

Organic Act

An Act to Provide a Temporary Government for the Territory of Wyoming

(Approved July 25, 1868, 15 Statutes at Large 178, Ch. 235.)

Section

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§ 1. Organization of territory; boundaries.

All that part of the United States described as follows: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude; thence north to the place of beginning, be, and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming; provided, that nothing in this act shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians; provided, further, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

Cross references. — As to boundaries of state, see art. 11, § 1, Wyo. Const. As to United States military reservations, see § 19-4-101 (see now § 19-7-301). As to United States lands, see §§ 36-10-101 to 36-10-203.

Editor's notes. — For parallel section, see 48 U.S.C. § 1451.

Indians. — The proviso clause relating to the

rights of Indians operates as a limitation upon the jurisdiction of the territory. *Fremont County v. Moore*, 3 Wyo. 200, 19 P. 438, 1888 Wyo. LEXIS 7 (Wyo. 1888).

Cited in *In re Race Horse*, 70 F. 598, 1895 U.S. App. LEXIS 2966 (D. Wyo. 1895); *Torrey v. Baldwin*, 3 Wyo. 430, 26 P. 908, 1891 Wyo. LEXIS 2 (1891).

§ 2. Governor; terms of office; powers and duties.

The executive power and authority in and over said Territory of Wyoming shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, with the advice and consent of the senate. The governor shall reside within said territory, shall be commander-in-chief of the

militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect, unless the same shall pass by a two-thirds vote, as provided in section six of this act; he may grant pardons for offenses against the laws of the said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to the office under the laws of said territory, and shall take care that the laws be faithfully executed.

§ 3. Secretary; term of office; powers and duties.

There shall be a secretary of said territory, who shall reside therein and hold office for four years, unless sooner removed by the president of the United States, with the consent of the senate; he shall record and preserve all the laws and the proceedings of the legislative assembly hereinafter constituted and all acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first day of December in each year to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress; and in case of the death, removal, resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

§ 4. Legislative assembly; apportionment; election; meetings.

The legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualification of voters, as hereinafter prescribed, whose terms of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-seven, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made by the governor as nearly equal as practicable among several counties or districts for the election of the council and house of representatives, given to each section of the territory representation in the ratio of their population, (excepting Indians not taxed), as nearly as may be, and the members of the council and the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties or districts of the territory to be taken, and the first election shall be held at such times and places, and be conducted in such manner, as the governor shall appoint and direct, and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts for members of the council shall be declared by the governor duly elected to the council; and the person or persons authorized to be elected, having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives; provided, that in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie vote. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding in conducting elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; provided, that no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

§ 5. Qualifications of voters and office holders.

Every male citizen of the United States above the age of twenty-one years and (including) persons who shall have declared their intention to become citizens of the United States, who shall have been

a resident of the said territory at the time of the passage of this act, shall be entitled to vote at the first and all subsequent elections in the territory, and shall be eligible to hold any office in said territory; the legislative assembly shall not at any time abridge the right to suffrage, or to hold office, on account of the race, color, or previous condition of servitude of any resident of the territory; provided, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath before a competent court of record their intention to become such, and shall have taken an oath to support the constitution and government of the United States.

§ 6. Extent and limitation of legislative power; taxation; veto power of governor.

The legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the rights of private property, nor shall any unequal discrimination be made in taxing different kind of property, but all property subject to taxation shall be taxed in proportion to its value. Every bill which shall have passed the council and the house of representatives of said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it was originated, who shall enter the objections at large upon the their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house it shall become a law. But in all such cases the vote of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

No tax upon property of United States. — yet remains in the United States. *Ivinson v. Hance*, 1 Taxes cannot be levied upon lands to which the title Wyo. 270, 1875 Wyo. LEXIS 35 (Wyo. 1875).

§ 7. Elective and appointive officers.

All township, district and county officers not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate, and by and with the consent of the council, appoint all officers not herein otherwise provided for and in the first instance the governor alone may appoint all such officers, who shall hold their office until the end of the first session of the legislative assembly; and he shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

§ 8. Restrictions on office holding by members of legislative assembly.

No member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

§ 9. Courts; jurisdiction; judicial districts; clerks; appeals.

The judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of

government of said territory annually, and they shall hold their offices for four years, unless sooner removed by the president, with the consent of the senate of the United States. The said territory, shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justice of the supreme court, at such time and place as may be prescribed by law; and said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law; provided, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction and authority for redress of all wrongs committed against the constitution or laws of the United States or of the territory affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerks, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said supreme court shall be allowed and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be apportioned to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Dakota Territory now receive for similar services.

Place of holding court. — The fact that neither congress nor the territorial legislature designated any place in either of the districts where the courts should sit while exercising the jurisdiction of a United States court did not render the exercise of such jurisdiction void, but the courts having themselves designated the

places for holding such sessions, and congress, by appropriating money to pay the expenses of such sessions, having impliedly ratified their acts, the legality of such exercise of United States jurisdiction would be presumed. *Ex parte Kougres*, 3 Wyo. 204, 19 P. 441, 1888 Wyo. LEXIS 10 (Wyo. 1888).

§ 10. Attorney for territory; marshal.

There shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, with the consent of the senate, who shall receive the same fees and salary as is now received by the attorney of the United States for the Territory of Dacotah [Dakota]. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, with the consent of the senate, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Dakota, and shall, in addition, be paid two hundred dollars annually, as compensation for extra services.

§ 11. Appointment, oath of office and salaries of governor and other officers; appropriations for expenses.

The governor, secretary, chief justice and associate justices, attorney, and marshal shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as

such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths when so taken shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings, and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same, to the secretary, to be recorded by him, as aforesaid, and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand dollars as governor and one thousand dollars as superintendent of Indian affairs; the chief justice and the associate justices shall each receive an annual salary of twenty-five hundred dollars, and the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be payable quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said sessions, estimating the distance by the nearest traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

§ 12. First session of legislative assembly; seat of government.

The legislative assembly of the Territory of Wyoming shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

§ 13. Delegate to house of representatives.

A delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States in the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the time, place, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes of the qualified electors as hereinbefore provided, shall be declared by the governor elected, and a certificate thereof shall be accordingly given.

§ 14. Reservation of school lands.

Sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same.

No vested right in schools sections prior to survey. — The legislative history of this section will not support the contention that the state obtained a vested right in schools sections under § 4 of the Act of Admission prior to survey of the sections. *United States v. Wyoming*, 331 U.S. 440, 67 S. Ct. 1319, 91 L.

Ed. 1590, 1947 U.S. LEXIS 2879 (U.S.), reh'g denied, 332 U.S. 787, 68 S. Ct. 37, 92 L. Ed. 370, 1947 U.S. LEXIS 2019 (U.S. 1947).

§ 15. Judicial districts; assignment of judges; times and places of holding courts.

Temporarily and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory and assign the judges who may be appointed for the said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts and assign the judges and alter the times and places of holding the courts as to them shall seem proper and convenient.

§ 16. Federal constitution and laws extended to Wyoming.

The constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Wyoming as elsewhere within the United States.

Cited in *Ware v. Wanless*, 2 Wyo. 144, 1879 Wyo. LEXIS 20 (1879).

§ 17. Effective date.

This act shall take effect from and after the time when the executive and judicial officers herein provided for shall have been duly appointed and qualified; provided, that all general territorial laws of the Territory of Dakota in force in any portion of said Territory of Wyoming at the time this act shall take effect shall be and continue in force throughout the said territory until repealed by the legislative authority of said territory, except such laws as relate to the possession or occupation of mines or mining claims.

Editor's notes. — The executive and judicial officers of the territory were appointed on April 7, 1869, and the last of said officers qualified on May 19 following, on which day the organization of the territory was complete.