

## County citizens pay tribute to 100-year-old courthouse

History of the county seat

O. F. Maskil gives the history of the courthouse.



The history of the courthouse can be divided into three parts. The persons who have served as county officials are one part of the story—and a part that I shall not recite. I may mention a little about the offices themselves, but very little.

There is the history of the building itself, the building whose centennial

we observe today, and there is the history of the county seat, a thing that exists apart from a physical building.

First, let's talk about the building. I hope it may be forgiven if I do not speak of it as an architectural masterpiece—those with long memories may recall that I have referred to it as an “unimposing pile of stone”.

I recall the words of one of Pottawatomie County's most famous citizens, Dan Casement, “the last of the great railriders,” when, 30-odd years ago, he was honored at the American Royal in Kansas City on the occasion of his 80th birthday. Perhaps some of you were there that day, as I was, to hear Dan praised.

“Folks have been making out that I'm a helluva fellow,” Dan said, when he was given the opportunity to speak. “The only thing out of the ordinary about me is that I've lived so God-damned long.”

That same philosophy, perhaps, applies to the Pottawatomie County Courthouse—the building we honor today. No one can contend that it is an

architectural masterpiece. No one will contend that it is a model of efficiency.

But, as Dan Casement said of himself, it has been here “so God-damned long”. It is the only permanent courthouse this county has ever known, and is now one of the oldest courthouses in the state.

The cornerstone for the courthouse was laid April 29, 1884, and the building was occupied by the county officials 100 years this month, September 4, 1884.

We need to go back in time to learn why the building is here at all—a question we must confess, that many newcomers to the county ask.

In the beginning God created Heaven and Earth, and when Kansas was made a Territory, God's appointed servant, man, designated St. George as the county seat. Although I understand a building exists in St. George today that served as a courthouse, there was little county business, and many county officials conducted business from their homes, located at various places over the county.

In one of the last actions of the Territorial Legislature, meeting in 1861, an act was passed providing that Pottawatomie County should first vote upon the question of then determining the location of the county seat; and if a majority voted in favor of such determination, then a second election should be had for selecting the place for the County Seat.

Towns—, or places—contesting for the honor were St. George, Louisville, and Mount Union.

Louisville was then an up-and-coming town. There had been talk of it competing for the State Capitol. Mount Union was a strong contender, as it, located a few miles south of the present town of Westmoreland, was closer to the center of the county. Louisville won the election—possibly because Indians, who were not citizens, were allowed to vote.

The Legislature of 1862 passed an act that declared and established that Louisville was the permanent county seat of Pottawatomie County.

Being the county seat did not bring the blessings to Louisville it might have expected. The town did not continue to flourish. For whatever reason, when the Union Pacific Railroad was built in 1867, Louisville was bypassed. The expense of making the numerous cuts and fills for the roadbed over the hills apparently out-weighed, to the Union Pacific officials, any advantage routing the road to the County Seat of Louisville would have been.

The town of Wamego was established four miles south of Louisville, and quickly boomed. Within a few short years, it was considerable larger than Louisville, and the town was casting envious eyes to Louisville's proudest possession, and determined to have the County Seat for itself.

No one in Wamego, in a wildest flight of fancy, would have predicted the course that the town's ambition for the County Seat would take—that Westmoreland, a cluster of huts o the ruts of the Oregon Trail, would end up with the prize. Wamego was a town of perhaps a thousand people. Westmoreland was a village 15 miles to the north, with only a couple of stores and a blacksmith shop doing business along the wagon ruts.

Westmoreland had been laid out as a townsite in 1871, but it had not been blessed with growth.

Wamego boosters circulated a petition to relocate the County Seat, acting on a law passed in 1868, and presented the county commissioners the petition containing the names of three-fifths of the legal electors of the county, as required under the act. On August 20, 1879, the Board of County Commissioners ordered an election to be held on the 23<sup>rd</sup> day of September, 1879.

Towns voted on were Wamego, Louisville, Laclede and Westmoreland. The vote was: Wamego, 975; Westmoreland, 778—nearly 200 votes behind Wamego; Louisville 620; and Laclede 587.

Louisville brought court action, contending that it has been named the permanent county seat in 1862 by legislative action, and that the law passed in 1868 did not apply. The town asked for an injunction, restraining any canvass of the vote. The temporary injunction was dissolved in the District Court June 27, 1881, and Louisville then sought review by the Supreme Court. The Supreme Court upheld the action of the District Court, and another election, with the two towns having the highest vote competing, was ordered for September 19, 1882.

Westmoreland won that election, 1887 to 1882, thanks to the support of Louisville. The vote was canvassed the following Friday, and a large number of Westmoreland area residents were on hand to load the furniture and records on wagons for the trip to Westmoreland.

Charles Scott, writing of his boyhood memories in 1956, relates how he stood on Mt. Ephraim, east of Westmoreland, and saw the "County Seat" coming to Westmoreland via the "West Road" from Louisville.

To understand the outcome of those elections, perhaps it would be well to remember Pottawatomie County as it was then.

Settlers had streamed into Kansas during the 1850's and early 1860's, and this county had several thousand more population than it now has. This population was more evenly distributed over the county, so that Westmoreland, being at the geographical center, was in a favorable position. Women had not yet been given the right to vote, so that the total vote of nearly 3,500 reflected the wish of perhaps 7,000 adults.

The county seat, as I have said, made its way to Westmoreland on wagons, but no courthouse awaited it. In lieu of a courthouse, the county treasurer, county clerk, district clerk, and register of deeds were housed in the Methodist Church, with chalklines dividing the offices; the probate judge and the county superintendent were housed in the Congregational Church; and the county surveyor was housed in the Detro House, a small hotel.

Within a few days of bringing the County Seat to Westmoreland, plans were made for a temporary courthouse, and by the middle of October, construction was underway on a two-story building, 50 foot long and 18 foot wide. The site was where the Hoffman Pharmacy now stands.

There was further legal action, of course. A mandamus section was brought against the county clerk, but it failed in the District Court November 16, 1882. The action was appealed, and dismissed by the Supreme Court in early December 1883.

Having failed in that effort, another petition was started by Louisville supporters, calling for another election.

The threat of another courthouse fight brought action from the residents of the Westmoreland area, and plans were made to build a more permanent structure, costing at least \$10,000. The \$10,000

may have been the magic figure needed to make moving of the county seat more difficult.

Louisville apparently received partial support from Onaga and Laclede, but a Wamego editor was urging that the matter be dropped, foreseeing that if Louisville did regain the county seat, that would not be the end of it, and the county would have “a courthouse on wheels.”

Louisville supporters presented the commissioners with a petition March 4, 1884, containing 2,190 names. Almost half of the names were found to be invalid for one reason or another—most for not being on assessment rolls, several were names of deceased men, some were non-residents, and about 50 names had been forged.

The petition was withdrawn, and with no evidence, no action was taken against those who may have been guilty of fraud. The threat of the petition to relocate the county seat back to Louisville removed, Westmoreland area residents moved quickly. The contract to build was let within a few days to a Manhattan firm, and preparation for construction began March 27, 1884, with the setting up of a derrick on Mt. Ephraim to quarry the stone.

The courthouse, when presented to the County Commissioners by the residents of Westmoreland, was far from a “turn-key” job. The area has spent the \$10,000 necessary, and the rest was up to the taxpayers of the county. Carpenters and plasterers were still at work in early April, 1885. The work was accepted by the county commissioners, and the contractors ordered paid.

The investment made by Westmoreland paid off. The county had a permanent, substantial courthouse, and efforts to move the county seat were abandoned.

Abandonment of the effort to move the county seat was only temporary. In 1909, the threat was renewed—this time by Onaga.

Reflecting the view of the Onaga supporters, an Onaga editor wrote on August 26, 1909--- and this is about the century-old building now being honored, 75 years ago, when the building was 25 years old.

“It is only a matter of a few years until the taxpayers of the county will be compelled to dig up for a new courthouse, if the county seat is retained at Westmoreland. The wrecked and unsafe condition of the present courthouse has been the subject of much comment for some time. It is a continual drain on the county treasury to keep the

old shack patched up and repaired to keep it from falling down.”

“Why not let Onaga put up a new courthouse built either of stone brick, or cement without any expense to the taxpayers of the county outside of Mill Creek Township, and stop all this expenditure of money, and then, too, have the County Seat in a thriving town that can be reached without wrecking your vehicle or killing your horses.”

Westmoreland then had 436 residents, and Onaga 679. St. Marys had nearly 1,400, and Wamego more than 1,600.

The Legislature, in 1883, perhaps prompted by the Westmoreland-Louisville county seat fight, had tightened the procedure to move a county seat to essentially what it is today. Not only did the names of two-thirds of the voters need to appear on a petition calling for an election to move the county seat to another location, but 60 percent of the qualified voters had to vote in favor of an election ordered by the commissioners upon receipt of such a petition. Failure to vote, therefore, was a effective as a “no” vote.

As an Onaga editor suggested, the law appeared to have been made for the purpose of doing away with county seat fights. In order to call for an election, with the 4,800 voters then in the county, more than 3,200 signatures would have been needed.

Onaga persisted with reports the petition was still being circulated in December—four or five months after it was first started. Although some saw the effort as only a publicity scheme for Onaga, possible Onaga boosters did feel that the combination of their promise of a \$50,000 courthouse and jail, plus the difficulty of getting to Westmoreland, would make the proposition attractive to the taxpayers.

The effort was abandoned by Onaga with no petition being filed.

After Onaga’s failure in the matter of relocating the county seat, all was quiet. The “old shack” was “patched up” to keep it from falling down. A metal ceiling was put in the courtroom—Onaga had suggested to keep the plaster from falling on the judge and lawyers—additions were made, including a south front entrance that houses the restrooms and the jury room above.

All was quiet, that is, for nearly 55 years. Then on October 21, 1965, this editorial appeared in a Wamego newspaper.

“For a long time the people of Pottawatomie County have known that new courthouse will be needed. Several years ago the county commissioners made plans for a courthouse to replace the old building.”

“Also, for a long time, the people of Pottawatomie County have been thinking about a better location for the new courthouse. Wamego has been favored by many.”

“There are obvious advantages to having the courthouse in Wamego.”

“The time to act is now! It will be up t the citizens. The only way and fair way is to have the citizens vote on this issue.”

“We suggest that interested citizens petition the commissioners to hold an election to vote on the location. After the ballots are counted everyone will know what the majority thinks about the logical courthouse location.”

The writer of that editorial was correct. The county commissioners had, on June 27, 1960, passed a resolution, authorizing a levy for the building of a new courthouse, and the county had, since 1960, been collecting one mill from all property in the county for that purpose.

That resolution, first published July 7, 1960, read in pertinent part:

“WHEREAS, the present Pottawatomie County courthouse is in need of extensive and immediate repairs, and WHEREAS, the cost of said repairs will be so great that said repairs are not justified; and WHEREAS, there is not adequate office space in the present courthouse to accommodate all of the county offices... IT IS THEREFORE RESOLVED... that an annual tax levy be hereby assessed upon the taxable tangible property.... In the amount of one mill for a period of ten years... to be used in acquiring a site for, and the building, equipping and furnishing of a courthouse and jail.. to pay expenses for... razing any building on the courthouse site, moving the county offices to and from temporary quarter to be used and occupied by such offices while the new courthouse is being constructed, and the rental for such temporary quarters.”

After nearly a quarter of a century, and on this occasion, I see no purpose in not telling the truth about that resolution.

I was present in person, meeting with the commissioners, when the subject of a mill levy was discussed. The building was badly in need of

repair, and its condition was deteriorating rapidly. The commissioners, looking ahead discussed a method of raising money for repairs, and instructed the county attorney to draft a resolution for the purpose of making a mill levy for repair of the building.

The then county attorney later brought the signed resolution to the newspaper of which I was editor, for publication. I was amazed to read, as I have just read to you, that the resolution called for a new building.

“I know,” the county attorney said. “But you can’t make a levy to repair a building. The county can raise the money for a new building and then spend it for repair.” All right, he was the lawyer,. He knew what he was talking about.

But when the commissioners sought to spend the money for repair, they were caught up short, presumably by the auditor. The opinion of the Attorney General was asked, and that office responded on January 29, 1963.

“It seems immaterial,” the Attorney General wrote, “that the resolution might not have fully represented the action the board desired to take. The fund accumulated there-under can only be used in the manner authorized thereby.

Other inquiries to the Attorney General in 1967 received the same response.

The commissioners thought about that for a few months. Here the county was, collecting one mill a year—had been since 1960—and the only way it could be spent was for a new courthouse.

Apparently, the board also took another look at the courthouse, and determined to take steps other than repair. On August 31, 1967, an architect was hired to make plans for a new courthouse.

That move brought action the Wamego editor had been asking for in 25 separate editions of his newspaper, over a time period of nearly two years.

On November 9, 1967, a petition was presented to the commissioners asking them to remodel the courthouse—something they had tried to find a way to do more than seven years before.

A meeting was held at the Wamego High School February 9, 1968—a meeting I am sure many of you here today recall as well as I do. That was only 16 years ago—modern history!

It was announced at that meeting that a petition was being circulated to relocate the County Seat to Wamego. In fairness to all, the announced purpose of the petition was only to delay the building of a

new courthouse. There is no reason considering the law that an Onaga editor had said, nearly 60 years before, was designed to end county seat fights forever, to think that opponents of building a new courthouse seriously considered that the effort to move the county seat would be successful.

We are here today to honor this historic building. It is somewhat surprising that 16 years ago, the opponents of building a new courthouse did not dwell on the historical significance of the building—the main thrust of the argument, it appears, was the saving of tax dollars.

Undaunted, the Board of Commissioners, by a two to one vote, forged ahead with plans for a new courthouse. Bonds in the amount of about \$300,000 were sold on March 7, 1968, for an average rate of a little more than three and three-quarters per cent interest. With the sale of the bonds, \$590,000 was available, enough, in those days to build a courthouse and jail that would have been adequate.

But prior to the sale of the bonds, on March 6, 1968, an injunction had been filed in the District Court to stop the sale of the bonds. A judge was assigned from another district to hear the case. The case was heard May 8, 1968, and the judge determined that the Board of County Commissioners had acted legally in every way.

The Board of County Commissioners again went ahead, advertising to sell the bonds on June 27, 1968. An appeal on the injunction was immediately made to the Supreme Court, and the sale of the bonds was again delayed.

That year, 1968, was, of course, election year. A bitter commissioner contest was held, with the candidate who avowed purpose was to stop the building of a new courthouse being elected, unseating the incumbent.

By April 30, 1969, the Supreme Court had not yet heard the appeal, and with the makeup of the Board of County Commissioners then being one to two for the sale of the bonds, the appeal was dismissed.

That isn't quite the end of the story. The Legislature passed an act to allow the money raised to build a new courthouse to be transferred to the General Fund—the law is Kansas Statutes 19-2675—and the constitutionality of that act was never challenged. The money was transferred to the general fund, and has been gone for many years.

I do want to take a look back for just a moment, to those early day county officials. Many of the offices were “fee” offices. The elected officials were not paid a salary, and their income depended on the fees that were paid for the services of the office. In light of this, it explains why there were many husband and wife teams in the courthouse—he as an official, she as deputy.

Also, in those early years, the county books were not audited. The county treasurer, for example, commingled the funds of the county with his own. He was limited to two terms in office—four years—but for those four years he had interest-free money. If the county had money, he had money. Some 30 years ago, a gentleman of 90 who told me the story confessed that his father was worried. He had tried to keep the books straight, but perhaps his figures were off. The audit revealed that he had returned to the county \$84 more than he had taken out—but the county did not return his \$84.



Lawrence D. Winegardner (left), grand master, along with other state officers of the Grand Lodge of A.F. and A.M. of Kansas, perform the official Masonic ceremony during the laying of the cornerstone of the Pottawatomie County Courthouse.

