

ACT OF CONGRESS (1864) ENABLING THE PEOPLE OF NEVADA TO FORM A CONSTITUTION AND STATE GOVERNMENT

[See 13 United States Statutes at Large (1864), pp. 30-32. Section headlines have been supplied by the Legislative Counsel of the State of Nevada.]

CHAP. XXXVI.—*An Act to enable the People of Nevada to form a Constitution and State Government, and for the Admission of such State into the Union on an equal Footing with the original States.*

Section 1. **Authorization for formation of state.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of that portion of the territory of Nevada included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said territory, a state government, with the name aforesaid, which said state, when formed, shall be admitted into the Union upon an equal footing with the original states, in all respects whatsoever.

Nevada Constitutional Debates and Proceedings, pp. 1, 33.

Sec. 2. **Boundaries of state.** *And be it further enacted,* That the said state of Nevada shall consist of all the territory included within the following boundaries, to wit: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the state of California; thence in a northwesterly direction along the said eastern boundary line of the state of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the state of California to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning.

Nevada Constitutional Debates and Proceedings, pp. 33, 525.

Sec. 3. **Constitutional convention: Qualified electors.** *And be it further enacted,* That all persons qualified by law to vote for representatives to the general assembly of said territory, at the date of the passage of this act shall be qualified to be elected, and they are authorized to vote for and choose representatives to form a convention, under such rules and regulations as the governor of said territory may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as the said convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still within said territory, they shall be permitted to vote at their place of rendezvous; and [if] any are absent from said territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the population as near as may be; and said apportionment shall be made for said territory by the governor, United States district-attorney, and chief justice thereof, or any two of them; and the governor of said territory shall, by proclamation on or before the first Monday of May next, order an election of the representatives as aforesaid to be held on the first Monday in June thereafter throughout the territory, and

such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein for members of the house of representatives, and the number of members to said convention shall be the same as now constitute both branches of the legislature of the aforesaid territory.

Nevada Constitutional Debates and Proceedings, pp. 124, 125, 131, 252, 787

Sec. 4. Authorization to form constitution and state government; limitations. *And be it further enacted,* That the members of the convention, thus elected, shall meet at the capital of said territory on the first Monday in July next, and, after organization, shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States. Whereupon the said convention shall be, and it is hereby, authorized to form a constitution and state government for said territory: *Provided,* That the constitution, when formed, shall be republican, and not repugnant to the constitution of the United States, and the principles of the Declaration of Independence: And provided further, That said convention shall provide, by an ordinance irrevocable, without the consent of the United States and the people of said state:—

First. That there shall be neither slavery nor involuntary servitude in the said state, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship.

Third. That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

Nevada Constitutional Debates and Proceedings, p. 66.

Sec. 5. Constitution to be submitted to popular vote. *And be it further enacted,* That in case a constitution and state government shall be formed for the people of said territory of Nevada, in compliance with the provisions of this act, that said convention forming the same shall provide by ordinance for submitting said constitution to the people of said state for their ratification or rejection at an election to be held on the first Wednesday of September, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the lawful voters of said new state shall vote directly for or against the proposed constitution, and the returns of said election shall be made to the acting governor of the territory, who, with the United States district-attorney and chief justice of said territory, or any two of them, shall canvass the same, and if a majority of legal votes shall be cast for said constitution in said proposed state, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the state admitted into the Union on an equal footing with the original states, without any further action whatever on the part of congress.

[Amended in 1864. See 13 United States Statutes at Large (1864), p. 85. (Chap. XCIV.—*An Act to amend an Act entitled “An Act to enable the People of Nevada to form a Constitution and State Government, and for the Admission of such State into the Union on an equal Footing with the original States.”*)]

Nevada Constitutional Debates and Proceedings, pp. 124, 131, 133, 135.

Sec. 6. Representation in House of Representatives of the United States. *And be it further enacted,* That until the next general census shall be taken said state of Nevada shall be entitled to one representative in the house of representatives of the United States, which representative, together with the governor and state and other officers provided for in said constitution, may be elected on the same day a vote is taken for or against the proposed constitution and state government.

Nevada Constitutional Debates and Proceedings, p. 34.

Sec. 7. **Grant of public lands for support of common schools.** *And be it further enacted,* That sections numbers sixteen and thirty-six, in every township, and where such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools.

Affirmed, *Heydenfeldt v. Daney Gold & Silver Mining Co.*, 93 U.S. 634 (1877)

Grant of 16th and 36th sections to state in section 7 of act enabling people to form state was grant in praesenti, in nature of float, taking effect upon specific tracts of land as soon as tracts were surveyed, but not before. Any such sections pre-empted prior to survey did not pass to state, but other equivalent lands were granted in lieu thereof. *Layton v. Farrell*, 11 Nev. 451 (1876), distinguished, *Shoemaker v. Hatch*, 13 Nev. 261, at 267 (1878)

Sec. 8. **Grant of lands to state for erecting public buildings.** *And be it further enacted,* That provided the state of Nevada shall be admitted into the Union, in accordance with the foregoing provisions of this act, *that* twenty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, on or before the first day of January, anno Domini eighteen hundred and sixty-eight, shall be, and they are hereby, granted, in legal subdivisions of not less than one hundred and sixty acres, to said state, for the purpose of erecting public buildings at the capital of said state, for legislative and judicial purposes, in such manner as the legislature shall prescribe.

Nevada Constitutional Debates and Proceedings, p. 34.

Sec. 9. **Grant of lands to state for erecting state prison.** *And be it further enacted,* That twenty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions, as aforesaid, shall be, and they are hereby, granted to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid.

Sec. 10. **Five percent of subsequent sales of public lands by United States to be paid to state for public roads and irrigation.** *And be it further enacted,* That five percentum of the proceeds of the sales of all public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the state, as the legislature shall direct.

Sec. 11. **Applicability of laws of United States after admission; state to constitute one federal judicial district.** *And be it further enacted,* That from and after the admission of the said state of Nevada into the Union, in pursuance of this act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said state as elsewhere within the United States, and said state shall constitute one judicial district, and be called the district of Nevada.

Nevada Constitutional Debates and Proceedings, p. 34.

Approved, March 21, 1864.
