their respective counties have jurisdiction and power under such limitations and restrictions as are prescribed by law.

Supervise Conduct of Officers.

1. To direct prosecutions for delinquencies.
2. To supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county, except municipal corporations charged with the assessing, collecting, safe keeping, management or disbursement of the public revenues; see that they faithfully perform their duties, and when necessary require them to renew their official bonds, to make reports and to present their books and accounts for inspection.

Divide County

3. To divide the counties into school, road and other districts required by law, change the same and create others as convenience requires.

Election Precincts, Etc.

4. To establish, abolish and change county election precincts, but no such precinct shall be established or abolished, or the boundaries of any precinct changed within thirty days prior to any election.
Public Roads

5. To lay out, maintain, control and manage public roads, turnpikes, ferries and bridges within the county.

Indigent Sick and Poor

6. To provide for the care and maintenance of the indigent sick or the otherwise dependent poor, transients and residents of the county; erect, officer and maintain hospitals and poor houses, in their discretion therefor, or otherwise provide for the same; and for such purposes, annually, at the time appointed by law for the levying of taxes for county purposes, to levy the necessary property tax therefor; Provided, the county court shall appoint (not let to the lowest bidder) some suitable person or persons to take care of and maintain such hospitals and poor houses, and the court shall also appoint (not let to the lowest bidder) some suitable graduate in medicine to attend such indigent sick or otherwise dependent poor.

Farm

7. To provide a farm and work shops in connection with the county hospital or poor house, sufficient to employ the inmates thereof, and make rules and regulations for working the same.

County Offices

8. When there are no necessary county buildings to provide suitable rooms for county purposes.

Purchase and Control Real Estate

9. To purchase, receive by donation or lease any real or personal property necessary for the use of the county, and preserve, take care of and manage and control the same.

Court House, Jail and Hospital

10. To cause to be erected or rebuilt and furnished, a court house, jail, hospital and such other public buildings as may be necessary; Provided, that none of the aforesaid buildings shall be erected or constructed until plans and specifications shall have been made therefor and adopted by the court; all such buildings must be erected by contract let to the lowest responsible bidder, after notice.
Sell Certain Property of the County

11. To sell at public auction at the court house door, after thirty days previous notice given, either by publication in a newspaper published in the county or by posting in five public places in the county, and convey to the highest bidder for cash, any property belonging to the county, no longer required for public use, paying the proceeds into the county treasury for the use of the county.

Examine and Audit Accounts

12. To examine and audit at least once a year the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county or appropriated by law or otherwise for its use and benefit.

Same

13. To examine, settle and allow, all accounts legally chargeable against the county and order warrants to be drawn on the county treasurer therefor.

Levy Taxes

14. To levy taxes upon the taxable property of their respective counties for all county purposes, and also upon the taxable property of any district, for the construction and repairs of roads and highways and other district purposes; Provided, that no tax shall be levied upon any district until the proposition to levy the same has been submitted to the qualified electors of such district and received two-thirds of all the legal votes cast upon such proposition.

Maintain Public Pounds

15. To maintain, regulate and govern public pounds, and appoint poundkeepers, who shall be paid out of the fines imposed and collected of the owners of impounded animals, and from no other source.

Equalize Assessments

16. To equalize assessments within their county, except assessments for municipal purposes.

Control Suits

17. To direct and control the prosecution and defense of all suits to which the county is a party, and when necessary, to employ counsel to
assist the prosecuting attorney of the county in conducting the same.

Insure Buildings

18. To insure the county buildings in the name and for the benefit of the county.

Fix Price of Advertising, Etc.

19. The county court shall, after having advertised for bids for the same, fix the price at which the county shall be supplied with job printing, stationery and blank books, and also the price of all county advertising, and the county court of each county shall procure such supplies and advertising at a price no greater than is so fixed, and shall let the contract therefore to the lowest responsible bidder, and all bills thereof shall be certified to the county court.

Adopt a Seal

20. To adopt a seal for their court; a description and impression thereof must be filed in the office of the clerk and of the secretary of the Territory.

Enforce Rules

21. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

Annual Report

22. The court shall cause to be published an annual statement of the financial condition of the county, showing in detail the receipts and expenditures authorized during the preceding year.

Destruction of Wild Animals, Etc.

23. To provide for the destruction of wild animals, noxious weeds, and insects injurious to fruit or fruit trees, or vine or vegetables, or plant life.

Establish Funds

24. To establish such county funds as they may deem necessary for the proper transaction of the business of the county, and to pay therefrom
the salaries or compensation of public officers, which the law contemplates or requires to be paid from the county treasury.

Fill Vacancies

25. To fill by appointment all vacancies that may occur in any office filled by the appointment of the county court, and elective county, district or precinct offices; the appointee to hold office for the unexpired term.

To Provide for the Preservation of Public Health

26. To adopt such provisions for the preservation of the health of their respective counties, or any district therein, or portion thereof, except municipal corporations, as they may deem necessary, and to provide for paying the expenses thereof; and when the expense is incurred in a district or portion of a county for the particular benefit thereof, the court may fix the boundaries of such district or portion, and levy a tax on the property therein to pay the same, the tax to be levied and collected in the same manner as other taxes are levied and collected.

Common Carriers

27. To adopt such rules and regulations within their respective counties, as may be necessary to regulate or prohibit the leaving by any persons or common carrier, within the limits of their respective counties, of any indigent or insane persons or travelers, not residents thereof, or the bodies of persons who die while traveling, unless such common carrier shall undertake to be responsible for the proper burial of such bodies, or unless such deceased person was, at the time of his death, a resident of the county within which it is proposed to deliver his body. Also to regulate or prohibit the bringing into, or leaving within their respective counties, of persons afflicted with, or who have but recently been exposed to any contagious disease.

Working Prisoners

28. To provide for the working of prisoners confined in the county jail, under judgment or conviction of a misdemeanor, (when under such judgement of conviction or existing laws said prisoners are liable to labor) under the direction of some responsible person, upon the public grounds, roads, streets, avenues, highways, or public buildings, for the benefit of the county.

Burying Dead

29. To provide for the burying of the indigent dead.
Make and Enforce Local Regulations

30. To make and enforce within the limits of their respective counties, except within municipal corporations, all such local, police, sanitary and other regulations as are not in conflict with general laws.

Adopt Rules

31. To adopt such rules and regulations within their respective counties, except within municipal corporations, with regard to the keeping and storing of every kind of gun powder, hercules powder, giant powder, or other combustible material, as the safety and protection of the lives and property of individuals may require.

Sheriff to Attend Meetings

Sec. 20.-The county court shall have power to direct the sheriff to attend, in person or by deputy, all meetings of the court, to preserve order, serve notices, subpoenas, citations, or other process, as directed by the court.

Subpoena for Witnesses, Books, Etc.

Sec. 21.—Whenever the county court of any county shall deem it necessary or important to examine any person as a witness upon any subject or matter within the jurisdiction of such court, or to examine any officer of the county in relation to the discharge of his official duties as to the receipt or disbursement by him of any moneys or concerning the possession or disbursement by him of any property belonging to the county, or to use, inspect, or examine any books, accounts, vouchers, or document in the possession of such officer, or other person, or under his control, or relating to the affairs or interests of the county, the probate judge shall issue a subpoena, in proper form, commanding such person or officer to appear before such court, at a time and place therein specified, to be examined as a witness, and such subpoena may contain a clause requiring such person or officer to produce on such examination all books, papers and documents in his possession or under his control, relating to the affairs or interests of the county.

Subpoena, How Served

Sec. 22.—It shall be the duty of the sheriff, or any deputy sheriff of the county, or constable of any precinct, to whom the subpoena may be delivered, to serve the same by reading it to the person named therein, and at the same time delivering him a copy thereof, and his official return thereon of the time and place of such service, shall be prima facie evidence thereof.
Powers of Chairman of Committee

Sec. 23.--Whenever the county court shall have appointed any member or their body a committee upon any subject or matter of which the court has jurisdiction, and shall have conferred upon such committee power to send for persons and papers, the chairman of such committee shall possess all the powers and be liable to all the duties therein given to and imposed upon the probate judge.

Penalty for Neglect to Appear and Testify

Sec. 24.--Whenever any person duly subpoenaed to appear and give evidence, or to produce any books or papers, as herein provided, shall neglect or refuse to appear, or to produce such books and papers, according to the exigency of such subpoena, or shall refuse to testify before such court or committee, or to answer any questions which a majority thereof shall decide to be proper and pertinent, he shall be deemed in contempt, and it shall be the duty of the probate judge or of the committee, as the case may be, to report the fact to the judge of the district court of the judicial district in which such county is situated, who shall thereupon issue an attachment in the form usual in the court over which he is judge, directed to the sheriff of the county, or any constable where such witness was required to appear and testify, commanding said sheriff or constable to attach such person, and forthwith bring him before the judge by whose order such attachment was issued.

Same

Sec. 25.--On the return of the attachment and the production of the body of the defendant, the said judge shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in case of a witness subpoenaed to appear and give evidence on the trial of a civil case before a district court.

Not Entitled to Fees

Sec. 26.--The witnesses summoned to testify on behalf of the county in matters of public concern before the county court, are not entitled to have their fees prepaid; but the court must allow them reasonable compensation for the expense of their attendance.

Limitations on County Courts

Sec. 27.--The court must not, for any purpose, contract debts or liabilities, except in pursuance of law, nor shall such indebtedness or liability, in any manner or for any purpose, exceed in any fiscal year
the income and revenue of such county for the two fiscal years immediately preceding the incurring of such indebtedness.

Claims Must be Itemized

Sec. 28.---The county court must not hear or consider any claim in favor of any person, corporation, company or association, against the county, nor shall the court credit or allow any claim or bill against any county or district fund, unless the same be itemized, giving names, dates, the particular service rendered, character of process served, upon whom, distance traveled, where and when, character of work done, number of days engaged, materials furnished, to whom, and quantity and price paid therefor, duly verified as to its correctness, and that the amount claimed is justly due, is presented and filed with the clerk of the court, within a year after the last item or claim accrued. If in case of any claim which requires itemizing the court do not hear or consider the same because it is not itemized, they shall cause notice to be given to the claimant, or his attorney, of that fact, and give time to have the claim itemized and be verified.

Same

Sec. 29.---No account must be passed upon by the court unless made out as prescribed in the preceding section, and filed by the clerk.

Certain Claims Must be Rejected

Sec. 30.---When the court finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the court may allow the claim in part, and authorize the clerk to draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment, the claim may be again considered at any regular session of the court within six months thereafter.

Proceedings After Rejection of Claim

Sec. 31.---A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed, him on his account, may sue the county therefor, at any time within six months after the final action of the court, but not afterward, and if, in such action, judgment is recovered for more than the court allowed, on presentation of a certified copy of the judgment, the court must allow and pay the same, together with the costs adjudged; but if no more is recovered than the court allowed, the court must pay the claim, but no more than was originally allowed.
Warrant Must Specify Fund

Sec. 32.--Warrants drawn by order of the court on the county treasury must specify the liabilities for which they are drawn, and the funds from which they are to be paid. The treasurer must pay the warrants in the order of their presentation. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

No Member of the Court Must be Interested in Certain Claims

Sec. 33.--No member of the court must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the court or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

Notices, Where Posted

Sec. 34.--All public notices of proceeding of, or to be had before the court, not otherwise specially provided for, must be posted at the court house door, and two other public places in the county.

Shade Trees

Sec. 35.--The court, under such regulations as they may adopt, may encourage the planting and preservation of shade and ornamental trees on the public roads and highways, and on and about the public grounds and buildings of the county.

Claims by Members

Sec. 36.--All claims against the county presented by members of the county court for per diem and milage, or other service rendered by them, must be itemized and verified as other claims, and must state that the service has been actually rendered.

Statement by the Clerk

Sec. 37.--The court must have prepared by the clerk, and under their direction, prior to their annual meeting for levying taxes, a statement showing:
1. The indebtedness of the county, stating the amount of each class and the rate of interest borne by such indebtedness, or any part thereof;
2. The amount of cash in the county treasury and its several funds;
3. The amount of unpaid taxes, if any, for the previous year.
To Receive Donations of Property

Sec. 38.--The court may receive from any source, lands and other property which may be donated to the county for the purpose of aiding in the erection of county building, roads, bridges, or other specific purposes, and may use the same therefor, and may provide for the sale of the same, and the application of the proceeds thereof.

Amount of Bonds

Sec. 39.--Each selectman, before entering upon the discharge of the duties of his office, shall give a bond to the county for which he has been elected, in the sum of five thousand dollars, conditioned that he will honestly and faithfully perform the duties of his office; said bond to be with at least two good and sufficient sureties, to the acceptance and approval of the probate judge of said county, and filed in his office. All persons offered as sureties on such official bonds may be examined on oath touching their qualifications, and no person can be admitted as surety on any such bond unless he is a resident and freeholder or householder within the Territory, and is worth, in real or personal property, or both, situate in this Territory, the amount of his undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution and forced sale.

Court to Audit County Charges

Sec. 40.--Accounts for county charges of every description must be presented to the county court, to be audited as prescribed in this act.

Compensation of Members.

Sec. 41.--The probate judge and selectmen shall each receive from their county, four dollars per day for each day actually employed in attending to business pertaining to the county court, together with mileage at the rate of twenty cents per mile in going only from their residences to the county seat at each session of the court attended by them.

Sec. 42.--Nothing contained in this act is intended to diminish, impair, or in anywise affect the powers heretofore conferred upon incorporated cities and towns.

Sec. 43.--All acts or parts of acts in conflict with the provisions of this act are hereby repealed.¹

¹Utah, Laws •• (1888), pp. 154-172.
APPENDIX E

An Act Defining the Duties of County Officers
(March 8, 1888)

ARTICLE I.

PROBATE JUDGES.

Section 1. Be it enacted by the Governor and Legislative Assembly
of the Territory of Utah; That there shall be a probate judge in each
county of the Territory of Utah, whose term of office shall be two years,
and until his successor shall be qualified.

Sec. 2. Each probate judge, before entering upon the discharge of
the duties of his office, shall give a bond to the county for which he
has been elected or appointed, for the faithful performance of his
official duties, in the penal sum of five thousand dollars, which amount
may be increased by the county court of the county to any sum not ex-
ceeding twenty thousand dollars, with at least two good and sufficient
sureties, who are residents of the county, and worth the sum for which
they become liable, over and above all their debts and liabilities in
property not exempt from execution, which said bond shall be approved by,
and filed with the county treasurer; and shall take and subscribe an oath
to the effect that he will honestly and faithfully perform the duties of
the office on which he is about to enter, which oath shall be attached
to and filed with said bond.

Sec. 3. He shall reside at the county seat and preside at all
sessions of the probate court. He shall also preside at all sessions
of the county court at which he may be present, and shall perform such
other duties as may be required of him by law.

FEES OF PROBATE JUDGES.

Sec. 4. For each day's attendance in court hearing a case previously
set ......................................................... $3.00
For making each order or decree in probate, when the matter comes
on without notice ........................................... .50
For approving sureties on any bond or undertaking .................... .25
For examining and approving or rejecting a creditor's claim when
the examination of witnesses is unnecessary ........................ .25
For making any certificate ........................................ .50
For administering an oath ......................... 25
For certifying to same .............................. 25
For taking an acknowledgment or proff of an instrument and certifying thereto, for the first signature .......................... 50
For each additional signature .......................... 25
   For any other service not herein provided for, a reasonable compensation.

ARTICLE II.

CLERK OF THE COUNTY COURT.

Section 1. That at the general election next to be held and biennially thereafter, there shall be elected in each county in this Territory, by the qualified electors thereof, a clerk of the county court who shall be ex-officio clerk of the probate court of such county, and whose term of office shall be two years, and until his successor shall be elected or appointed and qualified.

Sec. 2. Within thirty days after his election or appointment, the clerk of the county court shall take the oath of office and give a bond to the county for which he has been elected or appointed, in such sum and with such sureties as the county court of such county shall determine and approve, conditioned for the faithful performance of the duties of said office; which oath of office and bond shall be filed in the office of the probate judge of the said county.

Sec. 3. He shall keep his office at the county seat, shall act as clerk of the probate and county courts, and take charge of, and safely keep or dispose of, according to law, the seals of said county, and all books, papers and records which may be filed or deposited in his office.

Sec. 4. He shall have power to take acknowledgments to all instruments in writing, administer oaths, issue all process and notices required to be issued; enter a synopsis of all order, judgments, and decrees, proper to be entered, unless the law or the court shall direct them to be entered at length.

Sec. 5. He shall:
1. Record all proceedings of the county court.
2. Make full entries of all their resolutions and decisions on questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.

Sec. 6. He shall keep an accurate account of all receipts and expenditures of his county; also, of all debts payable to and by said county. At the first session of the county court held in each year, the clerk of the county court shall submit to the said court a statement
showing the total amount received from each source of revenue during the fiscal year ending on the thirty-first day of December last preceding, the balance, if any, in the treasury, at the close of the previous fiscal year; expenditures during the fiscal year just closed; specifying separately the total amount paid to each officer and the total amount for each and every disbursement, the balance on hand, if any, together with a statement of all the debts payable to and by said county; Provided, that the several clerks of the county courts shall make and furnish to the county courts of the several counties, financial statements up to and including May 31, 1888, and thereafter shall prepare and furnish a similar statement showing the receipts and disbursements of their several counties from June 1, 1888, to December 31, 1888, after which time the fiscal year shall begin January 1, and end December 31st of each year. He shall, within thirty days after the auditing of any such statement by the said court, transmit a certified copy thereof to the auditor of public accounts, to be filed by him, and furnished to the legislative assembly during the next succeeding session.

He shall also file and preserve the reports of the county treasurer of the receipts and disbursements of the county.

He shall preserve and file all accounts acted upon by the county court, authenticated with his signature and seal of the county court the proceedings of the court, whenever the same shall be ordered published, record all orders levying taxes, and perform all the duties required by law, or any rule or order of the court.

Sec. 7. Each clerk of the county court may appoint one or more deputies, for whose official acts he shall be responsible, and who, before entering upon the duties of the office, shall take the oath of office.

Sec. 8. The compensation of the clerk of the county court for services rendered the county shall be by salary, such as may be prescribed or allowed by the county court of their respective counties.

FEES OF CLERKS OF THE COUNTY COURTS AND EX-OFFICIO CLERKS OF THE PROBATE COURTS.

For filing petition in the commencement of an action ...... $1.00
For filing each paper and entering the same on register of action .......................................................... .25
For recording all papers required by law to be recorded, for each hundred words .................................................. .20
For copy of any proceeding, record or paper, for each hundred words .......................................................... .20
For each certificate under seal ................................................. .50
For administering an oath .................................................. .25
For certifying to the same .................................................. .25
For issuing each notice .................................................. .25
For posting notices .................................................. .25
For issuing citations, for the first person ......................... .50
For each other person named therein .................................. .10
For issuing a subpoena for the first person ......................... .50
For each other person named therein ........................................ .10
For taking testimony of witnesses in writing, when requested,   
   for each hundred words ................................................... .20
For issuing letters testamentary, letters of administration,   
   or letters of guardianship ........................................... $1.00
For entering each claim in the register of claims ................ .25
For issuing an execution ................................................... 1.00
For taking an acknowledgment or proof of an instrument and    
   certifying thereto, for the first signature ....................... .50
For any other service not herein provided for, a reasonable    
   compensation.

ARTICLE III.

COUNTY TREASURERS.

Section 1. That at the general election next to be held, and bi-
ennially thereafter, there shall be elected in each county of this Terri-
tory, by the qualified electors thereof, a county treasurer, who shall  
hold his office for the term of two years, and until his successor in    
office shall be elected or appointed and qualified.

Sec. 2. Within thirty days after his election or appointment, the    
treasurer shall take the oath of office and give a bond to the county  
for which he has been elected or appointed, in such sum not less than the  
whole amount of the revenue of the county for the year next preceding  
his election, and with such surities as the county court of such county  
shall determine and approve, conditions for the faithful performance of 
the duties of said office; which oath of office and bond shall be filed 
in the office of the clerk of the probate court of the said county.

Sec. 3. The county treasurer must receive and safely keep all funds  
belonging to the county and pay out the same only on warrants issued by  
the clerk of the county court of the county; he must keep an accurate  
account of all money and other funds received or disbursed by him; he  
must issue duplicate receipts, keeping a memorandum stub for all money or  
other funds received by him, and deliver to the person paying the same  
the duplicate and present to the clerk of the county court the original  
receipt. He must pay all county warrants presented for payment in the  
order of presentation, if he has sufficient funds for that purpose, and  
must keep a cancelling stamp and imprint the same on every warrant paid  
by him. At the close of each fiscal year he must make and present to  
the county court a statement, showing the balance in the treasury at the  
close of the previous fiscal year, the amount received from each source  
of revenue, the amount disbursed, and the balance, if any, in the  
treasury; he must present with each annual statement, as vouchers for  
disbursement, all warrants paid by him during the fiscal year. If required  
by the court, he must make a statement at any time, showing the condition  
of the treasury. And his office shall be kept at the county seat.
Sec. 4. The treasurer shall receive a salary for his services the amount of which shall be determined by the county court, and paid out of the county treasury, upon warrants drawn therefor by the clerk of the county court.

ARTICLE IV.

SHERIFFS.

Section 1. That at the next general election, and every two years thereafter, a sheriff shall be elected in each county, whose term of office shall be two years, and until his successor is qualified.

Sec. 2. Before entering upon the duties of his office, the sheriff shall give bonds in at least five thousand dollars, with approved security, and take and subscribe an oath for the faithful performance of his duties; said bond and oath to be approved by the probate judge, and filed in the office of the clerk of the probate court.

Sec. 3. The sheriff may appoint a deputy or deputies, for whose acts he shall be responsible, and who shall qualify in the same manner as the sheriff, except that the bonds may be in the sum of two thousand dollars each.

Sec. 4. When the sheriff's costs are tendered or satisfaction given that the costs of service will be reasonably paid, it is the duty of sheriffs to faithfully and diligently execute all orders, processes and requirements of a court, under a penalty of whatsoever costs, damages and fine may be adjudged.

Sec. 5. The sheriff of the county wherein a jail is or may hereafter be erected, shall by virtue of his office, become the jailor, and shall furnish all necessary supplies for persons therein kept.

Sec. 6. The said jailor shall receive and safely keep all persons duly committed to his custody, and shall record all precepts, by which persons are committed, and keep a register of each--the name, age, place of birth, particularly describing the person, in a book kept for that purpose.

Sec. 7. Male and female prisoners shall not be kept in the same room, and females shall be under the supervision of a suitable matron, who shall be appointed by the sheriff.

Sec. 8. The common jails in the several counties of the Territory shall be kept by the sheriffs of the counties in which they are respectively situated, and shall be used as follows;

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.
2. For the detention of persons charged with crime and committed for trial.
3. For the confinement of persons committed for contempt or upon civil process, or by other authority of law.
4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime.

Sec. 9. Persons committed on criminal process, and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

Sec. 10. A sheriff or jailor upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

Sec. 11. The sheriff, when necessary, may, with the assent in writing of the probate judge, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a Territorial or county charge, as the case may be.

Sec. 14. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall be allowed a reasonable compensation, to be determined by the county court, and, except as provided in the next section, to be paid out of the county treasury.

Sec. 15. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this Territory are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

Sec. 16. It is hereby made the duty of the sheriffs to serve any and all process, both meanes and final, issued out of any of the courts of this Territory when directed to him or placed in his hands for service.

ARTICLE V.

COUNTY SURVEYORS

Section 1. That at the general election next to be held, and biennially hereafter, there shall be elected in each county of the
Territory, by the qualified electors thereof, a county surveyor, who
shall hold his office for the term of two years, and until his successor
in office shall be elected or appointed and qualified.

Sec. 2. Within thirty days after his election or appointment the
surveyor shall take the oath of office and give a bond to the county for
which he has been elected or appointed, in such sum and with such sure-
ties as the probate judge of such county shall determine and approve,
conditioned for the faithful performance of the duties of said office;
which oath of office and bond shall be filed in the office of the clerk
of the probate court of the said county.

Sec. 3. The surveyor must make any survey that may be required by
an order of court, the county court, or upon application of any person,
keep a correct and fair record of all surveys made by him, number them
in the order made, and preserve a copy of the field notes and calcula-
tions of each survey; endorse thereon its proper number, a copy of which
and a fair and accurate plat, together with the certificate of survey,
must, upon application, be furnished by him to any person upon payment
of the fees allowed by law. He shall also have power to administer and
certify oaths whenever necessary in the discharge of his official duties.

Sec. 4. The records necessary for the surveyor's office shall be
furnished by the county court, and shall be the property of the county;
they shall be open to the inspection of any person having an interest
therein, free of charge, and shall be delivered by the surveyor to his
successor in office.

Sec. 5. Any person owning or claiming lands which are divided by
county lines, and wishing to have the same surveyed, may apply to the
surveyor of any county in which any part of said land is situated, and
on such application being made, the surveyor must make the survey, which
is as valid as though the lands were situated entirely within the county
of the surveyor making the survey.

Sec. 6. When land, the title to which is in dispute before any
court, is divided by the county line, the court making an order of survey
may direct the order to the surveyor of any county in which any part of
the land is situated.

Sec. 7. In all surveys the courses must be expressed according to
the true meridian, and the variation of the magnet meridian from the
true meridian must be expressed on the plat, with the date of the survey.

Sec. 8. If a party for whom a survey is made does not furnish the
chainmen and markers, the surveyor may employ the necessary chainmen
and markers, and receive the reasonable hire of all assistants neces-
sarily employed.

Sec. 9. When the county surveyor is interested in any land the title
to which is in dispute, and a survey thereto is necessary, the court must
direct the survey to be made by some disinterested person, and the person
so appointed is for that purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar service.

Sec. 10. It shall be the duty of each surveyor to make a sufficient corner, of stone or wood, at the southeast corner of each survey made by him, and make a record of such corner in his return diagrams.

Sec. 11. He shall perform such other services as may be required of him by law.

Sec. 12. Each county surveyor may appoint one or more deputies, who, before entering upon the duties of the office, shall take the oath of office and give bonds and security in like sum and manner as their principals, and all surveys made by any such deputy, when certified to by the county surveyor, or by such deputy in the name of the surveyor and the deputy as such, shall be valid, the same as if made by the county surveyor himself in person.

ARTICLE VI.

COUNTY PROSECUTING ATTORNEYS.

Section 1. That at the general election next to be held, and biennially thereafter, there shall be elected in each county in this Territory, by the qualified electors thereof, a county prosecuting attorney, who shall hold his office for two years, and until his successor is elected and qualified.

Sec. 2. Before entering upon the duties of his office, said prosecuting attorney shall take and subscribe an oath, and give bonds with sufficient sureties to the county for the faithful performance of his duties, which bonds shall be approved by the probate judge and, with the oath, be filed in the office of the clerk of the probate court.

Sec. 3. It shall be the duty of said prosecuting attorneys to commence and take charge of prosecutions, for offenses arising under the laws of the Territory in the counties for which they are respectively elected, and if such prosecution is carried to the district court by recognizance, appeal or otherwise, may aid in conducting the prosecution in such court.

Sec. 4. When requested, it shall be the duty of the prosecuting attorneys in their respective counties to advise the county court and all other county and precinct officers of their county, and shall represent said county in all suits and controversies where it shall be interested.

Sec. 5. The compensation of said attorneys shall be by salary such as may be prescribed or allowed by the county court of their respective
Sec. 6. Each prosecuting attorney may appoint a deputy or deputies, for whose official acts he shall be responsible, to aid him in performing the duties of his office.

Sec. 7. All acts and parts of acts in conflict with this act are hereby repealed.¹

APPENDIX F

SELECTIONS FROM THE "POLAND LAW" (June 23, 1874)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the United States marshal of the Territory of Utah, in person or by deputy, to attend all sessions of the supreme and district courts in said Territory, and to serve and execute all process and writs issued out of, and all orders, judgements, and decrees made by, said courts, or by any judge thereof, unless said court or judge shall otherwise order in any particular case. . . .

Sec. 3. That there shall be held in each year two terms of the supreme court of said Territory, and four terms of each district court, at such times as the governor of the Territory may be proclamation fix. The district courts shall have exclusive original jurisdiction in all suits or proceedings in chancery, and in all actions at law in which the sum or value of the thing in controversy shall be three hundred dollars or upward, and in all controversies where the title, possession, or boundaries of land, or mines or mining claims shall be in dispute, whatever their value, except in actions for forcible entry, or forcible and unlawful detainer; and they shall have jurisdiction in suits for divorce. Probate courts, in their respective counties shall have jurisdiction in the settlement of the estates of decedents, and in matters of guardianship and other like matters; but otherwise they shall have no civil, chancery, or criminal jurisdiction whatever; they shall have jurisdiction of suits of divorce for statutory causes concurrently with the district courts; but any defendant in a suit for divorce commenced in a probate court shall be entitled after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction when said suit shall proceed in like manner as if originally commenced in said district court. Nothing in this act shall be construed to impair the authority of the probate courts to enter land in trust for the use and benefit of the occupants of towns in the various counties of the Territory of Utah, according to the provisions of "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred and sixty-seven and "An act to amend an act entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands'" approved June eighth, eighteen hundred and sixty-eight; or to discharge the duties assigned to the probate judges by an act of the legislative assembly of the Territory of Utah entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands.'" All judgements and decrees heretofore rendered by the probate courts which have been executed, and the time to appeal from which has by
the existing laws of the Territory expired, are hereby validated and confirmed. The jurisdiction heretofore conferred upon justices of the peace by the organic act of said Territory is extended to all cases where the debt or sum claimed shall be less than three hundred dollars. From all final judgments of justices of the peace an appeal shall be allowed to the district courts of their respective districts, in the same manner as is now provided by the laws of said Territory for appeals to the probate courts; and from the judgments of the probate courts an appeal shall lie to the district court of the district embracing the county in which such probate court is held in such cases and in such manner as the supreme court of said Territory may, by general rules framed for that purpose, specify and designate, and such appeal shall vacate the judgment appealed from, and the case shall be tried de novo in the appellate court. Appeals may be taken from both justices' and probate courts to the district court of their respective districts in cases where judgments have been heretofore rendered and remain unexecuted; but this provision shall not enlarge the time for taking an appeal beyond the periods now allowed by the existing laws of said Territory of taking appeals. A writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him, and, upon such request made, the judge so requested may hold the whole or part of any term, or any branc thereof, and his acts as judge shall be of equal force as if he were duly assigned to hold the courts in such district.

Sec. 5. That there shall be appointed by the governors of said Territory one or more notaries public for each organized county, whose term of office shall be two years, and until their successors shall be appointed and qualified. The act of the legislative assembly of the Territory of Utah entitled "An act concerning notaries public" approved January seventeenth, eighteen hundred and sixty-six, is hereby approved, except the first section, which is hereby disapproved. Provided, that wherever, in said act, the words "probate judge" or "clerk of the probate court" are used, the words "secretary of the Territory" shall be substituted.
APPENDIX G

SELECTIONS FROM THE "EDMUNDS LAW" (March 22, 1882)

Be it enacted by the Senate and House of Representatives of the United States of America Assembled...

Sec. 7. That the issue of bigamous or polygamous marriages, known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the first day of January, anno Domini eighteen hundred and eighty-three, are hereby legitimised.

Sec. 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

Sec. 9. That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same, and the issuing of certificates or other evidence of election in said Territory, shall, until other provision be made by the legislative assembly of said Territory as is hereinafter by this section provided, be performed under the existing laws of the United States and of said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons, to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party; and a majority of whom shall be a quorum. The members of said board so appointed by the President shall each receive a salary at the rate of three thousand dollars per annum, and shall continue in office until the legislative assembly of said Territory shall make provision for filling said offices as herein authorized. The Secretary of the Territory shall be the secretary of said board, and keep a journal of its proceedings, and attest the action of said board under this section. The canvass and return of all the votes at elections in said Territory for members of the legislative assembly thereof shall also be returned to said board,
which shall canvass all such returns and issue certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificates shall be the only evidence of the right of such persons to sit in such assembly; Provided, That said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of the opinion such person may entertain on the subject of bigamy or polygamy nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy or polygamy; but each house of such assembly, after its organization, shall have power to decide upon the elections and qualifications of its members. And at, or after the first meeting of said legislative assembly whose members shall have been elected and returned according to the provisions of the act, said legislative assembly may make such laws, conformable to the organic act of said Territory and not inconsistent with other laws of the United States, as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.¹

¹U.S., Statutes at Large, XXII, pp. 30-32.
APPENDIX H

SELECTIONS FROM THE "EDMUNDS-TUCKER LAW" (March 3, 1887)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . .

Sec. 7. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

Sec. 12. That laws enacted by the legislative assembly of the Territory of Utah conferring jurisdiction upon the probate courts, or the judges thereof, or any of them, in said Territory, other than in respect of the estates of deceased persons, and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid, except as a member of a county court; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory respectively.

Sec. 19. That hereafter the judge of probate in each county within the Territory of Utah provided for by the existing laws thereof shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and so much of the laws of said Territory as provide for the election of such judge by the legislative assembly are hereby disapproved and annulled.

Sec. 24. That every male person twenty-one years of age resident in the Territory of Utah shall, as a condition precedent to his right to register or vote at any election in said Territory, take and subscribe an oath or affirmation, before the registration officer of his voting precinct, that he is over twenty-one years of age, and has resided in the
Territory of Utah for six months then last passed and in the precinct for one month immediately preceding the date thereof, and that he is a native-born (or naturalized, as the case may be) citizen of the United States, and further state in such oath or affirmation his full name, with his age, place of business, his status, whether single or married, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially will obey the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes. . . . No person shall be entitled to vote in any election in said Territory, or be capable of jury service, or hold any office of trust or emolument in said Territory who shall not have taken the oath or affirmation aforesaid. No person who shall have been convicted of any crime under this act, or under the act of Congress aforesaid approved March twenty-second, eighteen hundred and eighty-two, or who shall be a polygamist, or who shall associate or cohabit polygamously with persons of the other sex, shall be entitled to vote in any election in said Territory, or be capable of jury service, or to hold office of trust or emolument in said Territory.¹

¹U.S., Statutes at Large, XXIV, pp. 635-641.
APPENDIX I

PRESIDENTIAL APPOINTMENT OF A PROBATE JUDGE

Benjamin Harrison

President of the United States of America

To all who shall see these Presents: Greeting
Know ye that reposing special trust and confidence in the
Wisdom, Uprightness and Learning of Hector W. Haight, of Utah
Territory, I have nominated, and, by and with the advice and
consent of the Senate, do appoint him Judge of Probate in
Davis County in the Territory of Utah—and do authorize
and empower him to execute and fulfill the duties of that
Office according to the Constitution and Laws of the said
United States and to Have and to Hold the said Office with all
the powers, privileges and enrollments to the same of right
appertaining unto him the said Hector W. Haight for the term
of two years from the day of the date subject to the condi-
tions and provisions presented by Law.

Signed—with the Seal of the Department of Justice,
September 26, 1890

By the President (signed) Benj. Harrison

By the Attorney General (signed) William H.H. Miller¹

¹Document in possession of Mrs. Nellie Haight, Kaysville, Utah.

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APPENDIX J

Rules of the County Court of Iron County, Utah Territory,
December 2, 1889

Rule 1. Any member of the Court desiring to speak upon any subject will rise in his place and address the chair who will recognize him by naming him or otherwise.

Rule 2. When a member has been recognized and indicated, he is to be heard through without interruption.

Rule 3. All private and promiscuous conversation between members and others during the meetings will be considered out of order and prohibited.

Rule 4. In all cases on points of order an appeal will be allowed from the decision of the chair.

Rule 5. Whenever any subject matter shall be presented to the court which may need further consideration before final action thereon the same may be referred to a reference committee to be appointed by the court.

Order of Business

1st. Call to order
2nd. Reading the minutes
3rd. Report of County officers. The Treasurer, road supervisor, Precinct Justices and others
4th. Petitions and applications
5th. Miscellaneous and new business
6th. Claims and appropriations

Rule 6. All members or other persons having petitions or other documents to present to the court will file them with the clerk to come up in their order.1

1Iron County, County Court Minutes, Book C, p. 359.
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