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Indiana Counties and Townships*

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THE NORTHWEST TERRITORY

The present system of county and township government in Indiana has its antecedents in the local institutions established during the period of territorial government in the Old Northwest. By the terms of the Ordinance of 1787, the Governor of the Northwest Territory was charged with setting up proper divisions for the execution of civil and criminal process, and, as circumstances might require, with laying out those parts of the district in which the Indian titles had been extinguished into counties and townships, subject to such alterations as might subsequently be made by the legislature.[1] Acting under this authorization, Governor St. Clair, in July, 1788, set up Washington County, comprising about one-half of the present state of Ohio. The establishment of other counties soon followed, Hamilton, St. Clair, and Knox being organized in 1790, Randolph in 1795, and Wayne in 1796.[2] During the period while the area comprising the present state of Indiana was included in the Northwest Territory, new counties were regularly erected and county boundaries altered by executive proclamation, but instances were not entirely wanting in which the legislature exercised its prerogative of changing the boundaries fixed by the Governor.[3]

* This article is an adaptation of the introductory chapter in a general study of county and township government in the state of Indiana which was submitted as the writer's doctoral dissertation at the University of Illinois in 1936. A succeeding chapter of the study, treating of the nature and functions of the present county governing boards, may be found in the *Indiana Law Journal* for April, 1937.

[1] *Code of the Laws of the United States*, 1935, xxiii.

[2] *Journal of Executive Proceedings of the Territory Northwest of the River Ohio, 1788-1803* (Clarence Edwin Carter, ed., *The Territorial Papers of the United States*, vol. III, pt. V, Washington, 1934), 178-279, 294-295, 301-303, 213, 441, 447. See also John A Fairlie, *Town and County Government in Illinois* (*Report of the Joint Legislative Committee*, 47th General Assembly of Illinois, vol. II, Springfield, Illinois, 1913), 26.

[3] For an act of 1799 altering the boundary between the counties of Jefferson and Washington, see Theodore Calvin Pease, ed., *The Laws of the Northwest Territory, 1788-1800* (*Collections of the Illinois State Historical Library*, vol. XVII, Springfield, Illinois, 1925), 506.

The region now constituting Indiana was included in Knox County, which was created by proclamation of Acting Governor Sargent on June 20, 1790. As originally constituted, Knox County included, in addition to present Indiana, substantial parts of the present states of Illinois, Ohio, Wisconsin, and Michigan.[4] However, by subsequent proclamations creating Wayne County and enlarging Hamilton County, Knox County was reduced to embrace only present Indiana, less the northeast and southeast corners, together with a part of eastern Illinois.[5]

The Ordinance of 1787 provided that the Governor, prior to the organization of the General Assembly,[6] should "appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same."[7] When the Governor and Judges of the territory met in their legislative capacity, they gave prompt attention to the organization of local government, their first step in this direction being the establishment of a system of local courts. Legislation adopted in 1788 provided for justices of the peace, a court of quarter sessions, a court of common pleas, and a court of probate, in each county.[8] The Governor was directed to appoint "a competent number" of justices of the peace in each county. The justices were authorized, individually, to hear and determine "petit crimes and misdemeanours, wherein the punishment shall be by fine only, and not exceeding three dollars."[9] Collectively, the justices of a particular county constituted the court known as the general quarter sessions of the peace and possessing general criminal jurisdiction within the county in all cases where the punishment "doth not extend to life, limb, imprisonment for more than one year, or forfeiture of goods and chattels, or lands and tenements."[10] The court of

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[4] Logan Esarey, *History of Indiana* (2 vols., 2 vols., Indianapolis, 1915, 1918), vol. I, 137. For maps showing the original boundaries of Knox County and subsequent changes, see George Pence and Nellie C. Armstrong, *Indiana Boundaries-Territory, State, and County* (*Indiana Historical Collections*, vol. XIX, Indianapolis, 1933), 515 ff.

[5] Pence and Armstrong, *op. cit.*, 516-519.

[6] From the organization of the Northwest Territory until 1799, the territorial legislature consisted of the appointive Governor and Judges, who were charged with adopting for the territory such laws of the original states as they might deem necessary and suited to local conditions. The first elective General Assembly in the territory met in 1799. Likewise, in Indiana Territory, the Governor and Judges served in a legislative capacity until the meeting of the first General Assembly in 1805.

[7] *Code of the Laws of the United States*, 1935, xxiii.

[8] Pease, *op. cit.*, 4-8, 9-10.

[9] *Ibid.*, 6.

[10] *Ibid.*

common pleas, a court of record, consisted of not less than three nor more than five judges appointed by the Governor, and possessed general civil jurisdiction within the county. Two terms of the court were held annually, and individual judges were authorized to hear and determine actions concerning debts of not to exceed five dollars.[11] One probate judge was to be appointed in each county, with authority to record last wills and testaments, grant letters testamentary and letters of administration, and perform all other matters pertaining to the probate office except the rendering of definitive sentences and final decrees. For the performance of functions of the latter type, the probate judge was to call two common pleas judges of the county to sit with him. Four regular sessions of probate court were held each year, and special sessions as required.

By an act of 1795, the justices of the quarter sessions in each county were authorized to hold an orphans' court with broad supervisory powers over the estates of orphans and minors in the hands of guardians, trustees, executors, or administrators. The orphans' court was authorized to appoint guardians for orphans and minors and to apprentice minors, on request of their executors, administrators, or guardians, "to trades, husbandry, or other employments."[12]

Of these various local courts, that of the quarter sessions is of particular interest in a study of county government since the justices in quarter sessions not only acted as a judicial tribunal for the trial of criminal cases but also served as the central administrative body of the county.[13] Although the functions of the court of quarter sessions as the governing body of the county varied with the enactment, amendment, and repeal of numerous statutes concerning such duties, the following may be mentioned as indicating their general nature: ordering, upon proper petition, the opening of public highways and the vacating of existing roads; appointment of

[11] By a law of 1790, repealed in 1795, the number of common pleas judges in each county was fixed at not less than three nor more than seven, and the number of terms of the court increased from two to four annually. A law of 1795 provided for the appointment in each county of "a competent number" of common pleas justices, any three or more of whom might hold court, and for quarterly sessions thereof. Pease, *op. cit.*, 35-37, 154-160, 255-257.

[12] Pease, *op. cit.*, 181-188. By another law of 1795, a circuit court consisting of one or more judges of the General Court was established in certain counties to try issues of fact joined in the General Court in cases removed from the respective counties. *Ibid.*, 154-160.

[13] Administrative duties were occasionally conferred upon the court of common pleas. Thus, by a law of 1792, that court was charged with making plans for the erection of the courthouse and jail and appointing commissioners to superintend the construction. Pease, *op. cit.*, 77-79.

highway supervisors in the various townships; fixing of rates to be charged by ferries; entering into contracts, on behalf of the county, for the building or repair of the courthouse, the jail, or county bridges, and appointing persons to superintend such building or repair; recommending persons to be licensed as innkeepers and tavern-keepers; appointment of commissioners or "listers" to list property subject to taxation; inquiring into the condition of the prisons of the county and taking necessary measures to insure that such prisons should be adequate and sanitary; providing for the erection of a pound for the exhibition of stray livestock and appointing a keeper of such pound; and dividing the county into townships and appointing township clerks, constables, and overseers of the poor.[14]

The powers of the quarter sessions with respect to finance varied with the enactment and repeal of successive statutes. Under the terms of an act of 1792, the quarter sessions made and certified to the Governor and Judges an annual estimate of the amount necessary to defray the expenses of the county government for the ensuing year; the approval of the estimates and making of the tax levy were, however, reserved to the Governor and Judges acting as a territorial Legislature. An act of 1795 vested the control of county finance in three county commissioners appointed by the court of quarter sessions and assessors elected annually by the voters of the respective townships. These commissioners and assessors, meeting jointly, allowed claims against the county, fixed the sums necessary for carrying on the county business, and levied taxes therefor. Constables were made "listers" of persons and property for taxing purposes, individual assessments being made by the township assessors on the basis of the constables' lists. A collector of assessments was appointed in each township by the commissioners and assessors.[15]

The General Assembly of the Northwest Territory, at its first session, in 1799, established in each county a board of county commissioners with authority to control the fiscal affairs of the county subject to supervision by the court of quarter sessions. This board consisted of three members ap-

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[14] Pease, *op. cit.*, 37-41, 61-66, 74-77, 80-84, 193-197, 357-360, 368-376, 452-494. Upon recommendation of the court of quarter sessions, licenses for the keeping of inns and taverns were issued, from 1792 to 1795 by "commissioners for granting licenses" appointed by the Governor in each county, and after 1795 by the Governor himself.

[15] Pease, *op. cit.*, 69-73, 201-216.

pointed by the quarter sessions, one member being appointed annually for a three-year term. It was authorized to audit and allow claims against the county, subject to appeal to the quarter sessions; it levied county taxes, subject to approval by the quarter sessions, and appointed a collector of county taxes.[16] This board of county commissioners, which functioned in what is now Indiana from 1799 to 1803,[17] seems to be the earliest prototype in this area of the present board of county commissioners. It is to be noted, however, that this early board was an extremely weak body with little authority which it could exercise on its own responsiblity, its members being appointed by and subject to the supervision of the court of quarter sessions.

In addition to the various agencies already discussed, there were appointed by the Governor in each county a sheriff, coroner, treasurer, and recorder, with functions quite similar to those performed by the corresponding officials at the present time.[18] Fence viewers, whose duty it was to pass upon the legality of fences and to apportion among the parties concerned, in case of dispute, the cost of partition fences, were appointed by the court of quarter sessions in each county.[19] Between 1799 and 1803, a county tax collector was appointed by the board of county commissioners, the function of collector being transferred to the sheriff in the latter year.[20]

By an act of 1790, the court of quarter sessions in each county was directed to divide the county into townships, "having due regard to the extent of the country, and number of inhabitants residing within the same", and to subdivide such townships from time to time as the interest and convenience of the inhabitants might require. The court of quarter sessions was also directed to appoint in each township: one or more constables; one or more overseers of the poor; and a township clerk. The functions of the constables, as elaborated in 1799, consisted in preserving the peace, apprehending criminals and bringing them to justice, suppressing riots and unlawful assemblies, and serving warrants, writs, and other process. Under the act of 1790, township overseers of the poor

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[16] *Ibid.*, 478-494.

[17] The act of 1799 was repealed in Indiana Territory in 1803. Francis S. Philbrick, ed., *The Laws of Indiana Territory, 1801-1809* (*Collections of the Illinois State Historical Library*, vol. XXI, Springfield, Illinois, 1930), 68-81.

[18] Pease, *op. cit.*, 4-8, 24-25, 67-69, 197-201, 495-496.

[19] *Ibid.*, 235-237.

[20] *Ibid.*, 478-494; Philbrick, *op. cit.*, 68-81.

were merely charged with the duty of investigating needy persons and families and reporting to a justice of the peace such as they deemed proper objects of public charity. Thus, relief was actually administered by the county, the justices being charged with taking proper steps to afford relief to persons reported by the township overseers. In 1795 the township was adopted as the unit for relief purposes, the justices of the peace, however, retaining supervisory powers. Two overseers were to be appointed in each township and were charged with levying the township poor rate with the approval of any two justices of the peace of the county. The overseers might provide a poorhouse for the care of the indigent persons of the township, but were allowed to grant relief to a poor person only after the latter had procured an order therefor from two justices of the peace. With the approval of two justices, the overseers might bind out poor children as apprentices. A law enacted in 1799 directed the township overseers to farm out the poor to the lowest bidders for their support. The township clerk was charged with recording marks and brands employed by inhabitants of the township for distinguishing their livestock, and with recording and advertising a description of all estrays reported to him. By an act of 1792, the court of quarter sessions was directed to appoint "a proper number" of highway supervisors in each township, whose duty it should be to lay out new highways upon order of the court and to keep the highways of the township in proper repair. Beginning in 1799, fence viewers were appointed in the various townships instead of for the county at large, three such officials being appointed in each township by the court of quarter sessions. With the exception of the clerk, who served during good behavior, township officers were appointed annually.[21]

Summary. The foregoing discussion serves to indicate the comparatively elaborate machinery of local government which had already developed before the end of the first territorial period. With respect to both organization and functions, the influence of English precedents is clearly evident. In speaking of Knox County, Northwest Territory, an Indiana historian has said: "There was nothing striking or novel in its organization. All the common elements of the English coun-

[21] Pease, *op. cit.*, 37-41, 74-77, 216-232, 402-404, 510-511. The office of township clerk was abolished in 1795. *Ibid.*, 255-257. For an act of 1799 relating to highway supervisors, see *ibid.*, 452-467.

ty government were present. The chief functions were the preservation of order and the protection of the people."[22] In utilizing the court of quarter sessions as the chief local governing body, the organization followed the older English system, which was also the contemporary practice in Virginia and Kentucky.[23] In many other matters, as was to be expected, contemporary institutions of various states were copied. Thus, several of the statutes concerning local government were adopted from the Pennsylvania code. Doubtless the influence of existing states would have been even greater had the Governor and Judges confined their legislative activities to the adoption for the territory of laws from existing state codes, as was clearly their duty under the terms of the Northwest Ordinance. In practice, however, this limitation was disregarded and other laws were freely enacted where it appeared that the good of the territory would be promoted thereby.[24]

The functions of local government during the period, while less elaborate, were quite similar to those of the present day, the most important being the preservation of order, the administration of justice, the recording of legal documents, the maintenance of highways, and the relief of the poor. One significant difference from present-day practice in the matter of organization, however, should be noted, viz., that, apparently with the single exception of the township assessor during the years from 1795 to 1799, all local officers were appointive rather than elective. This applies to both county and township officers, the former being appointed, in most instances, by the Governor, and the latter by the county court of quarter sessions.

It should also be noted that the township, during the period under consideration, was in no true sense of the word a unit of local self-government, but rather a mere administrative area for the purpose of carrying on certain local functions under county supervision. It possessed no independent taxing power and its officers were usually appointed by the court of quarter sessions and subject to control by that body. It was, indeed, nothing more than a subdivision of the coun-

[22] Esarey, *op. cit.*, vol. I, 137.

[23] *Cf.* Fairlie, *op. cit.*, 26.

[24] In some instances the Governor protested against action of this *ultra vires* character only to have his views ignored by the Judges. *Cf.* Esarey, *op. cit.*, vol. I, 142-143; see also *The St. Clair Papers* (2 vols., Cincinnati, 1881), vol. II, 67 ff. The validity of these acts was so generally questioned that many of them were specifically confirmed by the General Assembly at its first session. Pease, *op. cit.*, 337-340.

ty for the administration of justice, the assessment of taxes, the maintenance of highways, and the administration of relief.

INDIANA TERRITORY

By an act of May 7, 1800, Congress divided the Northwest Territory and erected the western part thereof into Indiana Territory, providing that the new territory should be governed in conformity with the provisions of the Ordinance of 1787.[25] With the admission of Ohio to statehood in 1803, Indiana Territory was enlarged by the addition thereto of what is now eastern Michigan, but was subsequently reduced by the organization of Michigan Territory in 1805 and Illinois Territory in 1809. As originally organized, Indiana Territory included three counties; of these, St. Clair and Randolph lay in the western Illinois country, Knox to the eastward including practically all of what is now Indiana together with parts of present Michigan, Wisconsin, and Illinois.[26] During the years following 1800, successive new counties were created by the subdivision of older ones, fifteen counties having been organized within the area now comprising Indiana when the state was admitted to the Union in 1816.[27] Of these, Clark and Dearborn, created in 1801 and 1803, respectively, were, like Knox County before them, formed by executive proclamation.[28] The remaining twelve were formed, during the years from 1808 to 1815, by acts of the territorial legislature. No one of these fifteen counties, however, had reached its present form in 1816.[29]

In the counties formed during the earlier years of the period, the county seat or "seat of justice" was fixed by the executive proclamation or legislative act creating the county. Beginning in 1810, however, it became customary for the legislature to appoint, in the act creating a county, a commission to locate the county seat, and a general law passed in 1813[30] provided that this should be the procedure followed in

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[25] *United States Statutes at Large*, vol. II, 58-59. The act provided, however, that a general assembly might be formed in the new territory, regardless of population, whenever satisfactory evidence should be given to the Governor that a majority of the freeholders so desired.

[26] Philbrick, *op. cit.*, *Introduction*, xii.

[27] For a list of these counties see Pence and Armstrong, *op. cit.*, 27.

[28] *Executive Journal of Indiana Territory, 1800-1816*, edited by William Wesley Woollen, Daniel Wait Howe, and Jacob Piatt Dunn (*Indiana Historical Society Publications*, vol. III, no. 3, Indianapolis, 1900), 97, 116.

[29] Pence and Armstrong, *op. cit.*, 27.

[30] Louis B. Ewbank and Dorothy L. Riker, eds., *The Laws of Indiana Territory, 1809-1816* (*Indiana Historical Collections*, vol. XX, Indianapolis, 1934), 325-329.

the future when new counties were erected in the territory. According to this act the legislature, when it laid off a new county, was to appoint five non-residents of the new county as commissioners to locate the county seat. Sometimes the site originally determined upon as a county seat proved to be unsatisfactory and a relocation was effected. During the earlier years of the period relocation was accomplished by executive proclamation and during the later years by act of the territorial legislature.

During the period from 1800 to 1816 three changes were made in the county governing body in Indiana Territory. It will be recalled that, at the beginning of the period, the fiscal affairs of the county were in the hands of a board of county commissioners appointed by the court of quarter sessions and acting under the supervision of that body. In 1803, however, the Governor and Judges adopted an act repealing the law of 1799 which created the board of county commissioners and providing that the functions of making county levies and allowing claims against the county should be exercised directly by the quarter sessions.[31]

Two years later another significant change was made. By an act passed by the territorial legislature in 1805 to take effect on January 1, 1806, the local judicial system was reorganized and consolidated, a new court of common pleas being established in each county and vested with all the powers previously exercised by the court of common pleas, the court of quarter sessions, the orphans' court, and the probate court. The new court, which was to consist of three judges appointed by the Governor to serve during good behavior, thus fell heir to the administrative functions previously vested in the court of quarter sessions and thereby became the governing body of the county. The court was to hold six sessions annually, three devoted to the hearing of civil and criminal cases and three to the transaction of county business. A clerk of the court was appointed by the Governor to serve during good behavior.[32]

The third change in the county governing authority was made in 1813. By legislation of that year the court of common pleas and the existing circuit court were abolished and

[31] Philbrick, *op. cit.*, 68-81.

[32] Philbrick, *op. cit.*, 115-118. By the act of 1805, the common pleas judges were allowed $2.50 per day while in attendance at court. Three years later, complaints having arisen that the compensation of the judges was "too high and expensive for the counties to bear", their allowance was reduced to $2.00 per day. *Ibid.*, 661-662.

their duties transferred to a new circuit court. The territory was divided into three circuits, each of which was to be presided over by a judge of the General Court of the territory acting as circuit judge. Three associate judges were to be appointed by the Governor in each county, who, in addition to their judicial duties as members of the circuit court of their county, were charged with transacting the county business formerly transacted by the court of common pleas. A clerk of the circuit court was to be appointed by the Governor.[33] It appears, however, that this legislation never became fully effective, due to the fact that the territorial judges, appointed by the President and acting under federal law, denied the authority of the territorial legislature to impose additional duties upon them.[34] Unsuccessful in its efforts to secure the enactment of congessional legislation requiring the judges to perform such duties,[35] the territorial legislature, in 1814, provided that the Governor should appoint a circuit judge for each of the three circuits and *two* associate judges in each county. Three annual sessions of the circuit court were provided for judicial business; for the transaction of county business the associate judges were directed to hold three regular annual sessions and special sessions as necessary.[36]

Apart from the governing board, practically the same county officers existed during the period of Indiana Territory as during that of the Northwest Territory. To the list provided in the Northwest Territory, however, that of the surveyor was added in 1802.[37] The office of county treasurer was abolished in 1803, the duties of treasurer being transferred to the sheriff; in 1811 the office of treasurer was re-established with the provision that that official should be appointed by the court of common pleas, but two years later the office was again abolished.[38] For a time during the period, a county assessor and a county tax collector were appointed by the court of common pleas to assess and collect the land tax for use of the territorial government.[39] It is of interest to note that, with the single exception of the auditor, all of the seven

[33] Ewbank and Riker, *op. cit.*, 474-481. The provisions relative to circuit courts in the Northwest Territory (*supra*, n. 12) had been re-enacted, with minor modifications, in Indiana Territory in 1801. Philbrick, *op. cit.*, 8-15.

[34] See Ewbank and Riker, *op. cit.*, "Review of Legislation," 65-66.

[35] *Ibid.*, 66, 68.

[36] Ewbank and Riker, *op. cit.*, 517-522, 557-559.

[37] Philbrick, *op. cit.*, 25-26.

[38] *Ibid.*, 68-81; Ewbank and Riker, *op. cit.*, 273-278, 309-324.

[39] Philbrick, *op. cit.*, 147-153.

present-day constitutional county officers (sheriff, coroner, recorder, treasurer, auditor, surveyor, and clerk of the circuit court) were found in Indiana Territory. Appointment continued to be the accepted method of selecting county officers, although it seems to have been the policy of Governor Harrison to defer to the wishes of the local citizens with regard to his selections.[40] A nascent demand, near the end of the territorial period, for the popular election of local officers, is strikingly exemplified by a joint resolution adopted by the General Assembly in 1810. In instructing the territorial delegate in Congress to procure the passage of a law authorizing the people of the counties to elect their sheriffs, the General Assembly declared that "it is a vital principle in Republican Governments that the people are the fundamental source of all offices of honor trust and profit, and that all officers should be made amenable for their conduct to that source from which their honor or profit is derived" and that "the office of Sheriff form [*sic*] a grievous exception to this Republican principle in as much as the people hold no elective check or control over said officer."[41]

In Indiana Territory, as in the Northwest Territory, the township existed as a subdivision of the county for administrative purposes. The county governing body was authorized to divide the county into townships and to subdivide townships as the convenience of the inhabitants might require.[42] That body also continued to appoint in the various townships such local officers as constables, overseers of the poor, highway supervisors, fence viewers, and tax listers.[43] As a political unit, however, the township continued throughout the period to be of little importance. Indeed, it seems quite likely that the territorial laws with respect to the organization of townships were not always carried out in practice.[44]

[40] Ewbank and Riker, *op. cit.*, "Review of Legislation," 27-28.

[41] Ewbank and Riker, *op. cit.*, 772. For a memorial of similar purport addressed by the territorial legislature to Congress in the following year, see *ibid.*, 788.

[42] Philbrick, *op. cit.*, 255-256.

[43] *Ibid.*, 308-322, 344-347, 388-390; Ewbank and Riker, *op. cit.*, 309-324. An act of 1815 provided that the court transacting county business should appoint annually in each township three township commissioners, who in turn should appoint the highway supervisors. Ewbank and Riker, *op. cit.*, 608-616. At times during the territorial period, the statutes provided for county tax listers rather than township listers. These early county and township listers, while in a sense the forerunners of our present-day assessors, had a much less complicated task than the latter. Since most taxes of the territorial period were of a specific rather than an ad valorem nature, the duty of the lister consisted merely in making an inventory, with respect to each owner, of the land, livestock, and other forms of property selected by the Legislature as the subjects of taxation. Land was taxed at a fixed sum per hundred acres, but was ordinarily divided into three classes, the better grades paying correspondingly higher rates.

[44] See *Executive Journal of Indiana Territory*, Introduction, 77.

Summary. In the field of local government, the period of Indiana Territory was essentially a period of the continuation, extension, modification, and development of institutions established in the Northwest Territory. The formation of new counties continued until the area comprising the present State of Indiana, practically all of which had been included in Knox County in 1800, contained fifteen counties by 1816. During the period, the duty of transacting "county business" was vested successively in a board of commissioners appointed by the court of quarter sessions, the court of quarter sessions itself, the court of common pleas, and the associate judges of the circuit court. Appointment continued as the method of selecting county and township officials, but near the end of the period a popular demand for their election began to be discernible. The township continued throughout the period to be, as a mere subdivision of the county for administrative purposes, of little importance as a political unit.

PERIOD OF THE FIRST STATE CONSTITUTION

Indiana was admitted to statehood in 1816 under a constitution which contained relatively few provisions with respect to county and township government.[45] The constitution did, however, provide for circuit courts and clerks thereof, county recorders, sheriffs, coroners, and justices of the peace. The rising tide of democracy is evidenced by the introduction of the principle of popular election into the system of local government. Two associate judges of the circuit court, a clerk of the circuit court, and a recorder were to be elected in each county for a term of seven years.[46] A sheriff and a coroner were to be elected in each county for a two-year term, the constitution stipulating that no person should be eligible to serve as sheriff for more than four years in any six. "A competent number" of justices of the peace were to be elected in each township for a five-year term, while other township

[45] For the constitution of 1816, see William D. Owen (Secy. of State), *Constitutions of 1816 and 1851 of the State of Indiana and Amendments* (Indianapolis, 1895); Ben: Perley Poore, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (2 vols., Washington, 1877), vol. I, 499-512; Francis N. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* (7 vols., Washington, 1909), vol. II, 1057-1073.

[46] A president of the circuit court was to be chosen in each circuit for a like term by joint ballot of the two houses of the General Assembly. To be eligible for the office of clerk of the circuit court, a person was required to obtain a certification from a judge of the Supreme Court or a president of a circuit court that he was qualified for the duties of the office. The same person might serve as both clerk of the circuit court and county recorder.

officers were to be "appointed in such manner as shall be directed by law."

The General Assembly was left free to lay off new counties, subject to the provision that no old county might be reduced thereby to an area of less than four hundred square miles. As previously noted, fifteen counties had been organized within the boundaries of the state at the time of its admission into the Union. Fourteen of these may be said to have occupied, roughly, the southern third of the state. Eight counties, Posey, Warrick, Perry, Harrison, Clark, Jefferson, Switzerland, and Dearborn, bordered upon the Ohio River. To the north of these lay Gibson, Orange, Washington, and Jackson. Still farther north, in a narrow strip along the eastern boundary, were Franklin and Wayne, the latter extending northward into what is now Jay County. Knox County, the oldest and largest of the fifteen, extended northward from the White River to include, in addition to the present county of that name, the greater part of the northern two-thirds of the state.[47]

The advent of statehood inaugurated a period of great activity in the formation of new counties. The creation of Sullivan County in 1817 took a large block of territory out of the middle of old Knox County, leaving the latter in the form of two non-contiguous areas, the smaller to the south of Sullivan and the larger to the north. County organization, however, was retained only in the southern area, and thereafter a gradually diminishing portion of northern Indiana, most of which had been Indian territory at the time of the state's admission into the Union, remained as unorganized territory; this territory, however, was attached to existing organized counties for purposes of civil and criminal jurisdiction. In general, the carving of new counties out of the unorganized territory represents a gradual development of the state from south to north, following roughly the frontiers of Indian cessions and pioneer settlements. For the most part, the creation of new counties by the General Assembly came

[47] It is to be noted that the provision prohibiting reduction below 400 square miles (art. XI, sec. 12) applied only to *old counties*, and prohibited such reduction only in connection with the *laying off of new counties*. The manner in which this provision was subject to violation in spirit while still being observed literally is exemplified by the formation of Ohio County. When that county was carved out of Dearborn County in 1844 so that the town of Rising Sun might be a county seat, it was made to include only a miniscule area on the bank of the Ohio River, the General Assembly taking care to leave Dearborn an area of four hundred square miles. A year later, however, another act was passed enlarging Ohio County and thereby reducing Dearborn to less than four hundred square miles. See Pence and Armstrong, *op. cit.*, 83, 87-88,632-635. For maps showing county boundaries in 1816, see *ibid*, 147, 533.

in response to petitions from local citizens who protested against what seemed in those times to be unduly long distances from county seats.[48]

In 1835 practically all of the remaining unorganized territory in the northern part of the state was laid off into fifteen "paper" counties. The setting up of governmental machinery within these counties, however, was temporarily postponed, criminal and civil jurisdiction remaining in the hands of those organized counties to which the respective areas had previously been attached for jurisdictional purposes.[49] Subsequently, as increased population seemed to warrant, these respective counties were "organized" by the provision of local governments therein. Thus, by a succession of legislative acts extending over the period of the first state constitution, new counties were formed and county boundaries altered until, by the time of the adoption of the present constitution, all but one (Newton) of the present ninety-two counties had been established and provided with governmental organization.[50]

In locating county seats in the new counties, the procedure established during the territorial period, according to which the legislature appointed five non-resident commissioners to fix the "seat of justice" in a newly-organized county, was continued during the period of the first state constitution, an act of 1818 providing that this procedure should be followed whenever a new county was created.[51] Relocations of county seats were numerous during the period and were accomplished by virtue of special legislative enactments. These special acts displayed great variety, some of them actually fixing the new county seat, others setting up a commission to make the relocation, and still others authorizing the people of the county to decide, by vote, whether they wished to make a relocation and, if so, where the new site should be.[52] A general law of 1841 required persons petition-

[48] See *ibid.*, 28, 30, 31, 534.

[49] *Laws of Indiana*, 1834-35 (general), chs. 24, 25; Pence and Armstrong, *op. cit.*, 28, 64-66.

[50] For a list of the counties of Indiana with the dates of the various acts by which they were organized, see Ernest V. Shockley, "County Seats and County Seat Wars in Indiana", *Indiana Magazine of History* (1914) vol. X, 1-46, 44-46. This list, although useful, is not free from error. With regard to the formation of Newton County, see *infra*, n. 102.

[51] *Laws of Indiana*, 1817-18 (special), ch. 1. This law was of general application, notwithstanding its publication with the special acts. As a matter of fact, this method of locating county seats was not universally followed. Thus, the act by which Marion County was formed expressly fixed the location of the "seat of justice" of the new county. See *ibid.*, 1821-22, ch. 72.

[52] See *Laws of Indiana*, 1816-17, ch. 55; *ibid.*, 1828-29, chs. 87, 88; *ibid.*, 1848-49 (local), ch. 146.

ing the General Assembly for the removal of a county seat or the change of a county boundary line to give public notice, by publication or posting, of their intention to present such petition.[53]

The constitution of 1816 did not prescribe a form of governmental organization for counties but the General Assembly of the state, in its first session, created for the transaction of county business in each county a board of county commissioners similar in its nature to the present county board. The board consisted of three members elected by the voters of the county for three-year overlapping terms, and was constituted a body politic and corporate with power to sue and be sued in any matter wherein the county was concerned. Regular quarterly meetings of the board were provided and the clerk of the circuit court was made ex-officio clerk to the board.[54] By legislation enacted during the next session, the board of county commissioners was authorized to: levy taxes for county purposes, subject to rate limitations fixed by law; order, upon proper petition therefor and according to the procedure prescribed by law, the opening of new roads and the vacating of useless roads; appoint a lister to list the taxable property of the county; establish ferries; license tavern-keepers upon recommendation of twelve respectable householders; procure a set of standard weights and measures for the county; erect a pound and appoint a poundkeeper; divide the county into townships; and appoint annually in each township two overseers of the poor, an inspector of elections, one or more constables, three fence viewers, and " a necessary number" of highway supervisors. The board was also authorized to fix, within statutory limitations, the number of justices of the peace to be elected in each township.[55]

This system of county commissioner government was retained until 1824, when, with the revision of the statutes, the board of county commissioners was replaced as the governing body of the county by a county board of justices consisting of the justices of the peace of the county. The board of justices was directed to meet bi-monthly and to elect annually one of its members as president. The powers previously possessed by the board of commissioners of levying taxes, ap-

[53] *Laws of Indiana*, 1840-41 (general), ch. 65.

[54] *Ibid.*, 1816-17, ch. 15.

[55] *Ibid.*, 1817-18 (general), chs. 14, 15, 17, 31, 42, 43, 45, 47, 67, 68, 69. See also *ibid.*, 1816-17, ch. 14.

propriating money, appointing township officers, and conducting county business in general were now transferred to the board of justices. The board was constituted a body politic and corporate, and a right of appeal from its decisions to the circuit court was provided.[56]

The uniformity in the framework of the county government provided by the county commissioner law of 1816 and continued under the law of 1824 providing for a board of justices did not long survive the latter date. The constitution of 1816, as was commonly true of the constitutions of that period, placed no restrictions upon the power of the General Assembly to enact special legislation, and the power to enact such measures with respect to county government now began to be freely exercised. In 1826, for example, an act was passed modifying the personnel of the board of justices in certain counties by providing that the board should consist of one justice from each township, the justices of a particular township serving in rotation in alphabetical order.[57]

A year earlier, in 1825, an even more significant act had been passed. By the terms of this act, the townships of Dearborn County were incorporated and township governments established therein. It was further provided that the electors of each township of that county, in annual meeting, should elect one of the justices of the peace of the township as township supervisor. The various supervisors within the county, meeting together twice annually, were constituted the governing body of the county with authority to exercise all the powers of a county board of justices except those transferred by the act to the respective townships.[58] Two years later this supervisor system was extended to the counties of Switzerland and Ripley.[59] Thus we find three Indiana counties operating for a brief period under a system of supervisor government somewhat similar to that now found in New York, Michigan, Wisconsin, and most of the counties of Illinois. Care should be taken, however, that this analogy is not overemphasized, since the township "supervisors" who constituted the county boards under these early statutes were not charged with the admin-

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[56] *Revised Laws of Indiana*, 1823-24, ch. 15. An act of 1818 had provided for appeal to the circuit court from the action of the board of county commissioners in certain highway matters. *Laws of Indiana*, 1818-19, ch. 11.

[57] *Laws of Indiana*, 1825-26, ch. 77. This law was repealed the following year. *Ibid.*, 1826-27, ch. 14.

[58] *Laws of Indiana*, 1825, ch. 29.

[59] *Ibid.*, 1826-27, ch. 14.

istration of township affairs, the latter being in the hands of township boards of trustees elected in the respective townships. Moreover, since the statutes stipulated that supervisors should be chosen from among the justices of the peace of the respective townships, except for the fact that the justices who comprised the county board were designated by the voters instead of serving in rotation there was no difference in form between the board of supervisors and the modified board of justices referred to in the preceding paragraph.[60]

In 1827 an act was passed by the terms of which eleven counties reverted to commissioner government, and by subsequent acts this form of government was extended to certain other counties.[61] At this time, therefore, three types of county board existed side by side in the state, some counties continuing to operate under boards of justices as provided for all counties in 1824, others operating under boards of commissioners, and still others under boards of supervisors. Thus it became common for the General Assembly, when seeking to confer certain powers or duties upon the governing boards of *all* counties, to refer to "the boards of justices, or other persons doing county business in the several counties," or simply to "the boards doing county business in the several counties."[62] The latter expression is used in the constitution of 1851 and, indeed, is occasionally encountered in statutes still in effect, notwithstanding that uniformity in county boards has now existed for more than three-quarters of a century.[63]

While it is impossible to make any absolute generalization with regard to the distribution throughout the state of the counties operating under the respective types of county board and the factors responsible for that distribution, certain facts of possible significance may be noted. A perusal of the statutes enacted during the period intervening between the general establishment of county boards of justices in 1824 and the revision of the statutes in the legislative session of 1830-1831 indicates that commissioner government was restored, during those years, in perhaps as many as a third of the counties then

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[60] Except in name, there is no difference between the board of supervisors here discussed and the "board of commissioners", consisting of one justice of the peace elected by the voters of each township, which was provided for Owen County in 1840. See *Laws of Indiana*, 1839-40 (general), ch. 30.

[61] *Laws of Indiana*, 1826-27, ch. 13; *ibid.*, 1827-28, ch. 13; *ibid.*, 1828-29, ch. 13; *ibid.*, 1829-30, ch. 15.

[62] See, for example, *Laws of Indiana*, 1826-27, ch. 12; *ibid.*, 1833-34, ch. 24.

[63] See *Constitution of Indiana*, art. VI, sec. 10; *Burns' Annotated Indiana Statutes*, 1933, secs. 26-201, 42-204.

in existence. In general, the counties provided with commissioner government were located in the northern part of the then settled portion of the state, a fact which may indicate that the counties in the southern end of the state were satisfied with the system of government by justices prevailing in the states of Kentucky and Virginia, from which many of the settlers of that region had come. The reason for the establishment of the modified form of supervisor system in the three neighboring counties of Dearborn, Switzerland, and Ripley, in the southeastern corner of the state, is not apparent. Inasmuch as the system was first established in Dearborn and subsequently extended to Ripley and Switzerland, it appears that we cannot look for the explanation to the democratic background of the original settlers of the latter county.[64] It seems, however, that most of these special laws regulating the forms of local government were enacted in response to local demand, and we have direct evidence in the debates of the constitutional convention of 1850-1851 that this was true in the case of the law originally establishing the supervisor system in Dearborn County. In the course of the debate on the clause prohibiting special legislation regulating county and township business, Mr. Johnson Watts, a delegate to the convention who had been a member of the General Assembly in 1825 and had helped frame the law in question, said of that law: "It was first presented to the Legislature as a general law; but we ascertained that the people of Indiana, then as now, were some of them from North Carolina, some of them from Kentucky, some from Tennessee, some from Pennsylvania, and some from Massachusetts and other States; and they all had their peculiar method of doing county and township business, and the Legislature consented to allow us because we desired it, to try the experiment . . . in the manner we then proposed."[65] Accepting this instance, as we doubtless may, as typical of the prevailing attitude of the Legislature toward such matters, it is apparent that the form of local government established in particular counties was determined in no small part by the region which supplied the early settlers.

Notwithstanding the diversity prevailing in the form of county board during the years following 1824, the trend seems

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[64] For a discussion of the Swiss origin of the early settlers of Switzerland County, see Perret Dufour, *The Swiss Settlement of Switzerland County, Indiana* (*Indiana Historical Collections*, vol. XIII, Indianapolis, 1925).

[65] *Debates and Proceedings of the Convention*, vol. II, 1771-1772.

to have been distinctly away from the county board of justices created in that year and toward the board of county commissioners. As we have seen, the governments of various counties were changed, by special statutes, from the board of justices type to the commissioner type, and when new counties were created the commissioner type was frequently, although not always, established. Finally, when the state statutes were again revised by the legislative session of 1830-1831, uniformity was again established, this time with the board of county commissioners as the prescribed type.[66] The board provided at this time differed from previous boards in that, while its membership continued to be elected *by* the voters of the county at large, each member was to be elected *from* one of the three districts into which the county was to be divided by the existing governing board.[67] The board of commissioners was to hold five sessions annually, and appeal was allowed to the circuit court from any decision of the board.

The uniformity established in 1831 was not of long duration. In 1834 an act was passed applying to eleven counties which provided that the justices of the peace of the respective counties should constitute the board of county commissioners.[68] This amounted, in everything but name, to a reversion to the county board of justices in those counties. Two years later another act applying to two counties provided that the boards of commissioners therein should be composed of the justice holding the oldest commission in each of the respective townships.[69] When the statutes were revised in 1838, the regular board of county commissioners was provided as the normal authority for transacting county business, but ten counties in which existing laws provided that the justices of the peace should constitute the board were specifically excepted from this provision.[70] The revision of 1842-1843 again provided for a board of county commissioners in every county of the state,[71] but various counties were subsequently enabled, by virtue of special legislation, to operate under boards com-

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[66] *Revised Laws of Indiana*, 1830-31, ch. 20.

[67] Subsequent acts provided for the election of board members *by districts* in certain counties. See *Laws of Indiana*, 1834-35 (general), ch. 52; *ibid.*, 1850-51 (general), ch. 36.

[68] *Laws of Indiana*, 1833-34, ch. 23.

[69] *Laws of Indiana*, 1835-36 (general), ch. 62. See also *ibid.*, ch. 64, for an act providing that the board in Bartholomew County should consist of "the qualified justices" of the county.

[70] *Revised Statutes of Indiana*, 1837-38, ch. 21.

[71] *Revised Statutes of Indiana*, 1842-43, ch. 7, art. I.

posed of justices. It was not until after the adoption of the constitution of 1851 that uniformity in the composition of the county governing board was permanently established.

As previously pointed out, the constitution of 1816 provided for the election in each county of a clerk of the circuit court, a recorder, a sheriff, and a coroner. In addition to these constitutional offices, those of treasurer, surveyor, auditor, assessor, and tax collector were established by statute at various times during the period. The first session of the state Legislature provided for a county treasurer to be appointed annually by the board of county commissioners.[72] In 1841 the office was made elective and the term extended to three years.[73] An act of 1818 provided that the Governor should appoint a surveyor in each county, while an act of 1824 authorized the board of county commissioners to appoint either the sheriff or some other fit person to collect the state and county taxes.[74] In 1841 the office of county auditor was created, that official to be elected in each county for a term of five years.[75] Soon thereafter, however, the office was abolished in several counties of the state and the duties of the auditor transferred, in such counties, to the clerk of the circuit court.[76] By another act of 1841 an elective assessor was provided in each county, but this office, like that of the auditor, was subsequently abolished in certain counties.[77]

The first session of the General Assembly provided that the board of county commissioners in each county should divide the county into townships and subsequently alter township boundaries and create new townships as the board might deem proper.[78] After the first division of the county, however, no new township might be laid off except upon petition therefor by thirty or more citizens residing within the area of the proposed township. According to this legislation, not more than eight townships might be created in any one county, but this restriction was abolished three years later.[79] In 1824, the requirement of popular petition as a condition precedent to

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[72] *Laws of Indiana*, 1816-17, ch. 17. *Cf. Revised Laws of Indiana*, 1830-31, ch. 21.

[73] *Laws of Indiana*, 1840-41 (general), ch. 4.

[74] *Ibid.*, 1817-18, ch. 30; *Revised Laws of Indiana*, 1823-24, ch. 86.

[75] *Laws of Indiana*, 1840-41 (general), ch. 2. The auditor was to serve ex officio as clerk to the board of county commissioners.

[76] See, for example, *Laws of Indiana*, 1843-44 (general), chs. 22, 24, 96.

[77] *Laws of Indiana*, 1840-41 (general), ch. 3; *ibid.*, 1848-49 (general), ch. 6.

[78] *Ibid.*, 1816-17, ch. 14. *Cf. ibid.*, 1817-18, ch. 17, relative to new counties.

[79] *Ibid.*, 1819-20, ch. 21.

the creation of new townships was abandoned, the county board being left free to make alterations in township boundaries at its discretion.[80]

The year 1825 apparently marks the first actual incorporation of civil townships in the state. In that year an act was passed providing that the townships of Dearborn County should be bodies politic and corporate with power to sue and be sued. This act, which, as we have seen, set up a county board of supervisors, provided that the voters of each township were to elect annually three township trustees, a clerk, a treasurer, from one to three constables, one tax lister, three overseers of the poor, two fence viewers, and one highway overseer for each highway district. The three trustees, as the governing board of the township, were authorized to levy township taxes and to appoint all township officers, not named in the act, the appointment of which had theretofore been vested in the county board of justices. Two years later this system of township government was extended to the counties of Switzerland and Ripley. In 1834 an amendatory act provided that the tax lister, overseers of the poor, fence viewers, and highway overseers should be appointed by the township trustees, thus leaving the trustees, clerk, treasurer, and constables as the only elective township officers.[81] The townships of Shelby County were incorporated in 1829 and at the same time provision was made that any township of Crawford County might become incorporated whenever a majority of the citizens thereof should deem it expedient; an act of 1835 incorporated the townships of Warren County.[82] When the statutes were revised in 1838, an act was included which incorporated the townships of thirteen designated counties and provided for the election therein of substantially the same officers as were provided for the townships of Dearborn County in 1825.[83] The townships of certain other counties were incorporated by subsequent acts.

At the beginning of the period under consideration, township officers were regularly appointed by the board of county commissioners.[84] As we have seen, however, the townships of

[80] *Revised Laws of Indiana*, 1823-24, ch. 36.

[81] *Laws of Indiana*, 1825, ch. 29; *ibid.*, 1826-27, ch. 14; *ibid.*, 1833-34, ch. 71. An act of 1842 provided for appeal to the circuit court from decisions of the township trustees in incorporated townships. *Ibid.*, 1841-42 (general), ch. 149.

[82] *Laws of Indiana*, 1828-29, ch. 33; *ibid.*, 1834-35 (local), ch. 7.

[83] *Revised Statutes of Indiana*, 1837-38, ch. 111.

[84] *See Laws of Indiana*, 1816-17, ch. 26.

numerous counties were incorporated during the period and provided with elective officers. Moreover, various statutes were enacted whereby elective township officials were provided in certain counties other than those having incorporated townships with boards of trustees. As early as 1826, a special act provided for the election of township officers in Switzerland, Franklin, and Ripley counties. This act was repealed the following year but at the same time another act was passed providing for the annual election in each township within ten designated counties of: one inspector of elections; two fence viewers; two overseers of the poor; as many constables as there were justices of the peace; and as many highway supervisors as were allotted to the township by the board of county commissioners. The provisions of this act were extended by subsequent statutes to certain other counties. Finally, provision was made in the revised statutes of 1830-1831 for the annual election of township officials in every township of the state, with the provision, however, that, if the voters should fail to elect in any instance, the officials should be appointed by the board of county commissioners. The officials to be elected were constables, election inspectors, fence viewers, overseers of the poor, and highway supervisors, the townships of Dearborn and Switzerland counties retaining also their locally-elected boards of trustees.[85] But in township government, as in that of the county, these early attempts at uniformity did not prove to be of permanent duration. Subsequent special acts applying to particular counties provided for the appointment of a part or all of the township officers by the board doing county business. In 1849, an elective township assessor was added in certain counties to the list of township officials.[86]

It should be noted that the system, inaugurated in Dearborn County in 1825 and subsequently extended to a few other counties, of having township affairs controlled by locally-elected boards of township trustees rather than by the county governing board, seems to have been quite popular in the counties operating under it. Indeed, in the constitutional convention of 1850-1851, some of the delegates from those counties vigorously opposed the inclusion of "township business" in the list

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[85] *Laws of Indiana*, 1825-26, ch. 77; *ibid.*, 1826-27, chs. 13, 14; *ibid.*, 1827-28, ch. 13; *ibid.*, 1828-29, ch. 13; *ibid.*, 1829-30, ch. 15; *Revised Laws of Indiana*, 1830-31, ch. 20.

[86] *Laws of Indiana*, 1848-49 (general), chs. 6, 7, 8.

of subjects upon which special legislation was to be prohibited, fearing that such a prohibition would result in depriving them of this particular system of township government.[87]

The township as a corporation for educational purposes dates virtually from the beginning of Indiana's statehood, resulting from the policy on the part of Congress of granting a section of land in each congressional township to the inhabitants thereof for the support of schools. An act passed by the first session of the state legislature authorized the board of county commissioners to appoint, in each congressional or fractional township in which a section had been reserved for the use of schools, a superintendent of the school section, who was to have charge of the leasing of the school lands, subject to statutory restrictions.[88] It was further provided, however, that any congressional township, at the request of twenty resident householders, might be incorporated. In the event of such incorporation, the voters of the congressional township were to elect a board of three trustees to manage the school lands, which board should constitute a body corporate with power to sue and be sued and " to make all such bye laws, rules and regulations not inconsistent with the constitution and laws of this state, as may be necessary for the purpose of encouraging and supporting school or schools in said township."[89] Thus, it appears that the school township as a corporate entity antedates the civil township, the first civil townships being incorporated, as we have seen, in 1825. It should be pointed out, however, that whereas the boundaries of our present-day school townships are coterminous with those of the civil townships,[90] these early school corporations consisted of the areas comprising the respective congressional townships.

By a provision of the revised statutes of 1824 the board of township trustees in each incorporated congressional township was directed to divide the township into school districts and to appoint three sub-trustees or district trustees in each district;[91] thus was superimposed upon the township system a district system which, with various changes in the relation-

[87] See *Debates and Proceedings of the Convention*, vol. II, 1770-1772.

[88] *Laws of Indiana*, 1816-17, ch. 12. *Cf. ibid.*, 1817-18, ch. 49.

[89] *Ibid.*, 1816-17, ch. 12, p. 107.

[90] Except for the fact that cities and certain incorporated towns, although included within civil townships, are not included within school townships.

[91] *Revised Laws of Indiana*, 1823-24, ch. 97.

ship between district and township, was retained until 1852.[92] The district trustees were charged with the duty of calling a meeting of the inhabitants of the district for the purpose of determining whether or not a school should be established in the district. If the decision was in the affirmative, it was the duty of the district trustees to superintend the building of a schoolhouse and, subject to the approval of the township trustees, to employ a teacher. By an act of 1829 designed to facilitate the sale of the school lands, every congressional township of the state was specifically declared to be a body politic and corporate.[93] Legislation of 1833,[94] providing that the district trustees should be elected by the voters of the respective districts instead of being appointed by the township trustees, perfected the scheme of organization whereby an elective board of township trustees was to have charge of the congressional township school fund, while an elective board in each school district was charged, in case the inhabitants voted to maintain a school, with employing a teacher and managing the school's affairs. A harbinger of our present system of the single township trustee is found in an act of 1850 providing that the business of each congressional township in Grant County should be transacted by one trustee elected for a term of three years.[95]

Summary. By way of summary, certain outstanding characteristics and trends of the period of the first constitution may be noted.

New counties were organized and old counties divided until there were ninety-one counties in 1851 as contrasted with fifteen in 1816. Indeed, the ninety-second county was first formed during this period but was subsequently attached to a neighboring county and was not in existence in 1851.[96]

With respect to the form of the county governing body, variety characterizes the period. The session laws of these years fairly abound with statutes, both general and special,

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[92] Although the system of township control has been employed since 1852, the law still recognizes the school district. In the words of the Indiana Supreme Court, "The laws have been modified from time to time, but the school district has remained as the basis of the general system of common-school education". *Advisory Board* v. *State*, 164 Ind. 295, 299, 73 N.E. 700, 702 (1905). A school district, however, has no fixed boundaries, but is composed of those residents of the township who are served by a particular school. See *Ireland* v. *State*, 165 Ind., 377, 75 N.E. 872 (1905).

[93] *Laws of Indiana*, 1828-29, ch. 84.

[94] *Ibid.*, 1832-33, ch. 70. Cf. *ibid.*, 1836-37 (general), ch. 2.

[95] *Ibid.*, 1849-50 (general), ch. 265.

[96] See *infra*, n. 102.

establishing boards of justices, boards of county commissioners, boards of commissioners composed of justices, and boards of supervisors. Yet throughout the period may be sensed a certain striving for uniformity. Every revision of the statutes witnessed the enactment of legislation designed to bring all, or at least most, of the counties under a common form of governing board. However, the pressure for special legislation was strong and, the constitution offering no barrier to such action, these general provisions could not long withstand the local demands for exceptions and modifications. The latter part of the period was marked by a distinct tendency toward commissioner government of the present type and away from the other forms of county board.

With respect to the method of choosing local government officials, the period witnessed a widespread shift from appointment to election. Although, as we have seen, the germ of the demand for popular election was in evidence during the last years of the territorial period, appointment continued to be the well-nigh universal means of selecting county and township officials until the advent of statehood. By 1850, however, practically all county officers were popularly elected and, although township officers continued in certain instances to be appointed by the county board, appointment was the exception rather than the rule. The "democratic" movement had triumphed.

A third significant fact of the period was the incorporation of the civil township for purposes of civil government and of the congressional township for school purposes. Hand in hand with the fact of incorporation came an increase in the importance of the township as a unit of local government, evidenced by a slow but clearly perceptible expansion of the scope of its activities.

As a fourth and final point, may well be mentioned the creation, in 1841, of the office of county auditor, the incumbent of which was destined to assume a leading role in Indiana county government.

PERIOD OF THE PRESENT STATE CONSTITUTION

The constitution of 1851, as was to be expected in view of experience under the earlier instrument, was considerably more elaborate than that of 1816 with respect to its provisions concerning local government. It stipulated that there should be

elected in each county a clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor.[97] The term of the clerk, auditor and recorder was to be four years; that of the treasurer, sheriff, coroner, and surveyor, two years. No person might serve in the office of clerk, auditor, recorder, treasurer, or sheriff for more than two consecutive terms. It was further provided that a competent number of justices of the peace should be elected in each township for a term of four years. Such other county and township officers as might be necessary were to be elected or appointed in such manner as might be prescribed by law. In laying out counties and prescribing county boundaries, the General Assembly was forbidden to reduce any county to an area of less than four hundred square miles or to reduce further any existing county of less than that area.[98] A very significant provision was one to the effect that the General Assembly should not pass local or special laws regulating county and township business or regulating the election and compensation of county and township officers.[99] This prohibition indicates a pronounced reaction against the confusing mass of special legislation with respect to local government which had grown up under the constitution of 1816 as a result of the absence of restrictive provisions in that document and the apparent understanding within the Legislature that each member was entitled to the passage of whatever local legislation his own people wanted.[100]

As previously indicated, all but one of the present ninety-two counties had been organized when the constitution of 1851 was adopted. The list was completed when, acting under a general law of 1857[101] authorizing the formation of new counties and the change of county boundaries upon proper petition therefor, the board of commissioners of Jasper County, on December 8, 1859, entered an order dividing that county and setting up the western part thereof as the new county of Newton.[102]

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[97] *Constitution of Indiana, art. VI, sec. 2.* Counties containing less than one thousand polls were authorized to confer the offices of clerk, recorder, and auditor, or any two of them, upon the same person. *Ibid., art. II, sec. 9.*

[98] *Ibid.*, art. VI, secs, 2, 3; art. VII, sec. 14; art. XV, sec. 7.

[99] *Ibid.*, art. IV, sec. 22.

[100] See *Board of Commissioners* v. *State*, 161 Ind. 616, 623, 69 N.E. 442 (1904).

[101] *Laws of Indiana*, 1857, ch. 15. The constitutionality of this act was upheld by the Supreme Court in *Board of Commissioners* v. *Spitler*, 13 Ind. 235 (1859).

[102] The county of Newton had originally been formed in 1835. *Laws of Indiana*, 1834-35 (general), ch. 25. However, it was subsequently attached to Jasper County, of which it had been a part for twenty years prior to 1859. See Pence and Armstrong, *op. cit.*, 620-625. For interesting sidelights on the formation of Newton County in 1859, see John Ade, *Newton County* (Indianapolis, 1911), 54-65.

There were occasional relocations of county seats during the early decades of the period, agitation for relocation sometimes engendering intense and bitter rivalry between the different centers contending for the seat of government.[103] A general law of 1855 authorized the board of county commissioners of any county to remove the county seat to a new location upon petition of two-thirds of the legal voters of the county, the petitioners bearing the expense of erecting new county buildings and providing sites therefor.[104] In addition to general legislation of this type, there were occasional special acts authorizing relocation in particular counties.[105] So the process continued until it could be said in 1914 that "The hundred years of Indiana history have seen thirty-nine counties with from two to seven county seats each, and a total of one hundred and thirty-five towns in the State which have been county seats at some time."[106]

With the revision of the statutes immediately following the adoption of the new constitution, the General Assembly, by an act which, as subsequently amended, is still in effect, established a board of county commissioners as the governing body of each and every county of the state.[107] The board was to consist of three members, elected *by* the voters of the county at large but *from* commissioner districts. Regular quarterly sessions of the board were to be held, and the auditor was made ex-officio clerk to the board. The board was vested with the control of county property and was authorized to allow claims against the county, to levy county taxes, and, subject to certain limitations, to borrow money on behalf of the county. It was provided that appeal from all decisions of the board should lie to the circuit court or the court of common pleas.[108]

There is little to record concerning changes in the structure of county government between the years 1852 and 1899. Due to the prohibition inserted in the constitution of 1851, this half century was devoid of any great mass of special legislation such as characterized the preceding period and which had

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[103] For an account of these controversies, see Ernest V. Shockley, "County Seats and County Seat Wars in Indiana," *loc. cit.*, 1-46.

[104] *Laws of Indiana*, 1855, ch. 12. For supplementary act, see *ibid.*, 1858 (special session), ch. 10.

[105] See, for example, *Laws of Indiana*, 1913, ch. 335.

[106] Shockley, "County Seats and County Seat Wars in Indiana," *loc. cit.*, 44.

[107] *Revised Statutes of Indiana*, 1851-52, vol. I, ch. 20; *Burns' Annotated Indiana Statutes*, 1933, secs. 26-601 ff.

[108] The court of common pleas, a statutory court, was subsequently abolished.

resulted in great variety in the forms of county organization. Individual offices were, to be sure, established and abolished from time to time, but the broad outline of structure, centering nominally in the board of county commissioners, remained unchanged.

But the legislation establishing the board of county commissioners had vested broad powers in that body, to be exercised upon its own responsibility, and instances of the abuse of those powers were not wanting. While the law provided that county officers could spend no money without previous appropriation thereof by the board, the practice became widely prevalent of county officers making purchases and *then* presenting their claims to the board, which usually allowed them in a perfunctory manner.[109] Moreover, questionable practices in the letting of contracts seem to have been widespread. "It was openly asserted by the Indiana state board of commerce [in1898] that the county boards . . . had cost the people of the state as much as $100,000 annually in fraudulent contracts, and that to this sum must be added excessive and improvident expenditures by the boards . . .".[110] By 1899 charges of extravagance and dishonesty on the part of the county board, together with the resulting demand that its authority be curtailed, had become so widespread that the General Assembly responded by enacting what has come to be commonly known as the County Reform Law.[111]

By this act, control of the fiscal affairs of the county was taken from the board of county commissioners and placed in the hands of a county council, consisting of seven members elected for a four-year term. Of the seven councilmen, one was to be elected by and from each of the four councilmanic districts into which the county was to be divided by the board of county commissioners, the remaining three to be elected by the voters of the county at large. Upon the council was conferred the exclusive power to: levy county taxes; make appropriations; authorize the incurring of indebtedness; and authorize the purchase or sale of real estate when the value

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[109] Samuel E. Sparling, "Responsibility in County Government," *Political Science Quarterly*, vol. XVI (1901), 437-449, 445-446.

[110] *Ibid.*, 446.

[111] *Laws of Indiana*, 1899, ch. 154. For cases in which the highest courts of the state have considered the reasons for the passage of the act, see *Lund* v. *Board of Commissioners*, 47 Ind. App. 175, 93 N. E. 179 (1910); *Snider* v. *State*, 206 Ind. 474, 190 N. E. 178 (1934).

amounted to one thousand dollars or more.[112] The board of county commissioners was retained as the chief administrative agency of the county. To care for its various administrative duties, regular monthly sessions of the board were provided, beginning on the first Monday of the month "and continuing only so long as the necessary business of such session absolutely requires."[113] In connection with the reform act should be mentioned another act of the same session providing that county commissioners should receive regular salaries, "graded in proportion to the population and the necessary services required" in the several counties.[114] Prior to this time, the county commissioners, except in a few of the more populous counties, had been compensated on a per diem basis.

With the legislation of 1899, county government assumed its present general form of organization. The General Assembly has since found it desirable, from time to time, to create, modify, and abolish particular offices, as the county has been charged with new duties or relieved of old ones, or as existing provisions have for some other reason been found to be unsatisfactory. But the board of commissioners as the administrative body of the county and the council as the authority in fiscal matters have been retained with few changes in their original relationship.

By legislation enacted during the session of 1851-1852,[115] the plan of township government existing at the close of the preceding period was continued with certain modifications. The board of county commissioners was authorized to divide the county into any number of townships that the convenience of the inhabitants might require, and to alter the number and boundaries of such townships from time to time as the board might deem proper. Existing townships were to be retained, subject to future alteration. The township-board system was

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[112] Control of township taxation, which had been conferred upon the board of county commissioners in 1859, was, by a companion measure, transferred to elective advisory boards in the respective townships. See *infra*.

[113] *Laws of Indiana*, 1899, ch. 154, p. 364.

[114] *Ibid.*, ch. 241. As originally adopted, the constitution of 1851 provided (art. IV, sec. 22) that the General Assembly should not pass local or special laws "in relation to fees and salaries," and several early acts designed to provide a graduated scale of salaries for county officers were held unconstitutional as violative of this prohibition. See William A. Rawles, *Centralizing Tendencies in the Administration of Indiana* (New York, 1903), 302. The provision was modified by amendment in 1881 by adding thereto, as a qualification, "except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required". See Charles Kettleborough, *Constitution Making in Indiana (Indiana Historical Collections*, vols. I, II, XVII, Indianapolis, 1916, 1930), vol. II, 202-207.

[115] *Revised Statutes of Indiana*, 1851-52, vol. I, ch. 110.

continued, the voters of each township electing annually three trustees, a clerk, and a treasurer.[116] The trustees were charged with the management of township property and the levying of township taxes. They were also to serve as fence viewers and overseers of the poor, thus eliminating those officials from the list of independently elected township officers.[117] The township voters were to elect annually a highway supervisor for each road district.[118] It was made the duty of the supervisors, under the supervision of the trustees, to keep the highways and bridges of the township in good repair, for which purpose they were authorized to call out persons liable for road work and to superintend their labor. Every civil township of the state was constituted a school township, thus relieving the congressional township of its political functions.[119] The trustees, clerk, and treasurer of the civil township were to serve the school township in like capacities, the trustees being vested with general charge of the educational affairs of the township, including the employment of teachers. Since the beginning of this period, therefore, the boundaries of the school-township corporation have corresponded to those of the civil township rather than to those of the congressional township.[120] It is also to be noted that the practice of having the same set of officials serve both the civil and the school corporations dates from this time. A law of 1855, designed to facilitate the distribution of revenue from the congressional township school fund, directed the boards of county commissioners to make the boundaries of civil townships (and, therefore, of school townships) correspond as nearly as practicable to those of the congressional townships.[121]

In 1859 the three-member township board was abandoned in favor of the present single-trustee system. A statute of

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[116] An act of 1853 provided a three-year term for the trustees, one member of the board being elected annually. *Laws of Indiana*, 1853, ch. 113.

[117] The expense of poor relief, however, was to be borne by the county. *Revised Statutes of Indiana*, 1851-52, vol. I, ch. 81.

[118] *Revised Statutes of Indiana*, 1851-52, vol. I, ch. 102. The road districts were to be laid out by the township trustees. *Ibid.*, ch. 110. For a two-year period during the early eighties, the office of highway supervisor was abolished and a single elective "superintendent of roads" was provided for each township with authority to appoint one or more "road masters" and to superintend the employment of laborers for work on the roads. See *Laws of Indiana*, 1881, ch. 63; *ibid.*, 1883, ch. 56.

[119] *Revised Statutees of Indiana*, 1851-52, vol. I., ch. 98. *Cf.* Rawles, *op. cit.*, 37.

[120] Apparently it was not until 1859 that the school township was specifically declared to be a body corporate. See *Laws of Indiana*, 1859, ch. 119.

[121] *Laws of Indiana*, 1855, ch. 86. *Cf.* Rawles, *op. cit.*, 37, n. 2. Notwithstanding this injunction, less than one-fifth of the civil townships have boundaries corresponding with those of the congressional townships. See *Survey Maps of Indiana Counties* (Rand, McNally & Co., Chicago, *circa* 1908). Quite naturally, the degree of correspondence is greater in the northern counties, where county boundaries are more regular in shape, than in the southern part of the state.

that year provided that one township trustee, elected annually, should replace the existing three trustees and should also act as clerk and treasurer of the township, the separate offices of clerk and treasurer being abolished.[122] The trustee was charged with the management of township property and was also to act as inspector of elections, overseer of the poor, and fence viewer. In the matter of finance, however, the powers formerly vested in the township board were not transferred to the trustee without important qualification, the statute providing that township taxes should be levied by the trustee "with the advice and concurrence of the board of county commissioners."[123] In case the trustee and commissioners should fail to agree, the commissioners were to make the levy. Thus the control of township finance was virtually transferred, not to the township trustee, but to the board of county commissioners.[124]

By legislation of 1877, a two-year term for township officers supplanted the one-year term and provision was made that no person might serve as trustee for more than two consecutive terms. Twelve years later the four-year term was adopted, with the provision that no person might serve as trustee for a second consecutive term. In 1917, the law on this subject was again changed to allow an incumbent of the office of trustee to serve for two successive four-year terms.[125]

The scheme set up in 1859, whereby control of township finance was vested in the board of county commissioners, was retained for forty years. In 1899, however, as a part of the program to curb the power of the county commissioners, control of township finance was taken from that body and placed in the hands of a new fiscal agency—the township advisory board—which was created in each township of the state.[126] This advisory board, which still remains as the fiscal authority of the township, was to consist of three members elected

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[122] *Laws of Indiana*, 1859, ch. 133.

[123] *Ibid.*, p. 221. An act of 1875 required the trustee to procure an order from the board of county commissioners before incurring indebtedness in excess of what could be paid from the amount on hand in the proper fund plus the amount to be raised from taxes for the current year. *Laws of Indiana*, 1875 (regular session), ch. 114.

[124] Although the requirement that township tax levies have the approval of the board of county commissioners remained the general rule for forty years, instances were not wanting of statutes which authorized or required the trustee, either upon his own initiative or after favorable action by the voters, to make levies for specified purposes. See, for example, *Laws of Indiana*, 1865 (regular session), ch. 1; *ibid.*, 1873, ch. 95; *ibid.*, 1879 (special session), ch. 74; *ibid.*, 1895, ch. 119.

[125] *Laws of Indiana*, 1877 (regular session), ch. 87; *ibid.*, 1877 (special session), ch. 44; *ibid.*, 1889, ch. 226; *ibid.*, 1917, ch. 171.

[126] *Ibid.*, 1899, ch. 105. This act is commonly referred to as the Township Reform Law; it is a companion measure of the County Reform Law of the same year.

by the voters of the township for a term of four years, and was vested with authority to: adopt the township budget; levy township taxes; and authorize the incurring of township indebtedness. Thus was inaugurated our present system of township governmental organization.

Since 1899, various statutes have been enacted which have made minor changes in township organization and have shifted governmental functions as between the township and the county. Four such statutes deserve particular mention as being of special significance. The first of these, an act of 1917,[127] abolished the office of township road supervisor and transferred the duties of that functionary to the township trustee, at the same time placing the trustee, who had theretofore been compensated by a per diem,[128] on a regular salary basis. Two of the others, enacted in 1932 and 1933, respectively, transferred all township highways to the respective counties for maintenance and made the counties rather than the townships responsible for the cleaning and repairing of drainage ditches.[129] The fourth, also enacted in 1933, abolished the office of township assessor in all townships having a population of five thousand or less and imposed the duties of assessor in such townships upon the respective township trustees.[130]

Summary. The creation of Newton County in 1859 completed the present list of ninety-two Indiana counties. Since that time, county boundaries have been relatively stable, although there have been minor alterations. As contrasted with the preceding period, uniformity and continuity, rather than variety and change, have characterized the form of the county governing board. The board of three commissioners established in 1852 has continued to serve as the chief administrative authority of the county, monthly sessions of the board, however, replacing quarterly sessions. The most significant change in the organization of county government during the period has been the creation of the county council and the transfer to that body of the fiscal authority formerly possessed by the board of county commissioners. To the list of county officers established by the constitution the Gen-

[127] *Ibid.*, 1917, ch. 159.

[128] Except in a few of the more populous townships, in which salaries had been provided by special acts. See, for example, *Laws of Indiana*, 1893, ch. 133.

[129] *Laws of Indiana*, 1932 (special session), ch. 16; *Ibid.*, 1933, ch. 264.

[130] *Ibid.*, 1933, ch. 77.

TABLE

FORMS OF COUNTY GOVERNING BOARD IN INDIANA HISTORY

1790[131]-1795 (N.W.Ter.)	Court of Quarter Sessions. Fiscal control exercised directly by the territorial Governor and Judges in their legislative capacity.[132]
1795-1799 (N.W.Ter.)	Court of Quarter Sessions. Fiscal control in the hands of commissioners appointed by the quarter sessions, and elective assessors.
1799-1803 (N.W.Ter. & Ind. Ter.)	Court of Quarter Sessions. Fiscal control vested in a board of county commissioners appointed by the quarter sessions.
1803-1806 (Ind.Ter.)	Court of Quarter Sessions.
1806-1814 (Ind.Ter.)	Court of Common Pleas.
1814-1816 (Ind.Ter.)	Associate Judges of Circuit Court.
1816-1824 (State of Ind.)	Board of County Commissioners.
1824-1852 (State of Ind.)	County Boards of Justices. Boards of County Commissioners. Boards of Commissioners composed of Justices. Boards of County Supervisors.
1852-1899 (State of Ind.)	Board of County Commissioners.
1899-1937 (State of Ind.)	Board of County Commissioners. Fiscal control vested in the County Council.

[131] Date of the formation of Knox County, Northwest Territory.

[132] This method of fiscal control was prescribed by statute in 1792, and apparently existed in practice prior to that date.

eral Assembly has from time to time made additions. Some of these statutory offices, as, for example, that of county assessor, have been established by law in all counties; others have been established in only some of the counties; and in still other instances the counties have been left free to determine for themselves whether or not they will establish the office.

In the field of township government should be noted the supplanting, at the beginning of the period under consideration, of the congressional township by the civil township as the area to be incorporated for educational purposes as a "school township". Other noteworthy developments during the period have been the abandonment of the township board for the single-trustee system, the lengthening of the term of township officers from one to four years, and the creation of the advisory board as the fiscal authority of the township. The most recent developments have been the transfer of the township's highway and drainage functions to the county and the abolition of the office of township assessor in all but the most populous townships.