

Chapter Thirteen

Protecting Nauvoo by Illinois Charter in 1840

James L. Kimball Jr.

From the inception of the Nauvoo Stake in October 1839, the Saints considered its officers to be the equivalent of a civil government of the area. Not only did the Nauvoo High Council pass resolutions regarding ferry usages, but it set standards and procedures for the cost and sale of town lots in Nauvoo (subject to the First Presidency's approval), contracted to erect a stone schoolhouse in the city, supervised the work of poor relief, and approved the establishment of businesses such as a water mill operated by Newel K. Whitney.¹ The Kingdom of God, however, was to function within the existing society and governmental structures and not apart from them, to honor, obey, and sustain the law (Article of Faith 12; D&C 134). Therefore, creating a legal government at Nauvoo was a vital link in the fulfillment of the Church's goals.

To this end, the Nauvoo High Council decided in December 1839 to send a petition to the Illinois State Legislature asking the state to define new boundaries for the cities of Nauvoo and Commerce and to "do all other needful acts relative to those cities."² This presumably called for the legal adoption of a city charter. The journals of the Illinois Senate and House for the legislative year beginning December 9, 1839, and ending February 1, 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

1. Joseph Smith Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols. (Salt Lake City: Deseret Book, 1948), 4:16–18, 46, 76 (hereafter cited as *History of the Church*).

2. *History of the Church*, 4:39.



John C. Bennett helped to draft the Nauvoo Charter and was instrumental in its passage by the Illinois legislature. Courtesy Church History Library, The Church of Jesus Christ of Latter-day Saints.

lawmakers did not envision the potential impact of the immigrants on their state, or were reluctant to commit themselves on a party basis to a question not yet fully explored—any initial attempts at that time to secure a charter were not successful.³

As the Tenth Semiannual Conference of the Church convened in Nauvoo on Saturday, October 3, 1840, after all the hardships and persecution in Missouri, every prospect for peace and stability seemed assured. The issue of a corporate city government came to the forefront 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 Joseph Smith, 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 set forth at least 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 final composition.⁴

The felicity with which this document moved through the adoption process also reflects the fact that most of the provisions in the Nauvoo Charter already existed in other city charters that had been recently granted by the Illinois legislature.⁵ Indeed, the Nauvoo Charter incorporated by reference the thirty-nine

3. *Journal of the Senate of the Eleventh General Assembly of the State of Illinois* (Springfield: Wm. Walters, 1839); see also *Journal of the House of Representatives of the Eleventh Assembly of the State of Illinois* (Springfield: Wm. Walters, 1839).

4. *History of the Church*, 4:172, 178, 205–6.

5. At least five other city charters had been granted (Chicago, 1837; Alton, 1837; Galena, 1839; Springfield, 1840; and Quincy, 1840).

sections on legislative power previously conferred on Springfield, the Illinois capital, in February 1840. While the Nauvoo Charter was unique in its right to establish a university and in its definition of the mayor and aldermen as the chief justice and associate justices of the Nauvoo Municipal Court, its other key provisions were not unique. As in the Nauvoo Charter, the right to declare and remove nuisances was found in all Illinois city charters; the power of the mayor to call out the militia to carry into effect any city ordinance was granted by section 3 of the Galena Charter, adopted in 1839; and exclusive jurisdiction over all cases arising under municipal ordinances was extended to the mayor under article 6, section 8, of the Springfield Charter, adopted in 1840.⁶

The Illinois Twelfth General Assembly met on November 23, 1840. The forty senators met in the partially completed State House building, while the ninety representatives opened session in the nearby Methodist Church.⁷ As the first item of business, John Moore, one of the chief spokesmen for the Democratic Party, introduced a bill to vacate the town plat of Livingston, which was read out loud 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,”⁸ which was also read out loud and ordered to a second reading. On motion of Mr. William Richardson, a 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, December 5, 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 (that is, written plainly on parchment with all its amendments) for a third reading. On December 9, thirteen days after the introduction of the bill, the Nauvoo Charter was read the third time and passed.⁹

6. For extensive research on city charters in Illinois and surrounding states, see Christopher Crockett, “Nauvoo: A Historical and Comparative Analysis of the Nauvoo Charter from Passage to Repeal” (unpublished paper, BYU Law School, January 3, 2011), 51 pp.

7. Manfred Thompson, *Illinois Whigs before 1846* (Urbana: University of Illinois Graduate School, 1913), 76–79; *Journal of the Senate of the Twelfth General Assembly of the State of Illinois* (Springfield: Wm. Walters, 1840), 9, 23, 45, 61 (hereafter cited as *Senate Journal, Twelfth Assembly*).

8. *Laws of the State of Illinois Passed by The Twelfth General Assembly* (Springfield: William Walters, 1841), 52–57.

9. Thompson, *Illinois Whigs Before 1846*, 76–79; *Senate Journal, Twelfth Assembly*, 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

The progress of the Nauvoo Charter Bill through the House of Representatives was much swifter than in the Upper House. On December 10, 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 December 12, the committee reported the bill to the floor of the House without amendment. On a motion, the rules were suspended and the bill read simply by title and passed. Bennett states there were only fifteen nays, but as the vote was probably by voice vote, there is no official record of it in any legislative source.¹⁰

Three days later the Senate delivered the bill to the Council of Revision. It passed that body on December 17 to become effective February 1, 1841 (see fig. 1). 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 completely 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 congressional 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.¹¹

To guide such a document through the legislature required a purposeful hand. Some historians have ascribed to the leading Democrats Stephen A. Douglas and Sidney H. Little the responsibility for this management. However,

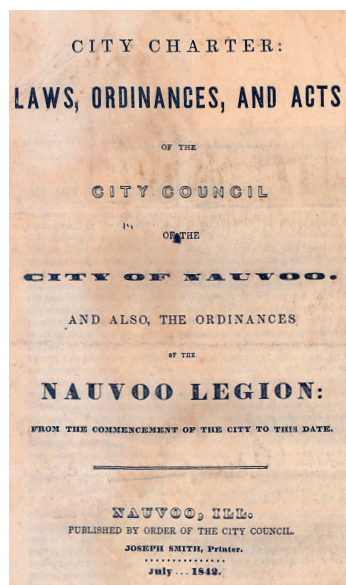


Figure 1. Publication of the Nauvoo Charter. Courtesy Church History Library, The Church of Jesus Christ of Latter-day Saints.

than the official minutes. See especially the issues for November 28, December 7, and December 10, 1840.

10. *Journal of the House of Representatives of the Twelfth General Assembly of the State of Illinois* (Springfield: Wm. Walters, 1840), 101, 110; *Illinois State Register*, July 15, 1842; Thomas Ford, *History of Illinois* (Chicago: S. C. Griggs, 1854), 263.

11. *Senate Journal, Twelfth Assembly*, 80, 89; *The Springfield Courier*, December 16 and 18, 1840.

the actual part that Douglas—who at the time was the Illinois Secretary of State—played in securing the charter remains elusive.¹²

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 interpretation. 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."¹³ Governor Ford asserted that Bennett "flattered both sides with the hope of Mormon favor; and both sides expected to receive their votes."¹⁴ All seem to concede that Bennett played a major role in the passage of the charter.

Whatever the reasons behind the General Assembly passage of the Nauvoo Charter, the Mormons were overjoyed. The passage of the Charter of Nauvoo gave the budding city "a government within a government." With this charter, the Saints possessed a city government whose ordinances (according to the literal wording of section 11 of the charter; see fig. 2) needed only to be "not repugnant to the Constitution of United States or of this State." Not mentioned is any need to conform with other state laws or county regulations.¹⁵

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 had drawn 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.¹⁶

12. 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. Sidney Little represented Hancock and McDonough Counties (where large bodies of Mormons resided) in the Senate.

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

14. Ford, *History*, 263.

15. See James L. Kimball Jr., "The Nauvoo Charter: A Reinterpretation," *Journal of the Illinois State Historical Society* 64 (Spring 1971): 66–78. The breadth of this provision may or may not have been intended or understood. Section 30 of the Chicago charter (1837) gave the city the power to enact ordinances and regulations "not contrary to the laws of this state," while article 5, section 38, of the Peoria charter limited the city's power to enactments "not repugnant to, nor inconsistent with, the constitution of the United States or of this State." For the Peoria charter, see *Laws of the State of Illinois Passed at the Fourteenth General Assembly* (Springfield: Walters and Weber, 1845), 228. Read literally, the difference between these two formulations could on certain occasions be substantial.

16. See Ralph Henry Gabriel, *Course of American Democratic Thought* (New York: Donald Press, 1956), chaps. 1–3.

During the third and fourth decades in the nineteenth century, despite opinions of the United States Supreme Court 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.¹⁷ Fully aware of this situation and armed with ample, though not unanimous, legal precedent and opinion, LDS Church leaders opted to interpret the Nauvoo Charter as a veritable Magna Carta—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.

The broad provisions of the Nauvoo Charter were intended to enable the Mormons to establish a peaceful sanctuary, free from the kinds of violence and harassments they had experienced at the hands of Missouri officials. 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.¹⁸ The implementation of the constitutional provisions of the charter exacerbated the Mormons' problems by isolating and thereby alienating the affairs of the city from the rest of the county and state.¹⁹

Perhaps only in pre-Civil War America could Mormonism have been born. Perhaps only in the 1840s could the Nauvoo Charter have been framed.

17. The 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).

18. As early as January 1843, that Saints were aware that some members of the Illinois legislature had "long been trying to repeal the Charter of Nauvoo," but Joseph had received assurances from James Arlington Bennet that "the Legislature cannot repeal a charter where there is no repealing clause." Joseph Smith, Diary, March 4, 1843, quoted in Faulring, *American Prophet's Record*, 326; *History of the Church*, 5:296.

19. For a further consideration of the creation, contents, and consequences of the Nauvoo Charter, see Robert B. Flanders, *Nauvoo: Kingdom on the Mississippi* (Urbana, Ill.: University of Illinois Press, 1965); James L. Kimball Jr., "A Study of the Nauvoo Charter, 1840–1845," (master's thesis, University of Iowa, 1966); and Kimball, "Nauvoo Charter: A Reinterpretation," 66–78.

The coming of the Nauvoo Charter reflects for us, today, the time of America's coming of age; it illustrates the growing pains of a nation optimistically trying to mesh democratic and religious idealism in a world of economic difficulties and political realities. The charter demonstrates a meeting of the American notions of political and social experimentation, impelled by a belief in the perfectibility of the human condition, with the equally American qualities 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 on the Mississippi River but also to glimpse a nation at the headwaters of its history.

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Figure 2. Selected Sections from the Nauvoo Charter

An ACT to incorporate the City of Nauvoo, Illinois Laws 1840, 52–57. Effective February 1841.

Sec. 3. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatsoever; to purchase, receive and hold property, real and personal, in said city, to purchase, receive and hold real property beyond the city, for burying ground or for other public purposes for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real and personal, for the benefit of the city; to improve and protect such property, and to do all other things in relation thereto as natural persons.

Sec. 4. There shall be a city council to consist of a mayor, four aldermen, and nine councillors, who shall have the qualifications of electors of said city, and shall be chosen by the qualified voters thereof, and shall hold their offices for two years, and until their successors shall be elected and qualified. The City Council shall judge of the qualifications, elections and returns of their own members, and a majority of them shall form a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

Sec. 5. The mayor, aldermen and councillors, before entering upon the duties of their offices, shall take and subscribe an oath or affirmation that they will support the Constitution of the United States, and of this State, and that they will well and truly perform the duties of their offices to the best of their skill and abilities.

Sec. 6. On the first Monday of February next, and every two years thereafter, an election shall be held for the election of one mayor, four aldermen, and nine councillors, and at the first election under the Act, three Judges shall be chosen *viva voce* by the electors present, the said judges shall choose two clerks, and the judges and clerks before entering upon their duties, shall take and subscribe an oath or affirmation such as is now required by law to be taken by judges and clerks of other elections; and at all subsequent elections, the necessary number of judges and clerks shall be appointed by the city council. At the first election so held the polls shall be opened at nine o'clock A. M., and closed at six o'clock P. M., at the close of the polls the votes shall be counted, and a statement thereof proclaimed at the front door of the house at which said election shall be held; and the clerks shall leave with each person elected, or at his usual place of residence within five days after the election, a written notice of his election, and each person so notified, shall within ten days after the election take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the recorder, whose appointment is hereafter provided for, and be by him preserved, and all subsequent elections shall be held, conducted and returns thereof made as may be provided for by ordinances of the city council...

Sec. 11. The city council shall have power and authority to make, ordain, establish and execute all such ordinances, not repugnant to the Constitution of the United States or of this State, as they may deem necessary for the peace, benefit, good order, regulation, convenience and cleanliness of said city; for the protection of property therein from destruction by fire or otherwise, and for the health and happiness thereof, they shall have power to fill all vacancies that may happen by death, resignation or removal, in any of the offices herein made elective; to fix and establish all the fees of the office of said corporation not herein established; to impose such fines, not exceeding one hundred dollars for each offence, as they may deem just for refusing to accept any office in or under the corporation, or for the misconduct therein; to divide the city into wards; to add to the number of

aldermen and councillors, and apportion them among the several wards as may be most just and conducive to the interests of the city...

Sec. 13. The city council shall have exclusive power within the city by ordinance, to license, regulate and restrain the keeping of ferries, to regulate the police of the city; to impose fines, forfeitures, and penalties for the breach of any ordinance, and provide for the recovery of such fines and forfeitures, and the enforcement of such penalties, and to pass such ordinances as may be necessary and proper for carrying into execution the powers specified in this Act: *Provided*, Such ordinances are not repugnant to the Constitution of the United States or of this State; and in fine to exercise such other legislative powers as are conferred on the city council of the city of Springfield, by an act entitled "An act to incorporate the city of Springfield, approved February third, one thousand eight hundred and forty"...

**Selected Sections Incorporated into the Nauvoo Charter,
Section 13, by Reference to the Springfield City Charter**

Sec. 7. To make regulations to secure the general health of the inhabitants, to declare what shall be a nuisance, and to prevent and remove the same in the streets for the extinguishment of fires, and convenience of the inhabitants.

Sec. 11. To divide the city into wards, and specify the boundaries thereof, and create additional wards, as the occasion may require.

Sec. 34. To regulate the police of the city, to impose fines, and forfeitures, and penalties, for the breach of any ordinance, and provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties.

Sec. 36. The City Council shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this Act, so that such ordinances be not repugnant to nor inconsistent with, the constitution of the United States or of this state.

Sec. 16. The mayor and aldermen shall be conservators of the peace within the limits of said city, and shall have all the powers of justices of the peace therein, both in civil and criminal cases, arising under the laws of the State; they shall as justices of the peace within the limits of said city, perform the same duties, be governed by the same laws, give the same bonds and security, as other justices of the peace, and be commissioned as justices of the peace in and for said city by the Governor.

Sec. 17. The mayor shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and shall issue such process as may be necessary to carry said ordinances into execution and effect, appeals may be had from any decision or judgment of said mayor or aldermen, arising under the city ordinances, to the municipal court, under such regulation as may be presented by ordinance. Which court shall be composed of the mayor or chief justice, and the aldermen as associate justices, and from the final judgment of the municipal court to the circuit court of Hancock county, in the same manner of appeals are taken from judgments of the justices of the peace: *Provided*, That the parties litigant shall have a right to a trial by a jury of twelve men in all cases before the municipal court. The municipal court shall have power to grant writs of *habeas corpus* in all cases arising under the ordinances of the city council. . . .

Sec. 23. In case the mayor shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to be indicted in the circuit court of Hancock county, and on conviction he shall be fined not more than two hundred dollars, and the court shall have power on the recommendation of the jury, to add to the judgment of the court, that he be removed from office.

Sec. 24. The city council may establish and organize an institution of learning within the limits of the city for the teaching of the arts, sciences and learned professions, to be called the "University of the City of Nauvoo," which institution shall be under the control and management of a board of trustees, consisting of a chancellor, registrar, and twenty-three regents, which board shall thereafter be a body corporate and politic, with perpetual succession, by the name of the "Chancellor and Regents of the University of the City of Nauvoo," and shall have full power to pass, ordain, establish, and execute all such laws and ordinances as they may consider

necessary for the welfare and prosperity of said university, its officers and students: *Provided*, That the said laws and ordinances shall not be repugnant to the Constitution of the United States or of this State, and *Provided, also*, That the trustees shall at all times be appointed by the city council, and shall have all the powers and privileges for the advancement of the cause of education which appertain to the trustees of any other college or university of this State.

Sec. 25. The city council may organize the inhabitants of said city subject to military duty into a body of independent military men, to be called the "Nauvoo Legion," the court martial of which shall be composed of the commissioned officers of said legion, and constitute the law making department, with full powers and authority to make, ordain, establish and execute all such laws and ordinances as may be considered necessary for the benefit, government, and regulation of said legion: *Provided*, Said court martial shall pass no law or act repugnant to, or inconsistent with the Constitution of the United States, or of this State, and, *Provided, also*, That the officers of the legion shall be commissioned by the Governor of the State. The said Legion shall perform the same mount of military duty as is now, or may be hereafter required of the regular militia of the State, and shall be at the disposal of the mayor in executing the laws and ordinances of the city corporation, and the laws of the State, and at the disposal of the Governor for the public defence, and the execution of the laws of the State or of the United States, and shall be entitled to their proportion of the public arms, and, *Provided, also*, That said legion shall be exempt from all other military duty.

[For a comparison of the powers granted under the Nauvoo Charter and other city charters in Illinois, see chapter 16, note 52, below.]