

## TWENTY-SECOND DAY.

SIOUX FALLS, Dakota, July 25, 1889.

2 O'CLOCK P. M.

Convention called to order by the president.

Prayer by the Rev. Clough.

The Journal read and approved.

## REPORT OF STANDING COMMITTEES.

The Committee on Printing made the following report:

July 25, 1889.

MR. PRESIDENT—

Your Committee on printing having had the desirability of putting into the hands of the people, the Constitution, submitted to them by this Convention, under careful consideration, have instructed me to report that they recommend that this convention do provide for the publication and distribution of 200,000 newspaper supplements containing the Constitution and Schedule, 10,000 of which shall be printed in the German and 10,000 in the Scandinavian language.

All of which is respectfully submitted.

H. A. HUMPHREY,  
Chairman Committee.

The following report of the Judiciary Committee was presented:

MR. PRESIDENT:

Your Committee on Judiciary, to whom was referred the question as to whether this Convention has the legal power to provide for the election of a circuit clerk at the October election, direct me to report that the committee, having had said question under consideration, are of the opinion that the Convention has the legal power to provide for such election, and recommend that provision for the election of such officer be made in the schedule and ordinance

THOS. STERLING,  
Chairman Judiciary Committee.

The following report of the Legislative Committee was submitted:

SIoux FALLS, July 25.

MR. PRESIDENT:

Your Committee on Legislative, to whom was referred Article III, entitled "Legislative Department," have considered the same and have compared said Article III with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill," and have instructed me to report the following as Article III of the Constitution, and that the same is in accordance with the Sioux Falls Constitution and the "Omnibus Bill."

No amendments made.

### ARTICLE III.

#### LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power shall be vested in a Legislature, which shall consist of a Senate and House of Representatives.

SEC. 2. The number of members of the House of Representatives shall not be less than seventy-five nor more than one hundred and thirty-five. The number of members of the Senate shall not be less than twenty-five nor more than forty-five.

The sessions of the Legislature shall be biennial except as otherwise provided in this Constitution.

SEC. 3. No person shall be eligible to the office of Senator who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have attained the age of twenty-five years, and who shall not have been a resident of the State or Territory for two years next preceding his election.

No person shall be eligible to the office of Representative who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have been a resident of the State or Territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of State, attorney general, States' attorney, recorder, sheriff or collector of public moneys, member of either house of Congress, or person holding any lucrative office under the United States, or this State, or any foreign government, shall be a member of the Legislature; provided, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative, nor

shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the Legislature or become a member thereof.

SEC. 4. No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been, or may be collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the Legislature or to any office in either branch thereof.

SEC. 5. The Legislature shall provide by law for the enumeration of the inhabitants of the State in the year one thousand eight hundred and ninety-five and every ten years thereafter, and at its first regular session, after each enumeration made by authority of the United States, but at no other time; the Legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy; provided, that the Legislature may make apportionment at its first session after the admission of South Dakota as a State.

SEC. 6. The terms of the office of the members of the Legislature shall be two years; they shall receive for their services the sum of five dollars for each day's attendance during the session of the Legislature, and ten cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.

Each regular session of the Legislature shall not exceed sixty days, except in cases of impeachment, and members of the Legislature shall receive no other pay or perquisites except per diem and mileage.

SEC. 7. The Legislature shall meet at the seat of government on the first Tuesday after the first Monday of January, at 12 o'clock m., in the year next ensuing the election of members thereof, and at no other time except as provided by this Constitution.

SEC. 8. Members of the Legislature and officers thereof before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I

have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give, or withhold on any bill or resolution, or appropriation, or for any other official act.

This oath shall be administered by a Judge of the Supreme or circuit court, or the presiding officer of either House, in the hall of the House to which the member or officer is elected, and the Secretary of State shall record and file the oath subscribed by each member and officer.

Any member or officer who shall refuse to take the oath herein prescribed shall forfeit his office.

Any member or officer of the Legislature who shall be convicted of having sworn falsely to or violated his said oath, shall forfeit his office and be disqualified thereafter from holding his office of Senator or member of the House of Representatives or any office within the gift of the Legislature.

SEC. 9. Each house shall be the judge of the election returns and qualifications of its own members.

A majority of the members of each House shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such a manner and under such a penalty as each House may provide.

Each House shall determine the rules of its proceedings, shall choose its own officers and employes, and fix the pay thereof, except as otherwise provided in this Constitution.

SEC. 10. The Governor shall issue writs of election to fill such vacancies as may occur in either House of the Legislature.

SEC. 11. Senators and Representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same; and for words used in any speech or debate in either House, they shall not be questioned in any other place.

SEC. 12. No member of the Legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the State which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the Governor, the Governor and Senate, or from

the Legislature during the term for which he shall have been elected, and all such appointments and votes given for any such members for any such office or appointment shall be void; nor shall any member of the Legislature during the term for which he shall have been elected, or within one year thereafter be interested, directly or indirectly, in any contract with the State or any county thereof, authorized by any law passed during the term for which he shall have been elected.

SEC. 13. Each house shall keep a Journal of its proceedings and publish the same from time to time, except such parts as require secrecy, and of the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the Journal.

SEC. 14. In all elections to be made by the Legislature the members thereof shall vote viva voce and their votes shall be entered in the Journal.

SEC. 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

SEC. 16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 17. Every bill shall be read three several times, but the first and second reading may be on the same day, and the second reading may be by title of the bill, unless the reading at length be demanded. The first and third readings shall be at length.

SEC. 18. The enacting clause of a law shall be: "Be it enacted by the Legislature of the State of South Dakota," and no law shall be passed unless by assent of a majority of all the members elected to each house of the Legislature. And the question upon the final passage shall be taken upon its last reading and the yeas and nays shall be entered upon the Journal.

SEC. 19. The presiding officer of each house shall, in the presence of the house over which he shall preside, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read immediately before signing, and the fact of signing, shall be entered upon the Journal.

SEC. 20. Any bill may originate in either house of the Legislature, and a bill passed by one house may be amended in the other.

SEC. 21. No law shall embrace more than one subject, which shall be expressed in its title.

SEC. 22. No act shall take effect until ninety days after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the Legislature shall by a vote of two-thirds of all the members of each house, otherwise direct.

SEC. 23. The Legislature is prohibited from enacting any private or special laws in the following cases:

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir-at-law of another.
3. Locating or changing county-seats.
4. Regulatiug county and township affairs.
5. Incorporating cities, towns and villages or changing or amending the charter of any town, city or village, or laying out, opening, vacating or altering town plats, streets, wards, alleys and public ground.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the State.
8. Remitting fines, penalties and forfeitures.
9. Granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.
10. Providing for the management of common schools.
11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

But the Legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable, no special law shall be enacted.

SEC. 24. The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State or to any municipal corporation therein.

SEC. 25. The Legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever.

SEC. 26. The Legislature shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes or to select a capital site or to perform any municipal functions whatever.

SEC. 27. The Legislature shall direct by law in what manner and in what courts suits may be brought against the State.

SEC. 28. Any person who shall give, demand, directly or indirectly, any money, testimonial, privilege or personal advantage, anything of any value to any executive or judicial officer or member of the Legislature, to influence him in the performance of any of his official or public duties, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.

The offense of corrupt solicitation of members of the Legislature, or of public officers of the State, or any municipal division thereof, and any effort towards solicitation of said members of the Legislature or officers to influence their official action, shall be defined by law and shall be punishable by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense or bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, but said testimony shall not afterwards be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid, shall be disqualified from holding any office or position or office of trust or profit in this State.

A. B. MCFARLAND, Chairman.  
SAMUEL A. RAMSEY,  
R. F. LYONS,  
JOSEPH ZITKA.

The Schedule Committee presented the following report:

SIoux FALLS, D. T., July 25, 1889.

MR. PRESIDENT:

Your Committee on Schedule and Submission, to whom was referred, "An ordinance irrevocable without the consent of the United States and the people of this State, relating to religious toleration, public lands, taxation of lands, debts of Territory of Dakota and public schools," have had the same under consideration and have instructed me to report as follows:

That the following be a substitute for the above described ordinance, and that the following be substituted as Article XXII of the Sioux Falls Constitution, as being directed by the Act of Congress, known as the "Omnibus Bill," and your committee recommend that the following be adopted as Article XXII,

“Compact with the United States,” and that the same be adopted by this Convention.

## ARTICLE XXII.

### COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of the State of South Dakota, expressed by their Legislative Assembly.

First: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Second: That we, the people inhabiting the State of South Dakota, do agree and declare, that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States;

That the lands belonging to citizens of the United States residing without the said State, shall never be taxed at a higher rate than the lands belonging to residents of this State. That no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed any lands, owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant save and except such lands as have been, or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, all such lands which may have been exempted by any grant or law of the United States, shall remain exempt to the extent, and as prescribed by such act of Congress.

Third. That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided in this Constitution.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be



open to all the children of this State, and free from sectarian control.

By order of committee,  
By L. H. HOLE, Chairman.

CONSIDERATION OF REPORTS OF STANDING COMMITTEES.

The report of the Congressional and Legislative Apportionment Committee was called and

Mr. Van Tassel moved its adoption.

Mr. Sterling moved

To postpone till 8 P. M. today, which motion was lost.

The vote being taken on adoption, resulted as follows:

Ayes—Anderson, Atkinson, Buechler, Clough, Cook, Cooper, Corson, Couchman, Craig, Culver, Davies, Dickinson, Diefendorf, Downing, Eddy, Edgerton of Yankton, Fellows, Fowles, Goddard, Hall, Harris, Hartley, Heninger, Hole, Houlton, Huntley, Humphrey, Jeffries, Jolley, Kimball, Lee, Lyons, Matson, O'Brien, Peck, Ramsey, Ringsrud, Scollard, Sherwood, Smith, Spooner, Stoddard, Stroupe, Thompson, VanBuskirk, Van Tassel, Westcott, Wheeler, Whitlock, Willis, Williams, Williamson, Wood of Pennington, Wood of Spink, Young, Zitka, and Mr. President—(57).

Noes—Gifford, McFarland and Sterling—(3).

So the report was adopted.

Mr. Harris moved

To reconsider the vote by which the report was adopted and also to lay the motion to reconsider on the table.

Which motions were carried.

REPORTS OF SELECT COMMITTEES.

The following report was submitted:

SIoux FALLS, Dakota, July 25, 1889.

MR. PRESIDENT:

Your Special Committee to whom was referred the communication from the officers of "The American Sabbath Union," having carefully examined the same and the matters therein referred to, beg leave to submit the following report.

That in our judgment, this Convention acting under enumerated powers fixed by and contained in the Act of Congress known as "The Omnibus Bill," have no power to change, alter or amend the Sioux Falls Constitution of 1885, by inserting the provision named in said communication nor any similar provision, for the reason that the power so to do is not conferred upon this convention by the said act of Congress.

Your committee further recommends that the Chief Clerk of this Convention on behalf of this Convention send in writing to the Hon. Elliott F. Shepard, Gen. O. O. Howard, U. S. A., Rev. J. H. Knowles, D. D., Rev. Wilbur F. Crafts, D. D., officers of the American Sabbath Union, the following communication:

GENTLEMEN:

We, the Constitutional Convention of South Dakota hereby acknowledge the receipt of your telegraphic communication bearing date of July 20, 1889, recommending the insertion into the Constitution of South Dakota of certain provisions relating to the observance of the Sabbath day.

We have the honor to inform you that your communication was referred to a special committee of this Convention and said committee after careful and mature consideration of your communication, made and submitted to this Convention the following report.

Your special committee to whom was referred the communication from the officers of the American Sabbath Union, having carefully examined the same and the matters therein referred to, beg leave to submit the following report:

That in our judgment this Convention, acting under enumerated powers fixed by and contained in the Act of Congress known as the "Omnibus Bill," have no power to change, alter or amend the Sioux Falls Constitution of 1885, by inserting the provisions named in said communication nor any similar provision for the reason that the power so to do is not conferred upon this Convention by the said Act of Congress, which said report was unanimously adopted by the Convention.

It is therefore apparent that no further action can be taken by this Convention on your communication and the matters therein referred to.

Respectfully submitted,  
E. E. CLOUGH,  
S. F. HUNTLEY,  
J. V. WILLIS,  
SAMUEL A. RAMSEY,  
CHAUNCEY L. WOOD,

On motion of Mr. Clough the above report was adopted.

Mr. Wood of Pennington moved

To suspend the rules and consider the report of the Judiciary Committee, relating to Clerks of the Circuit Court. Motion was lost.

## SPECIAL ORDER.

The report of the Committee on Education and school lands read and Mr. Humphrey moved its adoption.

Mr. Corson moved

To strike out of the report amendment number "Fourth" and to substitute for Section 8 as reported, the original Section 8 of the Sioux Falls Constitution.

Mr. Wood of Pennington moved

As an amendment that the words "and other" in the first sub-division of the report be stricken from the report. Carried.

Mr. Corson's motion as amended was adopted.

Mr. Sterling moved the following amendment:

That report of the Committee on Education and school lands be amended so that Section 9 of Article VIII shall read as follows:

SEC. 9. The lands mentioned in this Article may, under such regulations as the Legislature shall prescribe, be leased for periods of not more than five years in quantities not exceeding one section to any one person or company. All rents shall be payable annually in advance, nor shall any lease be valid until it receives the approval of the Governor.

Mr. Westcott moved to lay the amendment on the table which motion was carried.

The vote being taken on the report of the Committee as amended

The report was adopted.

The report of the Committee on Name, Boundary and Seat of Government in regard to Name and Boundary,

Was, on motion of Mr. Stroupe adopted.

The report of the Committee on Name, Boundaries and Seat of Government, relating to seat of government,

Was, on motion of Mr. Stroupe, adopted.

Mr. Clough offered a resolution in relation to the words "secretary and chief clerk" as appearing in the Journal, which was referred to the Committee on Rules.

On motion of Mr. Spooner,

It was ordered that when the Convention adjourn it adjourn to meet at 9 A. M. tomorrow.

On motion of Mr. Humphrey,

The Committee on Schedule and Ordinance were instructed to report at 9 o'clock A. M. tomorrow.

On motion of Mr. Humphrey,

The reports of the Schedule and Ordinance Committee was made special order for 9 A. M. tomorrow.

On motion of Mr. Fellows,

The vote by which the Schedule and Ordinance Committee were instructed to report tomorrow at 9 o'clock A. M. was Reconsidered.

The vote being again taken to instruct the committee to report tomorrow at 9 o'clock A. M., Motion was lost.

On motion of Mr. Sherwood,  
The Convention adjourned.

## TWENTY-THIRD DAY.

SIoux FALLS, Dakota, July 26, 1889.

9 o'clock A. M.

Convention called to order by the President.

Prayer by Rev. Lee.

Journal read and approved.

### REPORTS OF STANDING COMMITTEES.

The minority of the Judiciary Committee presented the following report:

MR. PRESIDENT:

The undersigned members of the Judiciary Committee would respectfully represent that we have carefully examined the Sioux Falls Constitution and the Omnibus Bill, and are unable to find any provision or authority in either, by which this Convention can provide by ordinance or otherwise for the election of any other than State officers at the election held for the adoption of the Constitution. That neither the clerk of the court, register of deeds, or any other of the county officers are by the said Constitution, or Omnibus Bill, considered as State officers nor have they ever been treated as State officers in the administration of the affairs of government, but especially does the said Constitution treat and consider these officers as county officers and provides for their election at the next general election after the admission of the State into the Union. We therefore beg