

A Wall to Defend Zion: The Nauvoo Charter

James L. Kimball, Jr.*

It is apparent that from the inception of the Nauvoo Stake in October 1839, the Saints considered its officers tantamount to the recognized government of the area. Not only did the High Council pass resolutions regarding ferry usages, but set standards and procedures for the cost and sale of town lots in Nauvoo (subject to the First Presidency's approval), and contracted to erect a stone school house in the city. The High Council supervised the work of poor relief in the area and approved the establishment of economic enterprises, such as the erection of a water mill by N. K. Whitney.¹

The Kingdom of God, however, was instructed to function within the existing society and governmental structures and not apart from them, therefore making the creation of a legal government at Nauvoo a vital link in the fulfillment of the Church's goals.

Pursuant to this purpose, the High Council decided as early as December 1839 to send a petition to the Illinois State Legislature, to define new boundaries of Nauvoo and of Commerce and to "do all other needful acts relative to those cities."² This presumably meant a town charter. The journals of the Senate and House for the legislative year beginning 9

*James L. Kimball, Jr., is area director of the Department of Seminaries and Institutes, Pacific Northwest Division.

¹Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts (Salt Lake City: Deseret Book, 1948), 4:16-18, 46, 76. Hereafter cited as *HC*. Further indication that the High Council governed the area can be found under date of 22 September 1844 when that body passed a resolution "to transfer all debts and temporal business, and that all business of a temporal nature be . . . in readiness to be transferred to the proper [city] authorities . . . [because] the proper authorities to which temporalities belong are now organized and acting in their proper places." *HC* 4:417.

²*HC* 4:39.

December 1839, and ending 1 February 1840, however, do not reveal any such petition coming to the floor of either branch of the General Assembly.

Whatever happened to circumvent it—whether the Illinois lawmakers did not glimpse the potential of the immigrants to their state, or were yet reluctant to commit themselves on a party basis to a question not yet fully explored—this initial attempt to secure a charter did not prove successful.³

As the Tenth Semi-Annual Conference of the Church convened in Nauvoo on Saturday, 3 October 1840, every prospect for peace and stability seemed assured. The issue of a corporate city government came to the fore during the morning session of the second day of the conference, when that body appointed a committee to draft a bill for the incorporation of the City of Nauvoo, and named as members of the committee Joseph Smith, John C. Bennett, and Robert B. Thompson. Another resolution authorized Bennett to superintend the bill through the legislature. After one hour's recess the conference resumed and, following a theological discourse by the Prophet, Bennett reported to the conference the "outlines" of a charter.

The speed with which the committee worked strongly suggests a prior agreement as to the contents of the document. How much detail Bennett presented to the congregation is unknown, but it is reasonable to assume that he told at least of the main features of the charter. It is also reasonable to assume that Joseph Smith and John C. Bennett were the individuals most responsible for its composition. Sometime between September, when Bennett arrived, and the commencement of the conference, these two men fashioned the charter into final form to be submitted to the state legislature.⁴

The Illinois Twelfth General Assembly met at the governor's proclamation on 23 November 1840. The forty senators met in the new capitol building, while the ninety representatives opened session in the Methodist Church. As the first item of business, John Moore, one of the chief spokesmen for the

³*Journal of the Senate of the Eleventh General Assembly of the State of Illinois* (Springfield: George R. Weber, 1840); *Journal of the House of Representatives of the Eleventh General Assembly of the State of Illinois* (Springfield: George R. Weber, 1840); HC 4:56. It is not valid to assume, therefore, that a partisan attempt by both the Whigs and Democrats to court the Mormons was as strong in the beginning as it was subsequently.

⁴HC 4:172, 178, 205-06. The substance of such offers is apparently lost, but speculation about their nature is full of enticement.

Democratic Party, introduced a bill to vacate the town plat of Livingston, which was read and ordered to a second reading. Moore then obtained leave to introduce as the second bill of the session "an act to incorporate the City of Nauvoo," which was also read and ordered to a second reading. On motion of Mr. William Richardson, Democrat from Schuyler County, the rules of the Senate were dispensed and the bill was read a second time by its title, whereupon the Senate, on motion of Sidney H. Little, Whig senator from McDonough and Hancock Counties, sent the bill to the judiciary committee.

Eight days later, on Saturday, 5 December, Adam W. Snyder, chairman of that committee, reported back the bill with an amendment to alter the boundaries of the city. The Senate concurred and the bill was engrossed for a third reading.

On 9 December, thirteen days after the introduction of the bill, the Nauvoo Charter appeared, together with two other bills in engrossed form, was read the third time (as were the other bills), and passed. Notwithstanding its passage, William J. Gatewood, of Gallatin County, moved an amendment (perhaps humorously) to the title of the bill so as to have it read, "A Bill for the Encouragement of the Importation of Mormons." Upon request, however, the proposal was withdrawn and the title of the bill remained unchanged.⁵

The progress of the Nauvoo Charter Bill through the House of Representatives was much more swift than in the Upper House. On 10 December Daniel Turney's motion to have the bill read twice by its title only before sending the document to the judiciary committee evoked no comment. By 12 December the committee reported the bill to the floor of the House without amendment. On a motion, the rules were suspended and the bill read the third time by its title and passed. Bennett states there were only fifteen nays, but as the vote was

⁵This was the second time the Assembly met in Springfield, but the first time it was able to use the partially completed State House. The House of Representatives convened in the Methodist Church on 27 November, the day the Charter was introduced. The House asked the Senate to exchange rooms as the Church was too small. Manfred Thompson, *Illinois Whigs Before 1846* (Urbana: University of Illinois Graduate School, 1913), pp. 76-79; *Journal of the Senate of the Twelfth General Assembly of the State of Illinois* (Springfield: George R. Weber, 1840), pp. 9, 23, 45, 61. A newspaper, *The Springfield Courier*, published only during the duration of the legislature, is consistently more detailed regarding legislative affairs during this session than the official minutes. See especially the 28 November, 7 December, and 10 December 1840 issues.

probably *vive voce*, there is no official record of it in any legislative source.⁶

Three days later the Senate delivered the bill to the Council of Revision and it passed that body on 17 December to become effective 1 February 1841. Altogether the bill lay before the Senate thirteen days, the House six days, and the Council of Revision two days, making the total elapsed time twenty-one days. The bill was never read *en toto* before the House and only once before the Senate. However, many bills during the session were read by their titles only two times in either body, but in every case the complete bill in question received at least one reading in each legislative chamber. Therefore, the difference between the passage of the Nauvoo Charter Bill and others in the session was one of time and procedure but was not really abnormal in either case.⁷

To guide such a document through the legislature required a purposeful hand. Some historians have ascribed to Stephen A. Douglas and Sidney H. Little the responsibility for this management. That most of the men mentioned in the Senate and House journals were Democrats is understandable since it was a Democratically controlled legislature. The Democrats, as the most organized party in the state, were in a better position to help the Saints. Douglas, as one of the leading spirits in the party, would naturally be one of the key men in this effort. However, because detailed records regarding Douglas' Illinois years do not appear to exist, the actual part he played in securing the Charter remains exasperatingly elusive.⁸

⁶*Journal of the House of Representatives of the Twelfth General Assembly of the State of Illinois* (Springfield: George R. Weber, 1840), pp. 101, 110. *Illinois State Register*, 15 July 1842. Bennett, however, in a letter sent to Nauvoo on 16 December 1840, states the Charter passed "with one or two dissenting voices" in the House. HC 4:248. These reports conflict with Governor Thomas Ford's reminiscence, "The ayes and the noes were not called for." Thomas Ford, *History of Illinois* (Chicago: S. C. Griggs, 1854), p. 263.

⁷*Senate Journal, Twelfth Assembly*, pp. 80, 89. *The Springfield Courier*, 16, 18 December 1840.

⁸Little represented Hancock and McDonough Counties (where large bodies of Mormons resided) in the Senate. Douglas had migrated from New York to Illinois in 1833. Besides practicing law, he became very active in organizing the newly forming Democratic Party, was State Representative from Morgan County, State Attorney, and Public Land Register. Although not serving in the Assembly at the introduction of the Nauvoo Charter, he was a key member of the Democratic State Central Committee. Three days after the introduction of the Charter Bill into the Senate, Douglas became Secretary of State, but this would not necessarily have precluded an active concern for the Charter's passage in the General Assembly. Frank E. Stevens, "Life of Stephen A. Douglas," *Journal of the Illinois State Historical Society* 16 (1923-24):331-37.

Unfortunately, information about John C. Bennett's lobbying in the Assembly is also vague. To what extent he pleaded for sympathy, demanded satisfaction, or bargained for position is open to conjecture. One writer tantalizingly suggesting Bennett was "a man of some sagacity and cunning but without principle," says that the Mormon delegate bargained "the whole Mormon vote in the future elections of the state."⁹ Governor Ford asserted that Bennett "flattered both sides with the hope of Mormon favor; and both sides expected to receive their votes."¹⁰ All seem to concede that Bennett played a major role in the passage of the Charter.¹¹

Whatever the reasons behind the General Assembly passage of the Nauvoo Charter, the Saints were overjoyed. They viewed it with but a single eye—politics, society, and economics notwithstanding. The passage of the Charter of Nauvoo gave the budding city "a government within a government." With this charter the Saints possessed a government based not upon the *laws* of Illinois but only upon the Constitution of Illinois and the Constitution of the United States.¹²

By taking refuge in constitutions or charters, the Mormons illustrated they were but citizens of their age. In a nation whose various inhabitants in nationalist fervor drew up declarations of independence and constitutions for organizations as diverse as temperance societies and emigrating expeditions, the Saints were but participants in an American tradition. The United States premised its existence on a government of laws, based on a written constitution, and thereby differed in essence from alleged tyrannies abroad where the law was the will of the men in power.¹³

During the third and fourth decades of the nineteenth century, despite opinions of the United States Supreme Court

⁹John Reynolds, *My Own Times* (Belleville, Ill.: B. H. Perryman and H. L. Davison, 1855), p. 576.

¹⁰Ford, *History*, p. 263.

¹¹Reynolds, *My Own Times*, pp. 573-76; Ford *History*, p. 263. Both Mormon and non-Mormon sources give Bennett much credit for the passage of the Charter.

¹²This and other provisions of the Nauvoo Charter, long considered by students of the period as very unusual or even unique, have recently been shown to have been variously present in each one of the other five chartered cities in Illinois. See James L. Kimball, Jr., "The Nauvoo Charter: A Reinterpretation," *Journal of the Illinois State Historical Society* 64 (Spring 1971):66-78.

¹³A good discussion of this American "doctrine" may be found in Ralph Henry Gabriel, *Course of American Democratic Thought* (New York: Donald Press, 1956), chapters 1-3.

to the contrary, several states—including Illinois—felt it was still an open question as to whether a corporate charter granted by government could ever be annulled or abrogated.¹⁴ Fully aware of this situation and armed with ample, though not unanimous, legal precedent and opinion, Mormon Church leaders opted to interpret the Nauvoo Charter as a veritable Magna Charta—a sacred, indestructible, inviolate instrument to be used for protection and power. In constitutionalism there was security; laws and resolutions were but water and sand. By invoking primary bases of law, Joseph Smith attempted to avoid what he termed rapacious and evil misuses of the law. In 1843 he proclaimed,

If there is not power in our charters and courts, then there is not power in the state of Illinois, nor in the Congress or Constitution of the United States; for the United States gave unto Illinois her constitution or charter and Illinois gave unto Nauvoo her charter ceding unto us our vested rights, which she has not power to take from us. All the power there was in Illinois she gave to Nauvoo. . . .¹⁵

The broad provisions of the Nauvoo Charter would provide a peaceable kingdom free from the violence and harassments of Missouri officials and others with evil intent who would inveigh against the Kingdom. As an agent of his Prophet, John C. Bennett became the catalyst who fused Mormon and politically partisan needs in such a manner that each element saw in the Nauvoo Charter a way to freedom and influence. Nonetheless, it is a twist of historical irony, that while the Saints relied on their Charter to be an unbreachable wall defending the rights of Zion, many of their non-Mormon neighbors came to view it as an offensive barrier. The implementation of the constitutional provisions of the Charter exacerbated the Mor-

¹⁴The situation was in effect an historical spin-off of antebellum tensions over states' rights and special privilege. The issue was whether the state legislatures had the legal right to grant irrevocable basic charters (as the United States Constitution) as well as "special charters" to corporations which could favor one segment of society over another. While the United States Supreme Court in 1837 rendered a decision against special charters and thereby for free enterprise in the *Charles River Bridge Case*, the delicate political resolution of the issues was left to the discretion of the individual state legislatures. A helpful summary may be found in Stanley I. Kutler, *Privilege and Creative Destruction: The Charles River Bridge Case* (Philadelphia: Lippincott, 1971).

¹⁵HC 5:466. With regard to the conception of the City of Nauvoo being federated with the states of the Union, it is pertinent to note that the inscription on the seal of the Nauvoo Municipal Court read, "Constitution and Charter." "Nauvoo Council Proceedings," 26 November 1841, p. 131.

mon's problems by isolating and thereby alienating the affairs of the city from the rest of the county and state.¹⁶

Perhaps only in pre-Civil War America could Mormonism have been born. Perhaps only in the 1840s could the Nauvoo Charter have been framed. The coming of the Nauvoo Charter reflects for us, today, the time of America's becoming. The Charter illustrates the growing pains of a nation optimistically trying to mesh democratic and religious idealism in a world of economic depression and political reality. The Nauvoo Charter demonstrates a meeting of the American notions of political and social experimentation and belief in the perfectability of man with the equally American quality of eager opportunism and clannishness. To understand the coming of the Nauvoo Charter is not only to understand the people who lived at "the head of the rapids" but it also is to glimpse a nation at the head of its history.

¹⁶For a further consideration of the coming, contents, and consequences of the Nauvoo Charter, see Robert B. Flanders, *Nauvoo: Kingdom on the Mississippi* (Urbana, Ill.: University of Illinois Press, 1965), and James L. Kimball, Jr., "A Study of the Nauvoo Charter, 1840-1845," (Master's thesis, University of Iowa, 1966).