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ENABLING ACT

AN ACT to enable the people of Utah to form a constitution and State government, and to be admitted into the Union on an equal footing with the original States.

[Formation of state authorized.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territory of Utah, as at present described, may become the State of Utah, as hereinafter provided.

Sec. 2. [Convention. Electors. Delegates. Apportionment. Election.]

That all male citizens of the United States over the age of twenty-one years, who have resided in said Territory for one year next prior to such election, are hereby authorized to vote for and choose delegates to form a convention in said Territory. Such delegates shall possess the qualifications of such electors; and the aforesaid convention shall consist of one hundred and seven delegates, apportioned among the several counties within the limits of the proposed State as follows: Beaver County, two delegates; Box Elder County, four delegates; Cache County, eight delegates; Davis County, three delegates; Emery County, three delegates; Garfield County, one delegate; Grand County, one delegate; Iron County, one delegate; Juab County, three delegates; Kane County, one delegate; Millard County, two delegates; Morgan County, one delegate; Piute County, one delegate; Rich County, one delegate; Salt Lake County, twenty-nine delegates, thus apportioned, to-wit: Salt Lake City, first precinct, four delegates; second precinct, six delegates; third precinct, five delegates; fourth precinct, three delegates; fifth precinct, three delegates; all other precincts in said County, outside of Salt Lake City, eight delegates; San Juan County, one delegate; San Pete County, seven delegates; Sevier County, three delegates; Summit County, four delegates; Tooele County, two delegates; Uintah County, one delegate; Utah County, twelve delegates; Wasatch County, two delegates; Washington County, two delegates; Wayne County, one delegate, and Weber County, eleven delegates; and the governor of said Territory shall, on the first day of August, eighteen hundred and ninety-four, issue a proclamation ordering an election of the delegates aforesaid in said Territory to be held on the Tuesday next after the first Monday in November following. The board of commissioners known as the Utah Commission is hereby authorized and required to cause a new and complete registration of voters of said Territory to be made under the provisions of the laws of the United

Enabling Act
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S.J.R. 4 p. 7 ✓

States and said Territory, except that the oath required for registration under said laws shall be so modified as to test the qualifications of the electors as prescribed in this Act; such new registration to be made as nearly conformable with the provisions of such laws as may be; and such election for delegates shall be conducted, the returns made, the result ascertained, and the certificate of persons elected to such convention issued in the same manner as is prescribed by the laws of said Territory regulating elections therein of members of the legislature. Persons possessing the qualifications entitling them to vote for delegates under this Act shall be entitled to vote on the ratification or rejection of the constitution, under such rules or regulations as said convention may prescribe, not in conflict with this Act.

1. **Women's ineligibility to vote on adoption of Constitution.** Women were without right to vote on question of ratification or rejection of Constitution. *Anderson v. Tyree*, 12 U. 129, 42 P. 201. (King, J., dissenting.)

Sec. 3. [Meeting of convention. Ordinance to be incorporated in constitution.]

That the delegates to the convention thus elected shall meet at the seat of government of said Territory on the first Monday in March, eighteen hundred and ninety-five, and, after organization, shall declare on behalf of the people of said proposed State that they adopt the Constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State.

The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide by ordinance irrevocable without the consent of the United States and the people of said State—

First: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship; *Provided*, That polygamous or plural marriages are forever prohibited.

Second. That the people inhabiting said proposed State do agree that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State

from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such Act of Congress may prescribe.

Third. That the debts and liabilities of said Territory, under authority of the legislative assembly thereof, shall be assumed and paid by said State.

Fourth. That provision shall be made for the establishment and maintenance of a system of public schools; which shall be open to all the children of said State and free from sectarian control.

1. **Effect, on state's power of eminent domain, of disclaimer of right and title to unappropriated public lands.**

Under provision of this section and Const. Art. III, § 2, by which the people forever disclaimed all right and title to unappropriated public lands lying

within boundaries of proposed state, public lands are not subject to state's power of eminent domain either directly or indirectly, without consent of United States. *Utah Power & Light Co. v. United States*, 230 F. 328, 337, 4 A. L. R. 535.

Sec. 4. [Vote on constitution. Canvass. Proclamation. Admission.]

That in case a constitution and State government shall be formed in compliance with the provisions of this Act, the convention forming the same shall provide by ordinance for submitting said constitution to the people of said State for its ratification or rejection, at an election to be held on the Tuesday next after the first Monday in November, eighteen hundred and ninety-five, at which election the qualified voters of said proposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted. The return of said election shall be made to the said Utah commission, who shall cause the same to be canvassed, and if a majority of the votes cast on that question shall be for the constitution, shall certify the result to the President of the United States, together with a statement of the votes cast thereon, and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if all the provisions of this Act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of said election, and thereupon the proposed State of Utah shall be deemed admitted by Congress into the Union, under and by virtue of this Act, on an equal footing with the original States, from and after the date of said proclamation.

1. **Women's ineligibility to vote on adoption of Constitution.**

Women were without right to vote on question of ratification or rejection of

Constitution. *Anderson v. Tyree*, 12 U. 129, 42 P. 201. (King, J., dissenting.)

Sec. 5. [Congressman. Time of election of state officers. Territorial officers to continue.]

That until the next general census, or until otherwise provided by law, said State shall be entitled to one Representative in the House of Representatives of the United States, which representative in the Fifty-fourth Congress, together with the governor and other officers provided for in said constitution, may be elected on the same day of the election for the adoption of the constitution; and until said State officers are elected and qualified under the provisions of the constitution, and the State is admitted into the Union, the Territorial officers shall continue to discharge the duties of the respective offices in said Territory.

Sec. 6. [Land grant for common schools.]

That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed state, and where such sections, or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

1. School land grant as not including mineral lands.
2. Purchaser's right to sue in trespass before issuance of certificate of sale.

School land grant to State of Utah did not include mineral lands. *United States v. Sweet*, 245 U. S. 563, 62 L. Ed. 473, 38 S. Ct. 193.

Purchaser of land set aside under this section and sold by land commissioner has such an interest as will support an action for trespass before issuance of certificate of sale. *Livingston v. Thornley*, 74 U. 516, 280 P. 1042.

Sec. 7. [Land grant for public buildings.]

That upon the admission of said State into the Union, in accordance with the provisions of this Act, one hundred sections of the unappropriated lands within said State to be selected and located in legal subdivisions as provided in section six of this Act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State when permanently located, for legislative, executive, and judicial purposes.

Enabling Act Sec. 6 Ref. to S.L. '45, c. 129 Sec. 1, p. 245

Enabling Act Sec. 7 Ref. to S.L. '45, c. 129 Sec. 1, p. 246

Sec. 8. [Land grant to university and agricultural college. Permanent fund.]

That lands to the extent of two townships in quantity, authorized by the third section of the Act of February twenty-one, eighteen hundred and fifty-five, to be reserved for the establishment of the University of Utah, are hereby granted to the State of Utah for university purposes, to be held and used in accordance with the provisions of this section; and any portions of said lands that may not have been selected by said Territory may be selected by said State. That in addition to the above, one hundred and ten thousand acres of land, to be selected and located as provided in the foregoing section of this Act, and including all saline lands in said State, are hereby granted to said State, for the use of said university, and two hundred thousand acres for the use of an agricultural college therein. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested and held by said State; and the income thereof to be used exclusively for the purposes of such university and agricultural college, respectively.

Enabling
Act
Sec. 8
Ref. to
S.L. '45, c. 129
Sec. 1, p. 245

1. Saline lands which were granted to state. 2. Applicability of section to proceeds from sale of lands granted for university purposes.

This section granted to State of Utah only such saline lands to be selected as part of other lands granted and not specifically located. *Montello Salt Co. v. Utah*, 221 U. S. 452, 55 L. Ed. 810, 31 S. Ct. 706.

The provisions of this section apply to proceeds derived from sale of lands granted for university purposes. *State ex rel. University of Utah v. Candland*, 36 U. 406, 104 P. 285, 24 L. R. A. (N. S.) 1260, 140 Am. St. Rep. 834.

Sec. 9. [Five per cent of sales of public lands granted to schools.]

That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

Enabling
Act
Sec. 9
Ref. to
S.L. '45, c. 129
Sec. 1, p. 245

Sec. 10. [Permanent school fund. Lands granted not subject to entry under laws of U. S.]

That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

1. Nonapplicability of section to proceeds from sale of lands granted for university purposes.

The provisions of this section do not apply to proceeds derived from sale of

lands granted for university purposes. *State ex rel. University of Utah v. Candland*, 36 U. 406, 104 P. 285, 24 L. R. A. (N. S.) 1260, 140 Am. St. Rep. 834.

Sec. 11. [Schools, colleges, and university must remain under state control.]

The schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university.

Enabling Act
 Sec. 12
 Ref. to
 S.L. '45, c. 129
 Sec. 1, p. 246

Sec. 12. [Other land grants. Enumeration. Penitentiary granted.]

That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand by the State of Utah under the Act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to said State of Utah, the following grants of land are hereby made to said State, for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the establishment and maintenance of an insane asylum, one hundred thousand acres; for the establishment and maintenance of a school of mines in connection with the university, one hundred thousand acres; for the establishment and maintenance of a deaf and dumb asylum, one hundred thousand acres; for the establishment and maintenance of a reform school, one hundred thousand acres; for establishment and maintenance of State normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, one hundred thousand acres; for a miners' hospital for disabled miners, fifty thousand acres. The United States penitentiary near Salt Lake City and all lands and appurtenances connected therewith and set apart and reserved therefor are hereby granted to the State of Utah.

The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide.

1. Date of vesting in state of title to lands selected.

Grant of land made by United States under this section was grant in praesenti, and, when the State of Utah made the selection of lands, which was approved by the secretary of interior, the

title thereto vested in State of Utah, as of the date of the passage of the Enabling Act, or, at least, as of the date the state made the selection of the lands. *Brigham City v. Rich*, 34 U. 130, 96 P. 220.

UTAH
 CONST.

Art. 1, sec. 13
 Amend.
 proposed
 S.L. '47
 S.J.R. 5
 p. 483
 (To be voted
 at the general
 election 1948)

Sec. 13. [Selection of lands granted.]

That all land granted in quantity or as indemnity by this Act shall be selected under the direction of the Secretary of the Interior, from

the unappropriated public lands of the United States within the limits of the said State of Utah.

Sec. 14. [U. S. district and circuit courts. U. S. attorney and marshal. Term of court. Jurors.]

That the State of Utah shall constitute one judicial district, which shall be called the district of Utah, and the circuit and district courts thereof shall be held at the capital of this State for the time being. The judge of said district shall receive a yearly salary of five thousand dollars, payable monthly, and shall reside in his district. There shall be appointed clerks of said courts, who shall keep their offices at the capital of said State. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. The regular terms of said courts shall be held at the place aforesaid on the first Monday in April and the first Monday in November of each year. For judicial purposes, the district of Utah shall be attached to the eighth judicial circuit, and only one grand jury and one petit jury shall be summoned in both of said courts.

Sec. 15. [Powers, jurisdiction, and duties of U. S. courts and judges.]

That the circuit and district courts for the District of Utah and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties possessed and required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations.

Sec. 16. [Duties of U. S. marshal, attorney, and other officers. Fees and compensation.]

That the marshal, district attorney, and clerks of the circuit and district courts of the said district of Utah, and all other officers and other persons performing duty in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the same fees and compensation allowed by law to other similar officers and persons performing similar duties.

Sec. 17. [Transfer of causes. Appeals. Succession to territorial courts.]

That the convention herein provided for shall have the power to provide, by ordinance, for the transfer of actions, cases, proceedings, and matters pending in the supreme or district courts of the Territory of Utah at the time of the admission of the said State into the Union, to such courts as shall be established under the constitution to be thus formed, or to the circuit or district court of the United States for the District of Utah; and no indictment, action, or proceeding shall abate by reason of any change in the courts, but shall be proceeded with in the State or United States courts according to the laws thereof, respectively. That all cases of appeal or writ of error heretofore prose-

cuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of said Territory, or that may hereafter lawfully be prosecuted upon any record from said court, may be heard and determined by said Supreme Court of the United States; and the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the said state from or to the supreme court of such State, as the nature of the case may require. And the circuit, district, and State courts herein named shall, respectively, be the successors of the supreme court of the Territory as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of the territory, mentioned in this Act, in any case arising within the limits of the proposed state prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by the law prior to the admission of said State into the Union.

Sec. 18. [Appropriation for convention.]

That the sum of thirty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated to said Territory for defraying the expenses of said convention and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislature.

Sec. 19. [Election of state officers. Representative. U. S. senators. State government. Territorial and U. S. laws.]

That the constitutional convention may by ordinance provide for the election of officers for a full State government, including members of the legislature and representatives in the fifty-fourth congress, at the time for the election for the ratification or rejection of the constitution; but the said State government shall remain in abeyance until the State shall be admitted into the Union as proposed by this Act. In case the constitution of said State shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two Senators of the United States in the manner now prescribed by the laws of the United States; and the governor and secretary of state of the proposed State shall certify the election of the Senators and Representatives in the manner required by law, and when such State is admitted into the Union, as provided in this Act, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the State government formed in pursuance of said constitution, as provided by the constitutional convention, shall proceed to exercise all the functions of state officers; and all laws in force made by said Territory at the time of its admission into the Union shall be in force in said State, except as

modified or changed by this Act or by the constitution of the State; and the laws of the United States shall have the same force and effect within the said State as elsewhere within the United States.

Sec. 20. [Repealing clause.]

That all Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved, July 16, 1894. (28 Stat. 107.)

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