

ACT OF CONGRESS (1861) ORGANIZING THE TERRITORY OF NEVADA

[See 12 United States Statutes at Large (1863), pp. 209-214. Section leadlines have been supplied by the Legislative Counsel of the State of Nevada.]

CHAP. LXXXIII.—*An Act to organize the Territory of Nevada.*

Sec. 1. **Boundaries of territory; Indian rights; division into two or more territories.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that part of the territory of the United States, included within the following limits, to wit:—beginning at the point of intersection of the forty-second degree of north latitude with the thirty-ninth degree of longitude west from Washington; thence, running south on the line of said thirty-ninth degree of west longitude, until it intersects the northern boundary line of the Territory of New Mexico; thence due west to the dividing ridge separating the waters of Carson Valley from those that flow into the Pacific; thence on said dividing ridge northwardly to the forty-first degree of north latitude; thence due north to the southern boundary line of the State of Oregon; thence due east to the place of beginning, be, and the same is hereby, erected into a temporary government by the name of the Territory of Nevada: *Provided,* That so much of the Territory within the present limits of the State of California shall not be included within this Territory until the State of California shall assent to the same by an act irrevocable without the consent of the United States: *Provided, further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Nevada, until said tribe shall signify their assent to the President of the United States to be included within the said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the Government to make if this act had never passed: *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 times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State.

Sec. 2. **Governor: Term, powers and duties.** *And be it further enacted,* That the executive power and authority in and over said Territory of Nevada 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. 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; he may grant pardons for offences against the laws of said Territory, and reprieves for offences 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 office under the laws of said Territory, and shall take care that the laws be faithfully executed.

On petition for writ of mandamus to enforce distribution of taxes for common schools in Ormsby County as required by certain acts of territorial legislature, provision of section 4 of act organizing territory, which vested legislative power in governor and legislative assembly, limited power to approve laws as conferred

on governor by section 2, and act signed by governor after adjournment of legislative assembly was void. Trustees of School Dist. No. 1 v. County Comm'rs, 1 Nev. 334 (1865)

Sec. 3. **Territorial secretary: Term, powers and duties.** *And be it further enacted,* That there shall be a secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the 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, or 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 necessary absence, or until another governor shall be duly appointed to fill such vacancy.

Sec. 4. **Legislative assembly: Council and house of representatives.** *And be it further enacted,* That the legislative power and authority of said Territory shall be vested in the governor and a 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 qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of thirteen members, which may be increased to twenty-six, 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, as nearly equal as practicable, among the several counties or districts for the election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population (Indians excepted), as nearly as may be; and the members of the Council and of 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 and districts of the Territory to be taken; and 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 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 to be 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. 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 and conducting all elections by the people, and the apportioning the representations, 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.

On petition for writ of mandamus to enforce distribution of taxes for common schools in Ormsby County as required by certain acts of territorial legislature, provision of section 4 of act organizing territory, which vested legislative power in governor and legislative assembly, limited power to approve laws as conferred on governor by section 2, and act signed by governor after adjournment of legislative assembly was void. Trustees of School Dist. No. 1 v. County Comm'rs, 1 Nev. 334 (1865)

Sec. 5. **Qualifications of voters and officers.** *And be it further enacted,* That every free white male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office at all

subsequent elections shall be such as shall be prescribed by the Legislative Assembly: *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 their intention to become such, and shall have taken an oath to support the Constitution of the United States.

Sec. 6. **Legislative power.** *And be it further enacted*, That 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 non-residents 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 discrimination be made in taxing different kinds of property; but all property subject to taxation shall be in proportion to the value of the property taxed.

Territorial legislature may tax any species of property, whether real, personal or mixed, corporeal or incorporeal, so far as they are not restrained by the organic act. *Hale & Norcross Gold & Silver Mining Co. v. Storey County*, 1 Nev. 104 (1865)

Taxation of possessory interest in mining claim was not in violation of section 6 of Act Organizing the Territory of Nevada, which prohibited territorial legislature from taxing property of United States. *Hale & Norcross Gold & Silver Mining Co. v. Storey County*, 1 Nev. 104 (1865)

Sec. 7. **Township, district and county officers: Appointment; election.** *And be it further enacted*, That 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 advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

Sec. 8. **Members of legislative assembly ineligible to certain offices.** *And be it further enacted*, That 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.

Sec. 9. **Courts; judicial districts; jurisdiction of courts.** *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in 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 during the period of four years. 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 justices of the supreme court, at such time and place as may be prescribed by law; and the 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 of 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 at the place 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 clerk, 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 decisions 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 the 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 the 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 appropriated 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 Utah Territory now receive for similar services.

Provision of section 9 of act organizing territory which provided that justices' courts did not have jurisdiction where debt or sum claimed exceeded one hundred dollars (see [NRS 4.370](#) and [73.010](#)) applied to all cases cognizable in justices' courts, whether they arose from contract or in tort. *Armstrong v. Paul*, 1 Nev. 134 (1865)

Sec. 10. **Attorney and marshal for territory: Appointment; term; duties.** *And be it further enacted,* That there shall be appointed an attorney for said Territory, who shall continue in office for four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Utah. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, 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 Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Sec. 11. **Presidential appointment of governor, secretary, justices, attorney and marshal; compensation of legislative assembly.** *And be it further enacted,* That 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 by him recorded 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 fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian Affairs; the chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars; the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly at the Treasury of the United States. The members of the legislative assembly shall be entitled to receive three 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, estimated according to the nearest usually travelled 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 of the Territory, 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.

Sec. 12. First meeting of legislative assembly; seat of government. *And be it further enacted,* That the legislative assembly of the Territory of Nevada 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.

Sec. 13. Delegate to House of Representatives of United States: Election, rights and privileges. *And be it further enacted,* That 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 to 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 times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

Sec. 14. Sixteenth and thirty-sixth sections in each township reserved for schools. *And be it further enacted,* That when the land in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same.

Sec. 15. Judicial districts: Organization; assignment of judges. *And be it further enacted,* That 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 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.

Sec. 16. Applicability of United States Constitution. *And be it further enacted,* That 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 Nevada as elsewhere within the United States.

Sec. 17. Surveyor general: Appointment, powers and duties. *And be it further enacted,* That the President of the United States, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a surveyor general for Nevada, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem it advisable to give him.

Approved, March 2, 1861.
