

Prescott Begins, Part Two:

The Introduction of Representative Government and the Beginning of Politics in the Arizona Wilderness

By AL BATES

Editor's Note: The most recent issue of Territorial Times (May 2014) was composed of a series of articles that traced the beginnings of Prescott from the Mexican-American War of 1846-48 to the founding in 1864 of a small town that instantly became the first capital city of Arizona Territory. The following article continues that story with a review of events that filled out the remainder of 1864 and some thoughts on resulting fallout.

Arizona's First Territorial Election

Selection of a legislative body for Arizona Territory was an important first step in moving administration of Arizona from the hands of appointees to those of elected officials. Although the top territorial positions would continue to be held by officials appointed from Washington—who early on were mostly complete strangers to the territory—more power was being transferred to locally elected residents.

Completion of the special territorial census had removed the final impediment to the election; details were set and the election date of July 18 was announced. Up for grabs were seats in the bicameral legislature plus the big prize, selection of the territorial delegate to Congress

The first important detail was the allocation of seats in the Council and House for each of the three districts. The first district (Tucson and vicinity) having the largest population was assigned the highest representation in both the Council and the House. Those elected to the Council from District Three (Prescott area) were Henry A. Bigelow, Robert W. Groom and King S. Woolsey. Elected to the house were John M. Boggs, James Garvin, James S. Giles and Jackson McCrackin (later McCracken).

The only territory-wide contest was that for the non-voting delegate to the U.S. Congress,

and that turned out predictably. Charles D. Poston, who had been running for the position from the moment he arrived in the new territory, gave the most speeches, had the most advertising in the *Arizona Miner* and defeated the closest of four rivals, Charles Leib, 514 to 226. He soon left for Washington, D.C., but neglected to return to Arizona to campaign for the 1865 election—a fatal mistake for his political future.

Final canvas of the election results and official announcement of where the legislature would meet would not come for a month, but those were formalities and attention had to be placed on new logistical challenges. Two concerns led the list: In what building could the legislators meet and where would they room and board while in session?

The first question proved the easier to answer. The July 20, 1864, issue of the *Arizona Miner* reported that, “As it is now known that the

Governor will convene the Legislature at Prescott, much has been said about the erection of public buildings. The following is, we believe, a correct statement of the steps taken by Secretary [and *Miner* owner] McCormick to whom the preparations for the accommodation of the Legislature are by law entrusted.”

The article went on to explain that, since Congress had not appropriated money for public buildings, Secretary McCormick could pay no more for a place for the legislature to meet than the rent for a building that would exist at an “old settlement.” There was nothing suitable among the buildings then under construction in the Prescott townsite and the Secretary was stumped until Van C. Smith—one of those prominent in getting the town started—stepped up. Mr. Smith proposed to put up a structure that would be ready to rent in time for the first legislative session, and the Secretary’s problem was solved.

The *Miner* article described the log building to be built on Gurley Street across from the Plaza as, “plain but extensive and comfortable, and if the weather is as pleasant as at present our Legislators will be likely to have an agreeable session.” Alas, it was not to be, for the November weather turned bitter and the legislature had to abandon the hall temporarily while a cast iron stove was constructed on site.

The problem of where members of the legislature would bed and board was left to each individual to solve, although some of them would be given brief lodging in the home shared by Governor Goodwin and Secretary McCormick. There followed much grumbling about the meager individual allowance for legislators versus the cost of living in such an isolated spot. What was worse, payment was in heavily discounted greenbacks, not gold.

That same issue of the *Miner* let an open secret out of the bag in an editorial piece slamming the laws of New Mexico Territory—still in effect for Arizona—as, “crude and incongruous in the extreme.” After calling for prompt rejection of those laws by the legislature, the piece casually went on, “. . . the code carefully prepared by Judge [William T.] Howell . . . will be a vast improvement upon these blind and inconsistent statutes.” This acknowledgement of work quietly being done by Judge Howell and Coles Bashford helps explain how an entire judicial code appeared to be created over a single weekend during the first legislative session.

Finally, after months of anticipation and speculation, the *Arizona Miner* of August 24, 1864, contained Governor Goodwin’s proclamation that the Territorial Legislature would convene in Prescott on September 26. His choice of location came as no surprise.

A Town Takes Form

The interim between the elections and the first legislative meeting saw the erection, if not completion, of a number of buildings on the Prescott townsite, including the legislative meeting place. The *Miner* reported, “The building to be hired of Van C. Smith, Esq., for the Legislature is well advanced. It is a sturdy and commodious structure.” However, Judge Joseph P. Allyn’s opinion of the structure was less glowing: “The building erected for the legislature . . . resembled a large livery stable; there was no floor, and the partitions dividing it into rooms did not reach the roof, so the murmur of voices in one [room] could be distinctly heard in all the others.”

Since the first legislature and the third district court session would overlap, it would bring, in the words of Judge Allyn: “. . . an unusual crowd into town. Honorable members of the

Council and House, and sedate members of the Bar were sleeping on the floors of the stores and in rows, and the bar rooms were in full blast day and night.”

George Lount and associates were in process of bringing both a sawmill and a quartz mill to Prescott. Difficulties in transport from San Francisco to La Paz and onward were great and only a portion of the equipment had arrived thus far, but Lount remained optimistic, and “hopes to have the saw mill in operation in a few weeks, and the quartz mill at a day not much later.”

Earlier that month, the *Miner* reported on the successful digging of a well on the Plaza that at a depth of 16 feet provided, “cold and excellent water.” Later *Miner* issues announced a meeting to devise means for paying for it followed by a successful subscription campaign.

Work on the house being built for the Governor and Secretary on their “Pinal Ranch” was continuing although they had occupied it since early August. The *Miner* commented, “It has been a long time in course of construction, owing to difficulty in procuring certain necessary materials, hardware especially.” The house was described as having a 50-foot front and 40-foot depth, built of hewn logs of large size. “It has six rooms besides a kitchen upon the first floor and a very large sleeping room upstairs. It is handsomely located, and a building which may be made exceedingly comfortable.” Since all boards used in its construction were made by hand in a sawpit they were used sparingly, thus the initial floor was of dirt.

Expenses for materials such as nails and other hardware were high and the contract had to be revised upward to cover the cost of roofing shingles. Specifics of how the building was financed (i.e., who paid) are lost in the fog of

history, as is how the ownership changed hands. Judge Edwin Wells, an early Prescott pioneer, said this: “How Judge Fleury obtained possession of the place no one knows, nor does anyone seem to care. His title was valid enough, however, to permit him to mortgage the house . . .”

Possibly more important than any of these positive accomplishments was the lessening of isolation brought by the establishment of two civilian pony express mail services to California in late July, one via La Paz, the other via Mojave. These expresses ran semi-monthly, compared to Fort Whipple’s military express running “semi-occasionally” to the east, use of which was kindly extended to the civilians.

Despite all the recent progress, news reports from Mexico were troubling. The *Miner*’s announcement of the arrival of Emperor Maximilian to the soil of Mexico, correctly prophesied coming conflict between Mexican rebels and the French troops there to protect the puppet Emperor. Given the Indian situation in Arizona and America’s as yet unresolved Civil War, this additional opportunity for regional chaos was not welcome.

Laws Are Enacted on a Dirt Floor

The first Arizona Legislature convened at Prescott, in the dirt-floored hall rented from Sheriff Van C. Smith, on September 26, 1864, but because of the late arrival of some members, it was adjourned from day to day until September 29. Both houses then chose their officers including Coles Bashford as President of the Council and W. Claude Jones as Speaker of the House.

Selection of chaplains for the two houses proved to be controversial. It took three weeks before Henry W. Fleury, the governor’s private secretary, was appointed

chaplain for both houses. The *Arizona Miner* wryly reported that, “The selection has caused much merriment in Prescott and was brought about by the persistent efforts of a party, not liked by the members, to secure the position.” It continued with the observation that, “Mr. Fleury makes no claim to the sacred office, but we presume this will be of little consequence to our legislators.”

On September 30 Governor Goodwin addressed a joint session of the legislature proposing goals to be met. His highest priority was the rejection of the laws of New Mexico Territory—then still in effect for Arizona—with adoption of a code of laws better suited to Arizona conditions. In particular he railed against a form of peonage permitted under the New Mexico laws.

That disdain for the laws of New Mexico Territory started when the Arizona officials first encountered them in late 1863. But how to replace them? A draft code of laws was needed in order for the first legislative session to start their work, but there was no official way to prepare them. So a work-around was necessary and Territorial Supreme Court Justice William T. Howell began a semi-secret effort that occupied several months.

On the day following the Governor’s speech to the Legislature, Robert Groom introduced Council Bill number one authorizing the governor to appoint a commissioner to prepare and report a set of laws to be considered for adoption. Governor Goodwin completed the charade, by selecting Justice Howell as the commissioner—despite the fact that Howell had left the territory permanently. Two days later the governor presented to the legislature a 400-page document (with a cover letter from Howell), containing the requested set of laws. After debate and some amendments, the “Howell Code” was adopted as the overall code of laws for the Territory of Arizona.

The Governor Sets Some Goals

Governor Goodwin’s proposed list of goals included some that the legislature could do something about and others where they could only petition to Congress for action through the territory’s congressional delegate. High on the list of problems to addressed were actions necessary to end the twin problems of isolation and Indians, with additional priority assigned to mail service and transportation (roads, railroads and steamboats). Further down the list were schools and a need to regularize the mining laws across the various mining districts.

After noting that control of hostile Indians was primarily a federal government problem, the Governor recommended that, because of our isolated situation, the need for raising companies of citizens organized as rangers to operate against the hostile Apaches, “until the last one is subdued.”

He raised the question of where the “permanent” Territorial Capital should be located, thus beginning the process that resulted in Arizona’s “Capital on Wheels.” He affirmed that, “The legislature and the Governor are . . . required to locate the permanent capital of the territory,” and then deferred the selection process to the legislators.

Legislative action came to a chilly halt in mid-October when a sudden cold snap made temperatures in the unheated legislative hall unbearable. The *Miner* reported that because of the unavailability of any heating devices other than for cooking, Secretary McCormick bought some sheet iron from Mr. Hardy and, in less than 24 hours, two blacksmiths made two huge stoves after an old New England schoolhouse pattern. The stoves worked “to a charm” and the session continued to a successful end.

A Solid Legislative Record

The first Arizona Territorial Legislature adjourned on November 10, 1864, leaving behind a solid record of accomplishment headed by adoption a comprehensive set of laws for the territory. A major part of that effort was establishment of the territory's original four counties and providing for their administration.

Governor Goodwin had requested that there be only three counties (corresponding to his original three judicial districts) to contain costs, but the legislature created four. They made a minor move of the District Two eastern border, moving it 40 miles east, and then divided it at the Bill Williams River to separate it into Mojave and Yuma Counties. The remains of District One became Pima County and a slightly reduced District Three became Yavapai County, all effective January 1, 1865.

For the time being, each county would be administrated by three appointed County Commissioners, consisting of the Probate Judge, the Sheriff, and the Recorder. Thus for Yavapai County the first County Commissioners were Hezekiah Brooks, Van C. Smith and Follet G. Christie. Provision for selection of County Supervisors by popular vote was added by the second legislature and the first sets of County Supervisors were elected in 1866 and seated in 1867.

Some of the Howell Code provisions ring harshly on modern ears. On democracy's most important issue, the right to vote, the laws passed were models for the time—sexist, racist and included a poll tax. The right to vote was limited to sane white male citizens 21 and over including “white” male citizens of Mexico who had elected to become American citizens through provisions in earlier land acquisitions from Mexico.

Racism appeared again in the chapter on marriage which prohibited the marriage of white persons and negroes or mulattoes, and in a section on civil actions that prohibited Indians and negroes of less than half white blood from testifying against whites in civil cases. Sadly, anti-miscegenation laws existed in Arizona well into the 20th Century.

Licensing—and taxing—of various gambling games was established. Unlicensed gambling games were prohibited and fines were established. Failure to pay any of these fines was subject to imprisonment in the county jail. Fines for illegal gambling were not oppressive, except that conviction on a charge of engaging in unlicensed gaming by any “public officer” also meant immediate loss of office, period.

A largely forgotten action of the first legislature was to authorize preparation of an official topographical map of Arizona Territory. Governor Goodwin selected a multi-talented young mining engineer named Richard Gird to prepare it. The map was completed in 1865 and, when lithographed and hand tinted copies of it became available, it was widely praised for its accuracy and detail. Gird a few years later would partner with the Scheffelin brothers Ed and Al in the discovery and development of the Tombstone silver mines.

Among other acts made law was the naming of the *Arizona Miner* as the official newspaper of the Territory and establishing how much the paper could charge for publication of official documents printed therein thus guaranteeing the *Miner's* owner, Secretary McCormick, a steady stream of income.

An Arizona Historical Society was incorporated and 15 pioneers led by Secretary McCormick were recognized as its initial

members, and they held their first organizational meeting shortly after conclusion of the first legislature, naming McCormick its first president. Noteworthy by his exclusion from the initial list was Charles D. Poston the self-proclaimed “Father of Arizona.” However, Mr. Poston had the last laugh when, largely through his efforts, the “Society of Arizona Pioneers” was founded in Tucson in 1884. Two reorganizations later they emerged as the “Arizona Historical Society” and then took on the mantle of the long-dead 1864 organization.

Along with the more substantial issues addressed, the legislators decided that they did not like the territorial seal designed by Secretary McCormick, so they authorized

\$100 for the engraving of a new seal that replaced the “sturdy miner” with a deer of unspecified gender. Use of the old seal would continue until its replacement would be available for use. As it turned out, the old seal continued in use for the next 15 years when its replacement first appeared on an official territorial document.

At the end of that first legislative session, Governor Goodwin expressed his appreciation for, “[T]he diligence and wisdom with which your labors have been prosecuted, and of their great value to the Territory.” He further complemented the legislators for their display of harmony and good feelings throughout, something that could not be said for legislatures yet to come.



A Brief Look Into Some Future Political Events

This seems an appropriate point to look ahead at the ways that two stories that were of interest in 1864 played out in years ahead. First we’ll look at what the future held for Arizona Territory’s first Congressional Delegate, and then how and why the territory had a “capital on wheels”.

Poston’s Fall From Political Grace

Charles DeBrille Poston was not the only early Arizona pioneer to be pushed aside by newcomers and changing circumstances, but he certainly was the best known—shoved aside unceremoniously and unexpectedly by others who had arrived to fill appointed territorial offices.

Poston first set foot in what would become Arizona in 1854, just as the Gadsden Purchase was being ratified, and returned two years later as the head of a silver mining operation headquartered at Tubac. During the Civil War he returned east where he lobbied for splitting Arizona from New Mexico Territory. Should he be remembered as the “Father of Arizona”? He certainly thought so.

He returned in 1864 as Indian Agent for the new Territory. Later that year he was elected by Arizona residents to the more prominent role as its first delegate to Congress, becoming Arizona’s voice in the halls of Congress, although lacking a vote. He seemed assured of a long and significant career in territorial politics, but then his career stalled—permanently.

Just a year after his election as delegate, the voters dumped him from the job that had put him in the first tier of Arizona politicians. His replacement was John N. Goodwin, the appointed governor; his election aided by connivance of another newcomer, Secretary Richard C. McCormick—at least so Poston claimed. Here is a summary of events as they transpired.

After the 1864 election, Poston immediately left to meet his Washington DC duties that ran during the second session of the 38th Congress, ending in March 1865. At that point he chose not to return to his constituency in the west, remaining near the seat of federal power. Indications are that he had hopes to be appointed Arizona governor at the next change of the presidency, and that he could do more to enhance his opportunity for the top territorial office by remaining in Washington where those appointments were made. This was not an unreasonable plan given his perceived popularity with the voters, but he ignored the need for being in sight of his constituents in an election year.

Poston's claim was that he was forced to remain in Washington because of work in behalf of the territory and that he "had been led to believe" by Secretary McCormick that his interests were being protected by Governor Goodwin.

The 1865 election turned out to be a three-way contest. Poston's first opponent was controversial Judge Joseph P. Allyn whom he expected to defeat handily. But then came the unexpected entry of Governor Goodwin. By then it was too late for Poston to return in time to campaign, and the governor prevailed, with Poston running a poor second, never to hold elective office again.

Poston's reaction was to blame his startling loss on "fraud and treachery." He soon issued a letter, printed by the New York Tribune, in which he accused Secretary McCormick of misleading him about the Governor's intentions and accused Goodwin of causing false statements to be made in the *Arizona Miner* to the effect that Poston was in support of the governor's run for the delegate position.

Secretary McCormick responded with a letter in the *Miner* stating in part, "I was as much

surprised as he [Poston], when I heard that the Governor had taken the field," and blamed the decision on Poston's unexpected absence from the territory which opened a path for "election of a man personally offensive" to all three of them. (An obvious reference to the third candidate, Judge Allyn, who had published charges of "fraud and corruption" including vote buying and ballot mishandling in the 1864 territorial election.) McCormick also admitted that he had early intentions to run for the office himself but business in the east prevented him from returning in time to campaign.

Over time the accusations faded from public view, but Poston was anxious to regain the office, and in 1866 he ran again, this time running well behind the winner, Coles Bashford. (Goodwin did not choose to run for reelection.)

Poston then left Arizona, not to return for over a decade, and then only to hold minor non-elective posts, although he kept putting his name forward for appointment as governor at each change of administration in Washington. He died in obscurity and poverty in Phoenix in 1902.

Arizona's "Capital on Wheels"

The portability of Arizona Territory's seat of government—first at Prescott, then to Tucson, back to Prescott and, finally, to Phoenix—earned it the nickname of "Capital on Wheels."

It began when Governor Goodwin told the first legislature at Prescott in late 1864, that "permanent" location of the territory's seat of government was at the discretion of the legislature and the governor, but that he would yield to the legislature's "knowledge of the territory and of the wishes and interests of the people . . . to determine that question satisfactorily."

The first legislature quickly took up the topic. First, a motion was made in the Council to locate the capital at Tucson, but that lost in a tie vote. Then, while a bill locating the capital at Prescott was being considered in the lower house, three amendments were attempted. The first motion proposed La Paz, a second proposed Walnut Creek. Third, and finally, a location “at a point within ten miles of the junction of the Rio Verde with the Rio Salado . . . to be called Aztlan” was suggested. Each proposal went down by the identical vote of nine to eight.

How serious were these lower house attempts to change the location from Prescott? Tucson was not mentioned; La Paz had fringe credibility; Walnut Grove seems a strange choice; and the third proposal named an undeveloped area then in the middle of nowhere. So, for the moment, Prescott retained its grip on the title of Territorial Capital.

It was not until Arizona Territory’s fourth legislative session in 1867 that an act was passed—with the support of Governor Richard McCormick—that moved the capital to Tucson. From Prescott there were instant claims of misdeeds.

In a November 30, 1867, editorial the *Prescott Weekly Miner* claimed that the move was done through fraud: “We are assured upon good authority that improper proceedings to the extent of buying three or four members of the Fourth Legislature, and pledging to Governor McCormick to support him for Congress at that place [Tucson]. If this does not come under the head of improper proceedings, we are at loss to know what does.”

While the charges of fraud were never proven, the fact remains that Pima County gave McCormick an astonishingly large vote a year later when he was a candidate for

Delegate to Congress. McCormick ran a very poor second to his principal opponent, John A. Rush, in all counties except for Pima where he gained an unbelievable 91.6 per cent of the votes, leading to both victory and cries of voter fraud.

John Marion, the new owner/editor of the *Miner* vehemently expressed his anger at the move, probably feeling that Governor McCormick had cheated him earlier that year when Marion bought the *Prescott Weekly Miner* from him. McCormick’s reason for selling the newspaper are unrecorded, but when the capital moved south to Tucson, so also did the territory’s public printing contracts, eliminating a steady source of income for the *Miner*.

Prescott had its second brush with celebrity in 1879, again becoming the territorial capital when population shifts helped wrest the title back from Tucson. But a third and final move was inevitable as a new population center was forming between the two rival cities. In late 1867 Jack Swilling and associates had begun developing an irrigation system in the Salt River Valley leading to the establishment and rapid growth of the new city of Phoenix. Phoenix became the final “permanent” territorial capital in 1889 as Arizona began to shed its raw frontier image.

How drastically times had changed during Arizona Territory’s first quarter century is illustrated by the transportation used for those moves. The first two moves of the capital (to Tucson and back) had to be made by freight wagons over dirt roads. The third and final move was by railroad—even though it had to use a roundabout route through California since there was not as yet a direct line between Prescott and Phoenix.

