

Pirates of the Prairie: Fraudulent County Organization in 1870s Kansas

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“Scandal!” “Fraud!” These words often resounded through the late nineteenth century, as scandal, graft and criminal activity seemed to infiltrate and infect every level of American society. The disease wormed its way even more so into government, from the President of the United States down to the lowest levels of county government in south central and southwest Kansas.

In 1872 and 1873, four counties were organized in south central and southwest Kansas: Barbour (later Barber), Comanche, Harper and Pratt. This fact is not surprising, as Kansas enjoyed one of its greatest population growth periods during the 1870s and 1880s. Indeed, the peak years for homestead entries in Kansas were: 1871, 1879, 1886 and 1893.¹ What set these counties apart was the fact that all of them but one were completely uninhabited. They were all organized by fraud.

The reason behind the organization of four counties with no population was greed, pure and simple. No precautions were in place in 1870s Kansas to prevent fraudulent county organization. This was a definite oversight on the part of the Kansas Legislature, but no evidence surfaced to prove the oversight was intentional. Even though the “Gilded Age”, the latter part of the nineteenth century, produced some of the most remarkable scandals in American history, few evidently thought it possible that someone would fraudulently organize a county for financial gain. This climate opened the door for some conniving men who wished to make a quick profit.

According to an 1872 Kansas statute, 600 *bona fide* inhabitants were required to form a county, organize its government and issue and sell bonds for county improvements. Forty signatures of legal county residents were needed to petition the Governor of Kansas and ask him to organize the county. Three householders were required to sign an affidavit certifying that at least 600 legal residents lived in the county. A census taken by an appointee of the Kansas Governor determined the population of that county. After the population was certified, the Governor appointed a county commission and named the county seat.² Since the petitioners usually recommended the census taker, the foxes were essentially given the key to the henhouse.

The “henhouse” consisted of bonds that the county was authorized to issue for relief of county debt. This debt was often incurred in the normal county organizational process. The counties issued bonds as a sort of promissory note to repay the bond holders. Bonds could also be issued to finance public works projects such as waterways, railroads and building construction. The bonds were issued at the county’s discretion for five to thirty years. The interest rate was usually ten percent.

¹ William Frank Zornow, *Kansas: A History of the Jayhawk State* (Norman: University of Oklahoma Press, 1950), 171.

² *Laws of the State of Kansas Passed at the Twelfth Session of the Legislature Commenced at the State Capital, Topeka, Kansas Commonwealth, State Printing House 1872, Chapter CVI, Kansas State Historical Society, Topeka S.P. 345.1 K13 1872.*

A few enterprising foxes took full advantage of the opportunity. Harper County, for example, was organized August 7, 1873, though it did not boast even six inhabitants—let alone six hundred.³

The organizers reportedly came from Baxter Springs, Kansas, although accounts differed on other details such as the names of the perpetrators.⁴ The facts are that this group of “scoundrels” set up shop on a barren piece of land in the center of what would become Harper County, approximately three miles northwest of the present site of Anthony.

The “organizers” arranged buffalo bones into groups and used a Cincinnati, Ohio hotel directory to furnish the bones with names. The process allowed the miscreants the ability to keep track of the names as well as playfully pass the time by addressing the bones as “Mr. So-and-so.” They continued this process until they had named 641 “residents” for Harper County.⁵

The group, armed with a registry of 641 names, a fictitious petition signed by forty of those residents, and an affidavit stating that the above documents were true, petitioned Kansas Governor Thomas Osborne to grant a charter to the county of Harper. Osborne appointed John Davis as the special census taker, who duly swore that the census information was correct—even though Davis only existed on paper. Osborne declared the county duly organized on August 20, 1873 and unwittingly became an accomplice to fraud.⁶

The miscreants then set about issuing bonds. \$25,000 in bonds was issued to build a new courthouse in the county seat of Bluff City. Another \$15,000 was issued to repay debt incurred for the county’s organization. At least another \$3,000 was issued for funding the school district, but the true figure of fraudulent bonds issued by the faux commissioners of Harper County was never determined.⁷

The process was similar in the organization of the other counties involved, with one exception. Barber County did have people living within its borders when it was first organized, but few were interested in becoming permanent residents. Many of the residents were stockmen who moved their herds through the county to utilize the vast grazing afforded by the area. Other folk were in the process of leaving the area because of increased Indian activity in the vicinity.

The majority of the true residents of Barber County were unaware of any illegal goings-on until it was too late. The census of Barber County was taken without the residents’ knowledge, although in this instance some of the names that appeared on the document were genuine.⁸

When the defrauders were finished, the residents of Barber County were saddled with \$141,300 of debt—far more than any of the other counties. \$41,300 of the debt was for funding bonds which included: \$25,000 for a courthouse that was never built, \$5,000 for G.W. Crane for services as an “advertising agent” and \$1,000 for W.E. Hutchinson as an “immigration agent.” The rest was divided up between the “officers” of the county. The bonds were sold on the cash market and not a penny benefited the county.⁹

³ *Harper County Times*, Nov. 28, 1878; *Anthony Republican*, May 19, 1938.

⁴ T.A. McNeal listed their names as W.H. Horner, A.W. Rucker, and William Boyd. Other accounts named them as George Boyd, William Horner and N.W. Wiggins, a grocer from Baxter Springs. See: T.A. McNeal, *When Kansas Was Young*, (Topeka, KS: Capper Publications, 1934), 46; A.T. Andreas, *The History of the State of Kansas* (Chicago: A.T. Andreas, 1883), 363 and *The Harper County Times*, Nov. 28, 1878.

⁵ *Harper County Times*, Nov. 28, 1878.

⁶ Andreas, 78.

⁷ *Report of the Minority, Commission Appointed to Investigate the Conditions of Barbour, Comanche and Harper Counties* (hereafter *Report of the Commission*), Kansas State Historical Society, Topeka, SP 328 K13 Pam. V.1 no. 10: 11.

⁸ Andreas, 364.

⁹ *Report of the Commission*, 9.

The citizens of Barber County held a legitimate election November 10, 1873 to bring the Nebraska, Kansas and Southern Railroad through the county. The people voted three to one to issue \$100,000 in bonds for railroad construction, but this money was also hijacked into the pockets of flim-flam men. The populace was unaware that there was never any intent by the railroad's "promoters" to bring the railroad into the area, and again not a penny stayed in the county.¹⁰

The frauds perpetrated in these counties seem like small potatoes when put into the larger context of nineteenth century American politics. As mentioned earlier, scandals ran through the nation like a virus, infecting many facets of society. Political machines, such as the one organized by New York mobster "Boss" Tweed made daily newspaper headlines. In Washington, D.C., the very halls of Congress were shaken when key legislators, including Vice President Schuyler Colfax were involved in the Credit Mobilier scandal.¹¹

The Kansas county bond scandals were also overshadowed by incidents a bit closer to home. Samuel C. Pomeroy, a U.S. Senator from Atchison, Kansas, was accused of bribing Kansas legislators to re-elect him to the United States Senate. His chief accuser was Alexander M. York, a state senator from Montgomery County, who claimed that Pomeroy had offered him \$8,000 for his vote on January 27, 1873.

Pomeroy had been a U.S. Senator from Kansas since 1861. In 1873, he was one of, if not the, preeminent politician in the state.¹² York was a relative newcomer to politics and gambled heavily against his political future by accusing Pomeroy of questionable conduct.

York eagerly admitted that he had set out to uncover wrongdoing on Pomeroy's part. He allegedly agreed to sell his vote to Pomeroy for the sum of \$8,000, but then reneged on his promise, and instead accused Pomeroy of bribery in full view of the legislature. Pomeroy's supporters thought duplicitous behavior such as this should not go unpunished. York's word could not be trusted because he broke his oath to a fellow gentleman. Evidently Pomeroy's friends felt it was all right to buy votes, but scandalous to go back on one's word, even if one's intentions were honorable.

Pomeroy was defeated for reelection by his rival, John J. Ingalls. He returned to Washington to plead his case to his fellow senators and was asked to resign, but his term expired before he was sanctioned otherwise. The Kansas Legislature decided to refer the matter to the courts, which in turn decided to return the money to Pomeroy, less \$1,700 for expenses incurred in Pomeroy's "prosecution." While crime might not pay, it certainly did not cost very much in 1870s Kansas--if one knew the right people.¹³ Ironically, York's political career was finished.

¹⁰ Ibid.; 9-10.

¹¹ Credit Mobilier was a corporation used to siphon profits from the Central Pacific Railroad. Key legislators were given stock in the company to ensure support for the railroad. See: Jean Edward Smith, *Grant* (New York: Simon and Schuster, 2001), 552-53; Ulysses S. Grant III, *Ulysses S. Grant: Soldier and Statesman* (New York: William Morrow, 1969), 324-25; Stephen E. Ambrose, *Nothing Like it in the World* (New York: Simon and Schuster, 2000), 373-75 and Oscar Theodore Barck, et al., *The United States: A Survey of National Development* (New York: Ronald Press, 1950), 497, 534-35.

¹² Pomeroy was a poster child for self-promotion. While chairman of the committee to distribute drought relief supplies to Kansans in 1860, he printed his name on sacked goods, such as beans. Cloth was a precious commodity, so women often made trousers for the men from the sacks. Thus, Pomeroy's name was emblazoned on the backside of many Kansans in time to be elected to the United States Senate in 1861. See: Andreas, 216; Albert R. Kitzhaber, "Gotterdammerung in Topeka: The Downfall of Senator Pomeroy," *Kansas Historical Quarterly*, XVIII (August 1950): 253, 267-269.

¹³ Andreas, 220.

When high-ranking politicians get away with high-ranking crimes, it is easy to imagine that small-time criminals would try their hand as well. The above examples are but a sampling of the myriad schemes and scandals that plagued the nation during this period of rapid growth, as America came into its own as an industrial power. It seemed as though graft was just a part of doing business.

Why then should the relatively petty crimes of fraudulent county organization be of any concern? In the big picture, the bond frauds were probably not that important. However, the crimes were very important to the people of the counties that were forced to pay the bond money to the investors who bought the bonds. The residents of Pratt County were spared that ignominy, and the bonds issued for Comanche County were never sold, but Barber and Harper County residents were held accountable for their debts, fraudulent as they were.¹⁴

Harper County realized its plight in 1878, when it reapplied for a charter. The Kansas Supreme Court ruled that the citizens of the county were responsible for the repayment of debt, even though the debt was obtained by fraud. The ruling stood because the county had never filed the proper paperwork to petition the Governor to revoke the previous charter.¹⁵

The county bond scandals produced some positive results even if they were costly to the residents of Barber and Harper Counties. It forced the Kansas legislature to rethink the way counties were organized. Four counties fraudulently organized in less than two years were more than even nineteenth century politicians could take. The legislature appointed a commission to investigate the frauds and recommend ways to prevent similar schemes in the future. The commission consisted of W.M. Matheny, Thomas S. Jones and Kansas Attorney General A.L. Williams.¹⁶

The commission, appointed to investigate Harper, Barber and Comanche Counties, found in each instance that none of the counties had sufficient inhabitants to constitute a *bona fide* county. Barber County had approximately 400 residents at the time of Attorney General Williams' visit in the fall of 1874. Williams was able to review the county records, such as they were, but determined that the documents he read were hastily prepared and lacking in credibility.¹⁷

Comanche County had no inhabitants at all, but Williams did interview some Barber County residents who witnessed the Comanche County "election" of 1873. He discovered that there may have been eighty or so people who came to vote at an election in Comanche County, but oddly enough no one could remember the details of the election. Attorney General Williams stated in regards to Harper County, "It is not pretended that Harper county (sic) ever had an inhabitant."¹⁸

The Commission recommended to the legislature that the charters of these counties should be revoked and that the perpetrators be found. They also asked for more strict guidelines regarding county organizations in the future. The legislative aspects of this recommendation were easier to follow than the punitive recommendation, however. To this day, the fate of the miscreants remains a mystery.¹⁹

¹⁴ J. Rufus Gray, *Pioneer Saints and Sinners: Pratt County From Its Beginnings to 1900*, (Pratt, KS: The Printing Press, 1968), 33.

¹⁵ *Harper County Times*, Nov. 11, 1878.

¹⁶ *Report of the Commission*.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 11, 16.

¹⁹ T.A. McNeal gave the only accounts of the possible fate of the criminals, but did not reveal his sources. See McNeal, 23-24, 47-48.

Governor Osborne, in his address to the Legislature in January of 1875, said, "there is not a law in all our statute books more thoroughly defective than that providing for the organization of new counties."²⁰ The seats of Comanche, Harper and Pratt Counties were declared vacant. A joint committee was also appointed to oversee the revision of the statute, but the job was not a quick one.

The authors of Kansas' original constitution wrestled with a similar problem. Article XII, which dealt with the organization of Kansas counties, did not appear overnight. The conventioners sampled several state constitutions—most notably Illinois and Ohio—and took four drafts before choosing the relatively weak wording of the final draft. The article was revised once by 1872.²¹

The joint committee of 1875 offered the following recommendation for the organization of future counties:

A memorial of at least 250 householders who are legal electors of the state, of any unorganized county showing that there are more than 1500 *bona fide* inhabitants of said county. There will be a census taker appointed by the Governor, who will take the census and certify to the clerk of the Supreme Court that his findings are correct. False claims were made a felony punishable by up to five years. The Governor will then appoint 3 householders to serve as commissioners, one to be the clerk and name the county seat. No bonds can be issued for one year after organization by townships or counties or school districts. If the governor has any reason to believe the affidavits or claims are false, he can delay his proclamation until three householders of his choosing can investigate.²²

The new law did deter further fraudulent organization of counties in Kansas. While the county bond frauds of 1872 and 1873 might be just a footnote in the scandals of the Gilded Age, they are important pieces of history. They underscore the thinking of the time; that anything was acceptable if it helped one attain a goal. The legislation of 1876, which put more safeguards in place to prevent further fraud, was also a precursor of the reforms that would come at the turn of the next century. Government was to be accountable to the people if legislators meant to keep their jobs.

²⁰ *House Journal: Proceedings of the Legislative Assembly of the State of Kansas*, Topeka: State Printing Works, Geo. W. Martin, State Printer, 1875, Kansas State Historical Society, S.P. 328.1 K13 1875: 38.

²¹ "The Sources of the Constitution of the State of Kansas," *Transactions of the Kansas State Historical Society, 1901-1902*, VII (1902), (Topeka: W.Y. Morgan): 145-146.

²² *Laws of the State of Kansas Passed at the Sixteenth Session of the Legislature Commenced at the State Capital on January 11, 1876*, (Topeka, KS: State Printing House, 1876): 159.