

OREGON—GOVERNOR GAINES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Copies of correspondence with Governor Gaines in reference to the government of the Territory of Oregon.

MAY 3, 1852.

Referred to the Committee on Territories.

To the House of Representatives:

In compliance with the resolution of the House of Representatives of the 18th instant, I transmit a copy of the correspondence with John P. Gaines, Governor of the Territory of Oregon, relative to the seat of government of said Territory.

MILLARD FILLMORE.

WASHINGTON, *March 26*, 1852.

EXECUTIVE DEPARTMENT,

Oregon City, February 6, 1851.

SIR: I have the honor to enclose you a copy of an act of the Legislative Assembly of this Territory, entitled "An act to provide for the selection of places for location and erection of public buildings of the Territory of Oregon," passed by that body on the 1st instant, and my message of the 3d, in relation thereto; and ask the favor of you, at your earliest convenience, to furnish me with an official opinion as to the validity of the act in question; and, especially, whether the Legislative Assembly can lawfully assemble at Salem at its next session, and whether the bond authorized to be taken, would have any binding force.

Much difference of opinion exists among the members, and I am extremely anxious to have the question settled as early as possible.

Very respectfully, your obedient servant,

JOHN P. GAINES,
Governor of Oregon.

HON. J. J. CRITTENDEN,
Attorney General United States.

GOVERNOR'S SPECIAL MESSAGE.

EXECUTIVE DEPARTMENT,

Oregon City, February 3, 1851.

Gentlemen of the Legislative Assembly:

Understanding that an act concerning the establishment of the seat of government for this Territory had passed your honorable body on the 1st instant, I sought for and obtained a copy of what purports to be a copy of the act; and, in the supposition that the paper furnished me is a true copy, I propose to submit to your consideration a few observations upon it.

The title is, "An act to provide for the selection of places for location and erection of public buildings of the Territory of Oregon."

The first section *establishes* the seat of government at Salem, in Marion county;

The second establishes the penitentiary at Portland, in Washington county; and,

The third section establishes the university at Marysville, in Benton county.

The fourth section names three gentlemen as commissioners to superintend the erection of the public buildings, and authorizes them to select one of their number as *acting* commissioner, who is required to give bond (without the usual requisition of security) to the United States in the sum of twenty thousand dollars, to be approved by the Governor, for the faithful performance of his duty; and upon this board is devolved the exclusive duty of erecting the public buildings.

The ninth section provides for the erection of the penitentiary in Portland, in the same manner and subject to the same restrictions prescribed for the erection of the public buildings at Salem; but the act is silent as to the erection of the university at Marysville.

The act of Congress entitled "An act to establish the Territory of Oregon," approved August 14, 1848, provides, in the concluding part of the sixth section, that, "to avoid improper influences, which may result from intermixing, in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The concluding part of the fifteenth section of the same act, provides that, "and the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Oregon, to be there applied by the Governor to the erection of suitable buildings at the seat of government." It is also provided in the sixth section of the same act, that "any law or laws inconsistent with the provisions of this act, shall be utterly null and void."

The act of Congress entitled "An act to make further appropriations for public buildings in the Territories of Minnesota and Oregon," approved June 11th, 1850, provides in the first section, "That the sum of twenty thousand dollars each, be and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be applied by the Governors and Legislative Assemblies of the Territories of Minnesota and Oregon, at such place as they may select in said Territories for the erection of penitentiaries;" and the third section, "That the sum of twenty

thousand dollars in addition to that appropriated by section fifteen of an act to establish the territorial government of Oregon, approved August 14, 1848, be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied by the Governor and Legislative Assembly of the Territory of Oregon, to the erection of suitable public buildings at the seat of government of said Territory."

I have carefully compared the paper which purports to be a copy of your enactment, with the above recited acts of Congress, and am constrained to say, with all due deference, that to my mind it is not in conformity with either, but in derogation with both. Every law should embrace "but one subject," and that "expressed in the title." The "*place*" selected for the penitentiary, should have the concurrence of the executive, and the money appropriated for the erection of the public buildings should be "*applied*" with his sanction.

Entertaining these views, I owe it to the government and people of the United States, whose agent I am; to the people of Oregon, whose rights it is my duty to protect, and to my official oath, to decline any participation in executing your act.

I have thus frankly expressed my views, in order that you may have an opportunity to substitute some other person to approve the bond of the acting commissioner, and to provide for filling vacancies in the boards of commissioners.

Allow me to add, in conclusion, my hope that you will not adjourn without taking the most effectual steps to carry out my recommendation in my message at the commencement of the session, to cause the public buildings to be erected.

I am, respectfully, your obedient servant,

JOHN P. GAINES.

A motion was made to print thirty copies of the above message.

The ayes and noes being called for, the following persons voted:

Ayes.—Deady, Campbell, Gilmore, Matlock, Payne, Tharp, Powers, Simpson.

Noes.—Alphin, Avery, King, Parker, Holmes, St. Clair, Harding, and the Speaker. Mr. Shaw being absent.

An act to provide for the selection of places for location and erection of public buildings of the Territory of Oregon.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the seat of government of this Territory be, and hereby is, established and located at Salem, in the county of Marion; and each and every session, either general or special, of the Legislative Assembly of this Territory, hereafter convened, shall be held at the place above-named.

SEC. 2. The penitentiary or State prison of this Territory shall be, and hereby is, located and established at Portland, in the county of Washington.

SEC. 3. That the university shall be, and hereby is, located and established at Marysville, in the county of Benton; and all appropriations or

donations of money or personal property, and all the proceeds of the sale of land or lands granted or donated to this Territory for the establishment and endowment of a university shall be applied to the erection of suitable buildings for, and endowment of, a university at the said place above-mentioned.

SEC. 4. That John Force, H. M. Waller, and R. C. Geer be, and are hereby, constituted a board of commissioners to superintend the erection of buildings at the place designated in the first section of this act as the seat of government; and the said commissioners, or a majority of them, shall agree upon a plan of said buildings, and shall issue proposals, giving two months' notice thereof, and contract for the erection of said buildings without delay; and the said commissioners shall agree upon one of their number to be acting commissioner, and said acting commissioner shall give bond to the United States in the sum of twenty thousand dollars, to be approved by the governor of this Territory, for the faithful performance of his duty, and said bond shall be filed in the office of the Secretary of this Territory.

SEC. 5. It shall be the duty of said acting commissioner to superintend in person the rearing and finishing of said buildings; and the said acting commissioner shall have power to call the said board of commissioners together for the purpose of transacting business on this subject; and the said commissioners shall receive such compensation as shall be hereafter allowed by law.

SEC. 6. The acting commissioner shall annually report to the Legislative Assembly a true account of all moneys received and paid out by him.

SEC. 7. If by death, resignation, or any other cause, there shall be a vacancy in said board of commissioners, it shall be the duty of the governor to appoint some person from the district where such vacancy occurred, to perform the duties of such disqualified commissioner: *Provided, however,* That such appointment shall not extend beyond the meeting of the next Legislative Assembly.

SEC. 8. *And be it further enacted,* That a penitentiary of sufficient capacity to receive, secure, and employ one hundred convicts, to be confined in separate cells at night, shall be erected at the place designated in the second section of this act, for the confinement and employment of persons sentenced to imprisonment and hard labor in the penitentiary of this Territory.

SEC. 9. That David H. Lounsdale, Hugh D. O'Bryant, and Lucius B. Hastings be, and are hereby, constituted a board of commissioners to superintend the erection of a penitentiary at the place designated in the second section of this act, and shall be governed by, and have all the powers, and be subject to all the restrictions contained in sections four, five, six, and seven of this act, and receive such compensation as may hereafter be allowed by law.

SEC. 10. This act to take effect and be in force from and after the passage of this act.

OREGON CITY, February 5, 1851.

SIR: I have received your communication asking my opinion as to the validity of the act passed by the Legislative Assembly, "To provide for

the selection of places for location and erection of public buildings of the Territory of Oregon;" and also, whether the next Legislative Assembly can lawfully assemble at Salem.

As to the first inquiry, I am compelled to state that the act seems to me to be invalid for several reasons:

In the first place, it is directly in violation of the last clause of the sixth section of the act "establishing the Territorial government of Oregon;" inasmuch as more than one object is embraced in the law, all of which objects are not expressed in the title.

On an examination of the law I find the following objects embraced in it, to wit: the establishment and location of the seat of government at Salem; the establishment and location of a penitentiary at Portland; the establishment and location of a university at Marysville; a provision and appropriations for the endowment of the university in some manner not stated; the appointment of two boards of commissioners to superintend the construction of the buildings at Salem and Portland, with provisions as to their duties and liabilities; at least *six distinct objects*, that do not seem to have "a proper relation to each other," in the language of the act referred to, nor are they expressed in the title. That only expresses a provision for the *selection of places* where public buildings of the Territory may be located and erected.

Under this title, it is somewhat unexpected and strange to find provisions for the endowment of a university; it is certainly difficult to see how the selection of a place for the location and erection of a State-house or penitentiary has any proper relation to the endowment of an institution of learning, which is something more than a mere building.

Further than this: I cannot see how "the selection of a place" can express the mode in which buildings shall be constructed, as, for instance, in the eighth section of the act; nor how, under that title, the appointment of boards of commissioners can be authorized to superintend, not any *selection of places*, but the construction of the buildings.

And even if the provisions of the act had been confined to the object expressed in the title, the selection of places, I am still of the opinion that the three subjects introduced are such as "have no proper relation to each other," and are absolutely distinct, unlike, and separate. One of these subjects is referred to by itself in the fifteenth section of the organic act, as follows:

"And at said first session, or as soon thereafter as they shall deem expedient, the Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible."

It would seem from this, that Congress regarded the location and establishment of the seat of government as one object. If so, that is sufficient to be embraced in one law; and if any subject having no proper relation to it is connected with it, the whole act must be utterly null and void.

For these reasons I am forced to the conclusion that the act is without validity.

I have not referred to the acts of Congress making the appropriations, and authorizing the concurrence of the Governor, because I do not find in this act, even if it were otherwise valid, any thing that requires, or even authorizes the executive to use the money in his hands for the purposes therein named.

There is no reference to any appropriation, except as to the university; nor does it appear whether a greater or less sum was intended to be expended than has been appropriated, or that these buildings are not to be solely territorial property, designed to be constructed by means of, and paid for from the funds in the Territorial treasury.

As to the second question, I must answer, that if any part of this act is void for the reasons stated, the whole must be so.

The Assembly have entire authority to locate the seat of government in a lawful manner. Until this is done, they cannot assemble except where they were summoned in the mode prescribed in the organic act.

Having thus briefly stated my impressions upon this subject, I have the honor to be, very respectfully, your obedient servant,

AMORY HOLBROOK,

United States Attorney.

His Excellency Hon. JOHN P. GAINES.

DEPARTMENT OF STATE,

Washington, May 1, 1851.

SIR: I have the honor to transmit to your excellency, herewith, a copy of the opinion of the Attorney General of the United States, bearing date the 23d instant, touching the several points mentioned in the letter which you addressed to him on the 6th of February last, and to inform your excellency, by direction of the President of the United States, that he fully concurs in the official opinion of Mr. Crittenden.

I am, with great respect, your Excellency's obedient servant,

DANIEL WEBSTER.

His Excellency JOHN P. GAINES,

Governor of Oregon, Oregon City.

OFFICE OF THE ATTORNEY GENERAL,

April 23, 1851.

SIR: The papers lately received from the Hon. John P. Gaines, which I communicated to you, and which you were pleased to refer to me for my opinion thereon, have been carefully examined and considered. They consist, first, of what purports to be an act of the Legislative Assembly of the Territory of Oregon; second, a message from Governor Gaines to that Assembly, bearing date February 3, 1851, expressing, for reasons given, his dissent to that act, and his refusal to participate in its execution; and, thirdly, an opinion of the United States attorney for that Territory, given on the application of the governor, against the validity of the said act.

The only acts of Congress which I have found relating to the subject are, "An act to establish the territorial government of Oregon," passed August 14, 1848, and "An act to make further appropriations for public buildings in the Territories of Minnesota and Oregon," passed June 11, 1850.

By the first of these acts, the legislative power and authority are vested

in the Legislative Assembly of the Territory, consisting of a Council and House of Representatives, and the concurrence or approval of the governor is not requisite to the validity of their acts of legislation. The power "to locate and establish the seat of government for said Territory, at such place as they may deem eligible," is expressly given to that Assembly by the 15th section of that act.

It may be a question how far this general and exclusive power of legislation has been qualified by the act of Congress above-mentioned of the 11th of June, 1850, in the instances therein embraced. That act, in its first section, provides "that the sum of twenty thousand dollars each be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, to be applied by the governors and Legislative Assemblies of the Territories of Minnesota and Oregon, at such places as *they* may select in said Territories for the erection of penitentiaries;" and in its third section it further provides, "that the sum of twenty thousand dollars, &c., be, and the same is hereby, appropriated, &c., to be applied by the governor and Legislative Assembly of the Territory of Oregon to the erection of suitable public buildings at the seat of government of said Territory.

This last section does not in my opinion conflict or interfere with the previous exclusive power of the Assembly to "locate" their seat of government as they thought proper. It gives the governor no control or voice on that question. But the seat of government once fixed by the Assembly, it does give him a concurrent and equal authority with them in the application of the money to the purpose designated. This concurrence was required probably as an additional security for the proper expenditure and use of the money granted. And to this extent, and in reference to the use of this money, the legislative power of the Assembly is qualified, and they cannot dispose of it without the concurrence of the governor.

In regard to the first section of the act, and the appropriation of the twenty thousand dollars for the erection of a penitentiary in Oregon, the act is too explicit to leave any room for construction. That money, in the words of the law, is to be applied "by the governor or Legislative Assembly of Oregon at such place as *they* may select for the erection of a penitentiary. By the force of this language, the governor must have a concurrent and equal power with the Assembly, not only in the application of the money to the erection of the necessary buildings, but in the selection of the place where they are to be erected.

On the other topics presented in the message of Governor Gaines, and in the written opinion of the United States attorney, it is unnecessary, perhaps, for me to say more than that I entirely concur in the views expressed by those gentlemen.

The act of Congress which established the territorial government of Oregon, and from which its Legislative Assembly derives its existence and its power, expressly and imperatively declares that "to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law* shall embrace but one object, and that shall be expressed in the title."

That the act of the Legislative Assembly in question does "embrace more than one object," and that it is, therefore, in violation of the act of Congress, is a proposition that cannot be made plainer by argument. The

same act of Congress declares what shall be the consequence of such a violation of its provision, namely, that the territorial act "shall be utterly null and void."

My opinion, therefore, of the act in question is, that it is null and void in all its parts, and consequently, can give no legal validity to anything done under color of its authority.

This statement, with the message of the governor, the act of the Legislative Assembly, and the opinion of the attorney of the United States for the Territory, will present the subject fully, and enable you to give whatever direction may be deemed proper.

I shall be gratified if the remarks I have made shall in any degree facilitate your examination and decision of the subject.

I have the honor to be, very respectfully, sir, your obedient servant,
J. J. CRITTENDEN.

To the PRESIDENT.