

titled "An act to designate and fix the place of holding the several courts for the county of Lee."

Approved January 15, 1841.

CHAPTER 70.

AN ACT to provide for assessing and collecting county revenue.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Authority to levy tax on bonds, etc.—property exempt from taxation—licenses, etc. That for the purpose of raising a revenue for county purposes, the board of county commissioners of each county in this territory, shall, each year, levy a tax, not to exceed five mills on the dollar, on all lands, town lots, and out lots, not exempt from taxation by any law of the United States, now in force; and on all personal property, with the exception of one hundred dollars worth of household furniture to each household, and excepting libraries, agricultural implements, tools of mechanics, sheep, school lands, or property of any kind, belonging or appertaining to schools, the property of all literary or scientific institutions, together with public buildings and other property belonging to the territory; on each ferry license, or ferry kept by authority of law, not less than two, nor more than fifty dollars per annum; on each license for hawking wooden, brass, or any other kind of clocks, not less than one hundred nor more than three hundred dollars; and on each license to keep a grocery, not less than twenty-five nor more than one hundred dollars; and no tavern or inn-keep-er shall be permitted to retail spirituous liquors without a grocery license.

SEC. 2. Duty of county commissioners—proviso—poll tax—payment of poll tax. That the county commissioners shall annually, at their regular session in July, or so soon thereafter as the assessment roll is filed, levy a per centage on real and personal property as aforesaid, sufficient, when added to the amount that will probably be received by the county from other sources of revenue, to defray the current expenses of such county, and to liquidate its debts for the year; but such per centage shall not, in any case, exceed five mills on the dollar, as aforesaid: provided, that the county commissioners of Dubuque county may, if they deem it expedient, levy a per centage not to exceed one cent on the dollar; and the commissioners should they deem it necessary may annually levy a poll tax, not exceeding one dollar, nor less than fifty cents, on every white male inhabitant in their county, above twenty-one, and under fifty years of age. Any person indebted to his county for the assessment of a poll tax may have the privilege of paying the same by working on the public road in the precinct in which he resides, at the rate of one dollar per day; and if the person so indebted shall neglect or refuse to pay his poll tax either in money or work, then and in that case the person so refusing or failing to pay his poll tax shall not hold any property free from execution for the payment of such poll tax.

SEC. 3. Election of assessor and his duties. That at the time and place of holding the election for county commissioners, there shall be elected one assessor for each county, who shall be a qualified elector, and whose term of office shall be one year, and until his successor is duly elected and qualified. Such assessor shall, within sixteen days after receiving a certificate of his election, enter into bonds, with security to be approved by the board of county commissioners, in the penalty of three hundred dollars, conditioned

for the faithful performance of his duties as assessor; and, also, take an oath or affirmation, to be administered by the clerk of the board of county commissioners, well, truly, and faithfully, to discharge the duties required of him by law.

SEC. 4. Vacancy, how filled—of failure to complete assessment. If any assessor so elected under the provisions of this act, shall refuse to accept of such office, or fail to comply with the foregoing section, the clerk of the board of commissioners shall, upon such failure, issue a notice thereof to the board of commissioners, which shall be served by the sheriff upon said commissioners; and it shall be the duty of said commissioners, upon receiving notice thereof, to call a meeting forthwith, and appoint some suitable person to fill such vacancy; which assessor so appointed shall be qualified according to the foregoing section; and should any assessor die, or become unable, from bodily infirmity, or any other cause, to complete the assessment of his county, township, or district, according to the provisions of this act, upon information thereof to the clerk aforesaid, a like summons as above mentioned shall be by him issued, and the appointment and qualification thereupon made; and such last mentioned assessor shall demand and receive the assess-[67]-ment roll of his predecessor, or of the person in whose possession it may be, and proceed to complete the assessment of taxable property, according to the provisions of this act; and if the roll of his predecessor cannot be obtained, the clerk, on application, shall make out a new form.

SEC. 5. Assessor may appoint deputy, etc. That whenever any assessor, elected or appointed as aforesaid, shall deem it necessary, he may appoint a deputy assessor, to be approved of by the board of county commissioners, who shall take an oath, before the clerk of such board, for the faithful performance of his duties, and for whose acts the assessor shall be responsible.

SEC. 6. Of assessment and assessment roll—designation of lands, etc.—of lands of non-residents, etc.—valuation of lots. Immediately after the election and qualification, each assessor shall commence assessing all property subject to taxation, within his district or county, as the case may be, and shall deliver to the board of commissioners, on or before the first Monday in July thereafter, a full and complete assessment roll thereof, which roll shall exhibit the description, number of acres, and value per acre, and the description and value of the town lots, and all other property specifically chargeable with tax for county purposes. The lands shall be designated by the numbers and description, as laid down on the plan or map of the original surveys, and the town lots by their numbers and description as laid down on the plan of said town, or by the boundaries, if no other specific description can be obtained; and all lots in towns or villages, the plats or plans of which have not been recorded, shall be taxed in the same manner that lots are in towns and villages whose plats or plans have been recorded; and all tracts and lots of land owned by non-residents, or persons unknown, and where specific description is not furnished by the owner, shall be described by their sub-divisions, as known or designated on the map or plan deposited in the office of the clerk, or any other public offices, or which are generally recognized as containing a correct representation of the same by their numbers, or other specific description, and as the property of persons unknown and non-residents. The value of the land shall be determined as described in this act; and in estimating the value of town lots, the assessor shall take to his assistance two discreet persons; and should any person feel aggrieved by the value which may be affixed upon his land by the assessor, or by the value at which the appraisers estimated his town lots, he may produce evidence before the board of commissioners, and if they think the value too high, they shall order the clerk to alter it accordingly.

SEC. 7. Assessor may administer oath—of refusal to testify. That any assessor, in any county in this territory, now elected or appointed, or who may hereafter be elected or appointed, is hereby empowered, at his discretion, to swear any person to give a true account of the quality and quantity of his or her property, according to the best of his or her knowledge and belief. And should any person, when so required, refuse to testify as aforesaid, such assessor shall ascertain the taxable property of such person, from the best information to be derived from other sources, and the person so refusing to testify shall pay such assessor the sum [68] of five dollars for his extra trouble, which may be recovered as other debts.

SEC. 8. Clerks to prepare assessment rolls. The clerks of each board of commissioners shall prepare blank forms of assessment rolls under this act, and deliver one to each of the assessors of his county, at the time of his qualifying.

SEC. 9. Correction of assessment roll, etc. On the last Monday in June, the assessor shall attend at the office of the clerk of commissioners, and with the assistance of said clerk, shall publicly, in order that all persons interested may have the necessary corrections made, examine the assessment rolls, and correct all double or imperfect listing, or errors in descriptions or quantities of lands or lots; and if it shall appear that there are omissions, or lands taxable not entered by the assessor on his roll, the clerk and assessor shall correct all such omissions; and shall enter upon the rolls lands so omitted as non-resident lands; and if the entry of any tract of land or lot cannot be rendered certain in its descriptions by the before mentioned examinations, such entry shall be rejected from the roll, and the assessor shall, within five days thereafter, return to the clerk a correct description of such lands or lot, and the clerk shall thereby amend the defective entry in said roll; and if the assessor shall fail to attend at the time and place required, the roll, when returned, shall be compared, corrected and completed, as herein required; and for such failure, the assessor shall be liable, under this act, for a violation of his duty.

SEC. 10. Disposition, etc., of assessment roll. After the clerk and assessor shall have corrected the assessment roll, as aforesaid, the same shall be laid before the board of commissioners, and if it is found to contain all the taxable land in said county, and is otherwise correct, the board shall accept it in writing on the back thereof, signed and attested by their clerk, and the clerk shall file the same in his office, where it shall remain unalterable, as a matter of record, and shall be a guide to future assessors, as far as the same may remain correct; but the assessment roll shall, every year, be corrected in the manner named in the preceding section of this act, before such roll shall be accepted and filed as aforesaid.

SEC. 11. Duty of recorder of deeds. That it shall be the duty of the several recorders of deeds in this territory, when ordered by the board of county commissioners of their respective counties, to make out and deliver a certified alphabetical list of all the owners of lands, the deeds for which are recorded in his office, and deliver the same to the assessor, at or before the time of his proceeding upon the discharge of his duties; which said alphabetical list shall be in the names of the present owner or owners of such lands as have been conveyed by deed as aforesaid, and in this form:

[69] *Form of Alphabetical List*

On	Quarter	No. of Section	No. of township	No. of Range	No. of Acres	Value per acre	Whole amount	Amount of tax

And for a compensation for making out said list as is required by this section, the recorders shall receive out of the treasury of their respective counties such sums as the county commissioners of their respective counties shall deem just and proper.

SEC. 12. Of lands, etc., omitted in former tax rolls. Whenever any assessor shall discover, during the time he is making his assessment, that there are tracts of land, town lots, or chattels, subject to taxation in his county or district, which were liable to taxation, and were omitted by the assessor in one or more preceding years, he shall enter the same upon his roll, noting distinctly the years in which such omissions were made, in the same manner as assessments for the current year, (but no such assessment shall be made for a longer period than one year back;) and such [70] assessment shall have the like force and effect as assessments made at the proper time, and the tax due thereon charged and collected with the revenue of the year in which such assessment is made; and land and town lots shall be subject to the tax omitted to be assessed as aforesaid, in whose hands soever they may come.

SEC. 13. First assessor to make duplicate of assessment roll, etc. For the purpose of aiding future assessors in making assessments under this act, the first assessor shall make out and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein from time to time, so that it corresponds with the assessment roll returned by him into the office of the clerk; and when he is succeeded in his office, he shall deliver the same, with all other documents in his possession relating to said office, to his successor.

SEC. 14. Compensation of assessors—deduction from pay of assessor. The board of commissioners shall allow to the assessors in their respective counties, such compensation as to them shall seem just and reasonable, to be paid out of the treasury of the proper county on the order of said board, as other moneys are paid. At the time the collector of the county makes returns of the amount of taxes collected by him of unassessed property, as hereinafter provided, the said board shall make an order deducting such sums as to them may seem reasonable, for failing to assess such property from the allowance made to such assessor. If such assessor shall have received his pay for assessing, he and his securities shall be liable, on their bond, for the amount of such deduction.

SEC. 15. County commissioners to determine rate of taxation. The board of commissioners, for the purpose of enabling the clerk to calculate and carry out the amount of tax on all property returned by the assessor, shall, at their session in July in each year, determine the rates of taxation upon the several subjects allowed to be taxed for county revenue under the restrictions of this act, and enter such determination on record, which shall govern the clerk in making the said calculations.

SEC. 16. Duty of clerk after return, etc., of assessment roll. Immediately after the return, perfection, acceptance and filing of the assessment roll, as hereinbefore directed, the clerk shall calculate and carry out the amount of taxes opposite to the specified property, lots, or lands, charged with tax; and within twenty days after the filing shall make out and deliver a certified statement of the amount, as exhibited by said assessment roll, to the treasurer of the county; and within the same time shall also make out an abstract of the roll or rolls aforesaid, and deliver the same, together with a precept in the name of the territory, tested by the clerk under the seal of the board of commissioners, and directed to the collector of the county, commanding him to collect the taxes charged in said abstract, by demanding payment of the persons charged therein, and sale of their goods and chattels, severally, or by sale of the tracts of land or lots mentioned in said transcript, according to exigency; and that he pay over monthly all moneys collected by him by virtue of said precept, as directed thereby, and return such precept, together with the abstract of the roll aforesaid, and an account of his acts thereon, to the said clerk, on or before the first Monday in January next ensuing the date thereof.

[71] **SEC. 17. Possessor of taxable estate liable for tax, etc.** Whosoever may be in possession of any taxable estate, at the time any tax is to be assessed, shall be liable to pay the tax thereon; and if any other person, by agreement or otherwise, ought to pay such tax or part thereof, the person paying the same may, by action of debt, recover the amount from the person so bound or liable, with damages not exceeding twenty per cent. on the amount paid; and all taxes on real estate shall be a lien thereon until paid, and have preference of all other charges, and all taxes upon personal estate, shall have preference of all other demands.

SEC. 18. Duties of sheriffs of several counties. That the sheriffs of the several counties shall collect the county revenue, and pay over to the county treasurer, monthly, all such sums collected, and take his receipt therefor, which receipt shall be a sufficient voucher for the board of commissioners to cancel the amount of such assessment roll standing charged against said collector on the books of said commissioners.

SEC. 19. Mode of collecting tax. The collector, on receiving the duplicate and precept, which he shall demand at the office of the clerk at the expiration of the time limited for their completion, shall proceed to collect the taxes charged thereon by demanding payment thereof, at the most usual

and best known places of residence of each person charged in the duplicate, or from the person so charged at any other place, on or before the first Monday in November next ensuing; and on the payment of the full amount of the county revenue due from any person, shall give a receipt, in which the amount paid, and for what year, shall be particularly designated in words at full length: provided, that a demand of the person, at any other time, shall be a sufficient demand.

SEC. 20. Duty of collector in certain case—proviso. Any collector, in cases of gross assessment of taxes upon any tract or lot of land, upon the application of any claimant or owner of a part thereof, either divided or undivided, of such lot or tract, to pay a part of the taxes, interest and charges due thereon, proportionate to the quantity of such lot or tract owned or claimed, shall receive the same: provided, that the owner or claimant will specify, with sufficient certainty to such collector, by a map or plan of such lot or tract, or by a memorandum of the undivided part of a survey, which indicates the boundaries thereof, to be delivered to such collector by such owner or claimant, and the balance of such taxes, interest and charges, shall be a lien only on the balance of such lot or tract of land.

SEC. 21. Property to be sold for unpaid taxes. If the taxes are not paid to the collector on or before the first day of November, he may proceed to collect the same by distress and sale of the goods and chattels of the person charged, or of the person found in possession of the lands or town lots charged with such unpaid taxes, giving twenty days' notice of the time and place of such sale, by written notices, set up in three of the most public places in said county, and publishing the same in a newspaper printed in said county, if there be any.

SEC. 22. How to proceed when no goods or chattels are found—proviso. If no goods or chattels can be found, out of which to make the taxes charged on lands and town lots, the collector shall give notice in some weekly newspaper published in his county, or if no [72] such paper be there published, then in some paper published in the county nearest thereto; also, by putting up four written notices, one of which shall be on the court-house door, the others in three of the most public places in said county, for four weeks preceding the second Monday in December annually, notifying all whom it may concern that he will, on the second Monday in December next ensuing the date of such notice, commence selling, at the court-house door, or where courts are usually holden in such county, or at the most public place in the county seat, all and singular the lands and town lots in said county on which the taxes due thereon for the year or years (naming the year or years for which he is authorized to collect) are not paid on or before the second Monday of December, and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon, and four o'clock in the afternoon of each day, until all are offered for sale; but such notices are not to contain any description of lands or lots: provided, however, and it is hereby made the further duty of such collector, to put up a written notice at the court-house door of the proper county, describing each tract of land or town lot intended to be sold as aforesaid, at least four weeks previous to such day of sale.

SEC. 23. Verification necessary in certain cases. Before any collector shall proceed to make any sale of real estate, under the provisions of this act, he shall procure and file in the clerk's office of his county a verification, under oath, of the printer, or some person belonging to his office, that the advertisement hereinbefore required to be published, relating to the sale of lands and town lots, a copy of which is to be annexed to such verification, has been duly published the length of time required by this act.

SEC. 24. Land to be sold for taxes, how to proceed. After having filed evidence of the publication of the notice required in the preceding section, the collector shall proceed in pursuance thereof, on the said second Monday of December, between the hours of nine and four o'clock of said day, to expose to sale each and every tract of land and town lot on which the taxes are not paid, by the description and number by which they are designated on the duplicate, for the taxes and interest due thereon, and the costs of advertising and selling the same, or so much thereof as will sell for the amount due and chargeable thereon to the best bidder for ready cash; such collector declaring at such exposure to sale, in what manner the division of a lot or tract of land shall be made, if a part thereof shall pay tax and other charges thereon, and continue from day to day, between the said hours, to expose the said lands and lots to sale, until all shall be duly offered.

SEC. 25. Of purchase of lands sold for taxes—how lands may be redeemed—purchaser to receive fee simple title in two years—conveyance to be recorded—proviso—fee to clerk—proviso. When any lots or tract of land or part thereof, shall be sold for the non-payment of the taxes and costs, and charges thereon, the collector shall give to the purchaser a certificate, in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot, or tracts, or parts thereof, which certificate shall be assignable and transferable by endorsement on the same, which assignment shall have the same force and effect as the assignment of other [73] bonds for the conveyance of lands; and if the owner or claimant of the lot or tract of land described in such certificate, shall not, within two years from the date thereof, pay to the purchaser, his heirs or assigns, or to the board of commissioners of the county in which such lot or tract of land be situate, for the use of such purchaser, his heirs or assigns, the sum mentioned in said certificate, with interest thereon at the rate of fifty per centum per annum, together with such other taxes, costs and charges upon the lot, or tract of land sold, as mentioned in said certificate, as may have accrued under the laws of this territory, and have been paid by such purchaser, his heirs or assigns, if vouchers of the payment thereof be deposited with the board of commissioners, or produced to such owner or claimant, the said collector, or his successor in office, at the time such deed is demanded, shall, at the expiration of said two years, execute to said purchaser, his heirs or assigns, in the name of the territory of Iowa, a conveyance of the lot or tract of land so sold as aforesaid, and described in said certificate, which conveyance shall vest in the person to whom it is given, an absolute estate, in fee simple, subject to the claim of the county for all taxes, costs and charges accruing and remaining unpaid upon such lot or tract of land after such sale as aforesaid, and such conveyance shall be prima facie evidence that the sale was regular, according to the provisions of this act; and every such conveyance, executed by the collector or his successor, and duly acknowledged before any officer authorized to take acknowledgments of conveyances, may be recorded and have like effect as other conveyances when acknowledged and recorded: provided, that idiots, femmes covert, and insane persons, who are owners or claimants of lands or lots sold under the provisions of this act, may redeem such lands or lots at any time not exceeding five years after the sale thereof, in the same manner as is provided in other cases: and provided also, that every person wishing to redeem any lands or lots sold under the provisions of this act, by depositing with the clerk of the board of commissioners of the proper county the money, shall pay to the clerk of said board, at the time of depositing the redemption, the sum of seventy-five cents for his services: provided, no sale of lands for taxes, nor deed made in pursuance thereof, shall be of any validity if the taxes for which the

same is sold shall have been paid prior to such sale: provided, always, that when the lands of minors be sold, the same shall be redeemable when said minor becomes of age, and one year thereafter.

SEC. 26. Of lands, etc., sold—duty of commissioners—duty of clerks. All lands and town lots which shall not be sold as above provided, and the taxes charged thereon still remain unpaid, shall still remain charged therewith until finally paid; and such taxes and charges, from the second Monday of December in the year such taxes were assessed, shall bear interest at the rate of seven per centum per annum, until paid; and the board of commissioners before the duplicate for the succeeding year is made out, shall examine the delinquent list returned by the collector, and strike therefrom all lands which they know to be forfeited or relinquished to the [74] United States, all lands or lots which have been double listed, or on which the taxes have been paid, and correct all manner of errors that may exist, and see that the clerk makes due return of such corrected lists of former years to the collector every year; and the several clerks, when they make out the duplicate of taxes for each and every year, shall annex to the new duplicate of taxes the taxes and charges of any and all former years that remain as unpaid on lands, lots and personal property, on the delinquent list of the preceding year, after its correction by the board as hereinbefore directed, and the same, together with the interest thereon, shall be collected by the collector of the current year, as hereinbefore directed.

SEC. 27. Taxes to be a lien on lands, etc. Taxes are hereby made a lien on the lands or town lots on which they may be due, in whosoever hands such lands or town lots may come; and when any land or town lot is offered for sale for any such taxes, it shall not be necessary that the collector should sell it as the property of any particular person; and if it should be sold as the property of any particular person, no misname of the owner, or supposed owner, or other mistake respecting the ownership of such land or town lot, shall ever, in any way, affect the sale or render it void or voidable.

SEC. 28. How lands, etc., may be released from sale—refunding of illegal tax. At any time before the sale of goods and chattels, or lands and town lots, under the provisions of this act, the owner or claimant may release the same by the payment of the taxes, interest and charges, for which the same are liable to seizure and sale; and whenever any balance of any sale of any goods and chattels under this act, over and above what is sufficient to pay the taxes, interest and charges for which the same were sold, remains, the collector shall pay the same over to the owner of such goods and chattels on his demand; and if at any time within two years after the payment of tax, the person who has paid the same can satisfy the board of county commissioners that such tax was improperly assessed, or paid by mistake when it was not legally chargeable, the said board shall order that the same be repaid, and such order shall be a legal debt against the county, and shall be paid by the treasurer of said county; and such treasurer shall be entitled to a credit for the amount thereof, as in cases of payment of other claims.

SEC. 29. Second sale of land authorized. In cases where sales of goods and chattels, lots or lands, are made under the provisions of this act, unless the purchaser shall, within such time as may be allowed by the collector who makes such sale, pay the purchase money, the collector may, at his discretion, again expose the property to sale, or sue such purchaser for the amount of the purchase money, and shall recover the same, with cost, and ten per centum damages.

SEC. 30. Further respecting second sale. If the collector of any county shall at any time unavoidably fail to offer for sale the delinquent land or town lots in his county, or may have offered them for sale and the purchaser thereof shall refuse to pay the collector the amount due thereon, it shall be

the duty of such collector to again advertise and sell such lands or lots on the second Monday of April next ensuing; and such advertising and sale shall in all things be governed by the provisions of [75] this act, and be as legal and valid, to all intents and purposes, as such sales would have been had they been made on the second Monday in December; and when such collector shall have settled at the treasury, at the proper time, the amount charged against him, he shall be entitled to draw on the treasury for the balance in his favor on account of lands that shall not sell when offered by him on the said second Monday of April, which account shall be made out and sworn to as is provided for in this act, for his delinquent return.

SEC. 31. Additional duties of collector of taxes. The collector of taxes, in his return to the precept before mentioned, shall state fully and distinctly the payment of taxes made by way of credit to the property charged on the transcript of the assessment rolls aforesaid, the payments enforced by distress and sales of goods and chattels, and in like manner the sales of lots and tracts of land, or parts thereof, and the person to whom, and the sums for which the same were sold; also the taxes remaining unpaid, designating particularly the tracts or lots remaining unsold, the name of the persons delinquent in the payment of other taxes, and the tax or property with which he is charged, and the legal cause of failure to enforce payment as commanded in said precept, and such other special matters as are provided by this act to be by him done; and the truth of such return shall be verified by affidavit of the collector, to be taken before the clerk of the board of commissioners; and if any individual shall be injured or sustain a damage by a false return of any collector made to any precept under the provisions of this act, or other illegal or fraudulent act of such collector, such individual, upon suit to be brought against such collector and his securities, upon their bond for his use, shall recover treble damages and full costs and charges.

SEC. 32. Clerk to put up notices of delinquents—proviso. It shall be the duty of the clerk of the board of commissioners of the several counties, to make four copies of the lists of delinquents as returned by the collectors of their several counties, one of which they shall put up in some conspicuous place in their office, and shall keep the same up at least twelve months, and shall cause three other copies to be posted up in three of the most public places in their counties within ten days after receiving said return; and the board of commissioners of the county may, if they should deem it necessary, cause fifty copies of such delinquent list to be printed and circulated in their county: provided, that it shall be lawful for any collector to proceed, by distress and sale of goods and chattels, to collect any taxes returned delinquent, within twenty days after making such return.

SEC. 33. Certain powers vested in collectors for two years. All collectors shall have power to proceed in the collection of taxes due them for two years, from the time at which they were bound to pay over to the county, in each year, in the same manner they would have done during their appointment or terms of office; but this provision shall not be so construed as to authorize any collector to collect taxes by him returned as delinquent after receiving credit therefor.

SEC. 34. Further duties of collectors—of delinquent list, etc. Each and every collector is authorized and required to assess a county tax on all real or personal estate that may not have [76] been assessed, and at the time he makes return of the precept and list of delinquents as required by this act, shall make out, and verify by affidavit, a list of the property by him so assessed and the taxes collected thereon; and no allowance shall be made to any collector on his delinquent list by the board of commissioners, until he shall have complied with the foregoing requisition; and it shall be the duty of the clerk to publish a list of the unassessed property that has been

assessed and taxes collected thereon by the collector, in the same manner and at the same time that he publishes the delinquent list.

SEC. 35. Concerning illegal assessment—proviso. When any collector discovers that any tract of land or town lot has been assessed more than once for the same year, he shall credit only the tax really due, and make return of the balance as illegal assessments; and in all cases where too much personal property has been, through mistake, charged by the assessors, the collector may remit the excess of tax and report the same, with the list of illegal assessments: provided, however, that all such lists of illegal assessments, returned by any collector, shall contain a description of the property illegally assessed, in what the illegality consists, and the names of the persons concerned, and be verified by affidavit, and filed with the clerk before it shall have any effect.

SEC. 36. Vacancies, etc.—collector liable for amount of assessed tax—redress for neglect of omission of collector—proviso. If any collector shall die, or become unable from bodily infirmity to perform the duties of his office, the board of commissioners shall forthwith appoint a collector in the place of the one deceased or infirm as aforesaid, who shall take the oath of office before said clerk, with like penalty and condition as hereinafter prescribed; and the said collector shall forthwith demand and receive from the person in whose possession the same may be, the precept and duplicate of the assessment roll as aforesaid, and shall immediately proceed to complete the collections as commanded by said precept; and such collector shall be liable, under the provisions of this act, for the amount of the assessed taxes of his county, after deducting those which appear from the memorandums of the deceased, or the statements of the infirm collector to have been collected; and the executors, administrators, heirs, devisees and securities of the deceased collector, and the infirm collector and his securities, shall be liable, under the provisions of this act, for the amount of taxes collected by them severally, unless the same be paid over as herein provided; and any person injured by the neglect of any deceased or infirm collector to enter credits for taxes paid on the transcripts aforesaid, shall have redress by action on such collector's bond for the damages thereby sustained; and if any persons charged with the taxes on the transcript of the deceased or infirm collector, (no evidence being furnished to the successor of payment thereof, by or on the part of such collector, deceased or infirm,) be able to produce a receipt for such taxes paid such prior collector, the successors aforesaid shall not be charged therewith, but shall take up such receipt, giving his own in lieu thereof, and return the same with said receipt, and the amount thereof shall be recoverable as before provided: provided, however, that this section shall not be so construed as to [77] prohibit any collector who may be disabled by bodily infirmity from appointing deputies under the provisions of this act hereinafter provided.

SEC. 37. County orders receivable for taxes—collector, etc., not to purchase county orders—penalty. Every collector of taxes shall receive for any individual or individuals, orders regularly drawn upon the treasurer of his county, in payment of taxes due said county; and no collector or other person doing county business shall either directly or indirectly purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order for a claim allowed by the board of commissioners at any time during the period for which he may be elected, for a less amount than that expressed on the face of such order or demand against the county; and every person elected or appointed to do county business, before entering upon the duties of his office shall take an oath not to violate the provisions of this section. And any collector or other person doing county business offending against the provisions of this section, on conviction thereof, upon indictment

or presentment, shall be fined for every such offence in any sum not exceeding five hundred dollars.

SEC. 38. When taxes to be paid to treasurer—further duty of clerk. It shall be the duties of the collectors of the several counties to pay to the county treasurer the whole amount of taxes assessed in their respective counties, before the first Monday in January in each year; and if there be any deficiency in the amount thereof he shall account for the same by producing to the board of county commissioners a certified statement, to be made by the clerk attested by his signature and official seal, of the amount of delinquencies in the payment of taxes, specifying the name of the person, and the property or tax for which he is delinquent, as appears from such collector's return to the precept; and it is made the duty of the clerk to make out such statement and certificate, and calculate the amount thereof; and if the amount of such certified statement of delinquencies and the treasurer's receipt for the payment aforesaid will balance the charges on the books of the county commissioners, they shall give him a receipt for the amount of such taxes.

SEC. 39. Fees of collector. Each collector shall be entitled to the following fees for his services; seven dollars for every one hundred dollars of county tax by him collected, and in the same proportion for less sums, to be retained by him in making payment, and credited therefor in his settlement with the board of county commissioners; five per centum commission where goods are distrained, and taxes, commission and charges paid before sale; eight per centum commission on sales of distress and charges for keeping property distrained, together with the tax and charges, out of the moneys received therefrom; on sales of real estate, five per centum on the amount for which the same is exposed to sale, and twenty-five cents for each certificate of sale under this act, which are to be added to and estimated in the sum for which any tract of land, or lot, or part thereof, shall be sold.

SEC. 40. Failure of collector to make settlement, etc.—collector to be sued—trial of suit—set-off. If any collector shall fail to make settlement of the tax-[78]-es assessed in his county for county purposes, at the time required by this act, it shall be the duty of the board of county commissioners forthwith to charge, in the account against such collector, five per centum damages on the amount of balance due from such collector on account of such taxes for such delinquency; and unless the said debt and damages, and the interest thereon, to be paid to the treasurer of the county, the county commissioners shall, with due diligence, cause suit to be commenced upon such collector's bond against him and his securities, for the debt and damages due as aforesaid, and the said amount shall bear interest from the day at which payment thereof should have been made at the rate of ten per centum per annum until paid. And upon the trial of any such suit, the stated account of the collector against whom the suit is brought, certified by the clerk of the board of commissioners as truly transcribed from the accounts current against such collector on the books of said commissioners, authenticated by the county seal, shall be conclusive evidence of the amount against such collector and his securities; nor shall such collector or his securities be permitted to set-off, or allege in payment of such demand, any payment or claim of credit, unless the same has first been presented to the board of county commissioners and been allowed or rejected by them, or the same could not, by using due diligence, have been presented to said board of commissioners for their determination thereon, to be had before trial of such suit.

SEC. 41. Judgment in certain cases—proviso—extension of time to collector—duty of district attorney. If any collector shall fail to return the precept and duplicate, as hereinbefore directed, or shall make a false return thereto, the judgment, upon the determination of the suits which may be

brought by the board of county commissioners against such collector and his securities, shall be for the full amount of the taxes for the county revenue, as contained in the transcript of the assessment rolls aforesaid, together with the damages, commission, costs and charges, as hereinbefore provided, and of the amount of said taxes: provided, the county commissioners of any county are hereby empowered to extend the time of the county collector of such county, for making his returns, to such period as they may deem requisite; and the said collector is hereby authorized to proceed to collect and make sales during the term of such extension in the same manner as is prescribed in the act aforesaid, the day of such sales to be appointed by the board of commissioners at such times as they may think proper, conforming in all other respects with the provisions of the act aforesaid. The stated account of the board of commissioners aforesaid in the several cases shall be sufficient evidence; and it shall be the duty of the district attorney to aid the board of commissioners in prosecutions under this act, when requested, and to give advice and counsel concerning the revenue, when requested by any officer concerned in the collection thereof; and it shall be the duty of all officers to give information to the grand jury of the proper county of all frauds and offenses against this act.

SEC. 42. Penalty for neglect, etc., of duty. If any officer shall neglect or refuse to perform any of the duties imposed upon him by this act, he and his securities shall [79] forfeit and pay to the county not less than fifty nor more than one hundred dollars for each offense, besides all damages which may be sustained by the county or any individual in consequence of such violation of his duty; the said penalties to be adjudged, within the limitations aforesaid, by the court before whom the adjudication shall be had, and to be recovered with costs of suit in an action to be brought upon the official bond of such officer; and this provision shall be construed to extend to all cases of violations of official duties not provided for by this act.

SEC. 43. Bonds payable to board of commissioners. All bonds directed to be taken by this act shall be made payable to the board of county commissioners of the proper county, and all suits brought thereon shall be prosecuted in the corporate name of the board of county commissioners; and if brought for the use and benefit or by the direction of any person or persons, such suit shall be brought in the corporate name of the board of county commissioners, on the relation of such person or persons, and several rights may be presented in the same suit on such bond, and one judgment entered thereon shall be no bar to other rights; but the board of county commissioners, or any other person having right thereto, may have the defendants to such judgment again summoned by scire facias, to show cause why execution should not be had on such judgment for the debt or damages supposed to be due, owing, or belonging to the party complaining, as often as such right may accrue.

SEC. 44. Penalty for withholding payments, etc. Any officer withholding the payment of any moneys belonging to the county after the same shall be demanded or become due, shall be liable to pay five per centum in damages, and twenty per centum interest per annum from the date of such defalcation, to be recovered of such officer and his securities, or either of them, by action as in other cases; and the accounts in favor of the county, in all cases of the trial against all and every person or persons charged on the books of the board of county commissioners, and certified to be true by the clerk of said board of commissioners as above provided in case of collectors, and authenticated by their seal, shall be evidence in all cases of debtors of the charges therein stated, to put the defendant upon his defense to the demand.

SEC. 45. Sheriff to take oath and give bond—may appoint deputies, etc. The sheriff, before he enters upon the duties of his office as collector, shall take an oath or affirmation before some person authorized to administer the

same, that he will well and truly perform the duties of his office as collector; and shall enter into bond, to be filed with the clerk, with security to be approved of by the board of county commissioners, in the penalty of fifteen thousand dollars, conditioned for the faithful performance of the duties of his office as prescribed by law; and such collector may appoint as many deputies as he may think necessary or proper, who shall be sworn, and possess the same power and authority as his principal; such collector being at all times responsible for the acts of deputies; and should any deputy fail to pay over any moneys collected by him as such for county revenue, such principal is hereby authorized to proceed against him in the same summary manner as is provided for proceeding against collectors in like cases.

SEC. 46. Peddlers, etc., required to obtain license—minimum and maximum of license—penalty for peddling without license. That no peddler shall hereafter be permitted to vend, sell or retail, at private sale, any goods, wares or merchandize, without first having obtained a license for that purpose from the board of county commissioners of the proper county in which such peddler intends to offer said goods for sale, such sum as the board of county commissioners shall assess, not less than ten nor more than fifty dollars per annum, or at the same rate for a shorter period; and if any person or persons shall peddle any goods, wares or merchandize, within any county in this territory, without first having obtained such license, such person or persons so offending shall forfeit and pay any sum not exceeding one hundred dollars nor less than ten dollars, to be recovered by action of debt in the name of the board of county commissioners of the proper county, for the use of said county, before any justice of the peace of the proper county, or court of record having jurisdiction thereof.

SEC. 47. Clerk may grant permit, etc.—proviso. In all cases when the said board of commissioners shall not be in session when application is about to be made for a license as aforesaid, it shall be lawful for the clerk of such board to grant a written permission to such applicant or applicants, to vend, sell, and retail goods, wares and merchandise as provided in this act, until the next meeting of said board of county commissioners to be holden after the granting of such permit, and for one year from the date thereof, if the said board of commissioners, at their said next meeting, shall, upon examination and consideration, approve the same: provided, such applicant or applicants shall first pay into the county treasury, for the use aforesaid, such sum as the said clerk in his discretion shall direct, in conformity with the rate prescribed in the foregoing section, and as shall be usual in similar cases; for each of which permits or licenses, when granted, the clerk shall receive one dollar, to be paid by such applicant.

SEC. 48. Subsequent action of commissioners—further action of commissioners. When a permission is granted by the clerk in vacation, as aforesaid, it shall be the duty of the board of commissioners at their next session thereafter, to examine such permit, and to proceed forthwith to assess the amount of the tax to be paid in such case, as in the case of an original application; and if the tax thus assessed correspond with the amount fixed by the clerk, as aforesaid, they shall cause a license to be issued to the applicant or applicants, for the term of one year, or a less time, commencing with the date of the permit. If a greater sum shall be assessed than that fixed by the clerk, the applicant or applicants shall forthwith be required to pay over the residue to the county treasurer, under the penalty of forfeiting the amount already paid, and of his having his, her, or their permit revoked; but if a less sum shall be assessed, it shall be the duty of the board of commissioners, to order a warrant to be drawn on the treasurer, in favor of such applicant or applicants for the overplus, payable out of any money in the county treasury not otherwise appropriated.

[81] **SEC. 49. Penalty for hawking, etc., without license—duty of officers named.** That if any person shall peddle or hawk clocks without being duly authorized by a license, or a permit, such person, for every such offense, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by action of debt in the name of the board of commissioners of the proper county, for the use of the county, before any justice of the peace or court of record having jurisdiction of the same; in all of which cases it shall be the duty of the county commissioners, sheriffs, coroners, justices of the peace, and clerks of the several courts in this territory, and lawful for any other person, in case of their neglect, to cause such offenders to be sued, and the suit prosecuted to effect.

SEC. 50. What to be done to obtain license. That no person or persons applying for a license or permit, shall be entitled to the same until he, she or they, file with the clerk of the board of commissioners a receipt from the county treasurer for the amount ordered to be paid by such applicant, agreeable to the provisions of this act; and such receipt shall be charged in account against said treasurer on the books of said board of commissioners.

SEC. 51. Repealing section. "An act providing for assessing and collecting county revenue," approved January 24, 1839, and an act to amend the same, approved January 14th, 1840, be and the same are hereby repealed.

Approved January 15, 1841.

CHAPTER 71.

AN ACT to amend an act entitled, "An act to provide for the erection of a penitentiary," etc.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. Governor to appoint warden—term of service. That there shall be appointed by the governor, by and with the advice and consent of the council, a warden for the penitentiary, who shall hold his office for the term of one year and until his successor be appointed, whose duties shall be the same as those required of the warden in the act to which this is amendatory.

SEC. 2. Power and duties of warden. That the warden is hereby authorized and empowered to hire out the convicts confined in the penitentiary, and that the amount of the labor so performed, which shall be paid over to the superintendent, and the money arising therefrom, be reported by said warden to the director and by him to the legislative assembly. But said convicts shall not be hired out of the town in which the penitentiary is located, nor shall they be hired out separately.

SEC. 3. Pay of warden and assistants. That the warden shall receive an annual compensation of [82] five hundred dollars; and each assistant shall receive not exceeding twenty dollars per month, to be fixed by the director.

SEC. 4. Pay of director. That the director shall receive two hundred and fifty dollars annually, payable as provided for in "An act to amend an act to provide for the erection of a penitentiary," approved January 17th, 1840.

SEC. 5. Pay of superintendent. That the superintendent shall be paid only for the time he shall be necessarily employed in the performance of his duties, as prescribed by the act to which this act is amendatory, at the rate of one thousand dollars per annum. The accounts of the superintendent shall be examined and allowed by the director, and paid out of any money appropriated by congress for the erection and completion of the penitentiary.