

A Rare Edition of the Leavenworth City Charter & Ordinances: A Vignette of Life in 1870 Kansas

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As a legal historian, I spend much of my time reading through old statutes and cases. Reading these sources as a historian is very different from reading them as a lawyer. Lawyers read legal documents primarily to use them to construct their arguments and to guide their document drafting.¹ Legal historians, for the most part, read such documents to understand the development of the law and the legal profession. But legal sources can be used to write social history as well because they provide a unique insight into both the ideals and behavior of those who write the sources. Foundational legal documents: constitutions, charters, statutes, and ordinances provide strong evidence of how the authors want government to operate and what issues they believe to be the most important. Thus, by studying such documents it is possible to understand the social, political, and legal concerns of founding legislators.

One of my long-time scholarly preoccupations—as well as a hobby and source of entertainment—is to seek out unknown or little-known books and documents in libraries and on the private market to use in my writing.² Much of this activity for the past quarter century has consisted of my going to estate sales and auctions in Kansas and Missouri. During the COVID-19 pandemic, my ability to attend such events has been eliminated because of my vulnerability to the disease, but I have still spent innumerable hours scanning advertisements and online auctions and, on a few occasions, I have gone so far as to have friends personally attend auctions to bid on my behalf. At one such auction in Missouri this past summer, I was able to purchase a box of books that had been advertised as containing the earliest edition of the Laws of Kansas Territory. I had little idea of what other books might be in the box, but I placed a bid and was successful. When my friend brought the box of books to me, I was delighted to discover that not only was the volume of territorial laws

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1. See M.H. Hoeflich, *The Lawyer as Pragmatic Reader: The History of Legal Common-Placing*, 55 ARK. L. REV. 87, 88–89 (2002).

2. See M.H. Hoeflich, *Law Book Hunting in the Heartland: A Life in Books*, 68 U. KAN. L. REV. 727 (2020).

complete, but that there were also a number of other Kansas legal volumes including a copy of the 1869-1870 edition of the Leavenworth City charter and ordinances. This volume turned out to be the beginning of a minor scholarly detective story and inspiration for this article.

When I begin researching a particular book, I first turn to the bibliographical database called WorldCat.³ WorldCat is a database consortium of thousands of libraries maintained by the Online Computer Library Center (“OCLC”).⁴ While this database does not list the holdings of every library in the world, it does list the holdings of most academic and public libraries, including all of the major libraries in Kansas.⁵ Thus, it was with some degree of surprise that I could not find an entry in WorldCat for this particular edition of the Leavenworth Charter and Ordinances. WorldCat lists editions of 1859,⁶ 1863,⁷ and 1866.⁸ Other bibliographical databases also did not list this edition. I finally discovered that the Carol Mansion Museum, home of the Leavenworth Historical Society, owned what appeared to be the only other copy of this book.⁹ While the discovery of a rare edition of city ordinances is not earth-shattering, in the case of the 1869-1870 Leavenworth volume, it is not without historical significance. There are several reasons for this.

First, the 1869-1870 edition of the Leavenworth *City Charter and Ordinances* that I purchased was edited by H. Miles Moore. Moore was an original member of the Leavenworth Township Association, a noted Kansas politician and lawyer who was elected Attorney-General of Kansas by the Topeka Convention of 1855,¹⁰ the first serious historian of

3. WORLD CAT, [www.worldcat.org](https://perma.cc/4NRW-XUT9) [https://perma.cc/4NRW-XUT9] (last visited Feb. 28, 2021). This database is also accessible through libraries that subscribe to it. The University of Kansas is among these subscribing libraries.

4. OCLC, [www.oclc.org](https://perma.cc/FS3T-7GCZ) [https://perma.cc/FS3T-7GCZ] (last visited Feb. 28, 2021).

5. See, e.g., *Topeka & Shawnee County Public Library*, WORLD CAT, <https://www.worldcat.org/libraries/10701?backfrom=libraryProfile&searchTerm=Topeka&start=1&count=10&libTypeNum=0&sortBy=rel> [https://perma.cc/3DF6-GW7K] (last visited Feb. 28, 2021).

6. *Charter and Ordinances of the City of Leavenworth, 1859*, WORLD CAT, https://www.worldcat.org/title/charter-and-ordinances-of-the-city-of-leavenworth/oclc/18089967&referer=brief_results [https://perma.cc/9CK9-RQJP] (last visited Feb. 28, 2021).

7. *Charter and Ordinances of the City of Leavenworth, with an Appendix, 1863*, WORLD CAT, https://www.worldcat.org/title/charter-and-ordinances-of-the-city-of-leavenworth-with-an-appendix/oclc/17008059&referer=brief_results [https://perma.cc/YNT3-NC4Y] (last visited Feb. 28, 2021).

8. *Charter and Ordinances of the City of Leavenworth, 1866*, WORLD CAT, https://www.worldcat.org/title/charter-and-ordinances-of-the-city-of-leavenworth/oclc/17008153&referer=brief_results [https://perma.cc/ZZ4S-ZSU5] (last visited Feb. 28, 2021).

9. *Research Requests*, LEAVENWORTH CNTY. HIST. SOC'Y, http://www.leavenworthhistory.org/form_research.htm [https://perma.cc/6G52-E8BV] (last visited Jan. 11, 2021).

10. *H. Miles Moore, 1826–1909*, TERRITORIAL KAN., https://territorialkansasonline.ku.edu/index.php?SCREEN=bio_sketches/moore_h_miles [https://perma.cc/2XBV-WNXV] (last visited Mar. 4, 2021).

Leavenworth, Kansas and the Kansas territorial bar,¹¹ and, at the time of the publication of the Charter and Ordinances, the Leavenworth City Attorney.¹² Second, the particular volume I purchased was owned by one of the first Leavenworth City councilmen, Edmund Walsh. Walsh was one of the incorporators of Leavenworth Township and owner of the Woodward House Hotel in Leavenworth.¹³ Third, when I began to go through the Charter and the various ordinances printed in the volume, I realized that these were a superb source for the social history of one of Kansas' major cities during the period from 1855 to 1870. Since these ordinances were edited by H. Miles Moore, the leading historian of the early history of Leavenworth in his capacity as city attorney of Leavenworth, they provide an opportunity to supplement the account he gives in his historical work with the legal sources of the period. Further, the City of Lawrence published its own Charter and Ordinances during this period,¹⁴ so it is possible to compare what issues were foremost on the minds of Lawrence's founders that required legislation to the concerns of Leavenworth's founders and what they legislated and included in their Charter and Ordinances.

The Leavenworth Town Company was first incorporated by the Kansas Territorial Legislature on June 13, 1854.¹⁵ Because of its proximity to Fort Leavenworth, the easy access to Weston, Missouri just across the Missouri River, and the siting of the territorial court there, Leavenworth became a major population center.¹⁶ As a result, Leavenworth was the only city in Kansas large enough to qualify for incorporation under the State Statutes of 1862 and 1868.¹⁷ By the time the

11. See H. MILES MOORE, *EARLY HISTORY OF LEAVENWORTH CITY AND COUNTY* (1906). The late Professor James C. Malin of the University of Kansas raised serious issues about the accuracy of Moore's historical writings. See, e.g., JAMES C. MALIN, *ON THE NATURE OF HISTORY: ESSAYS ABOUT HISTORY AND DISSIDENCE* 192 (1954).

12. See sources cited *supra* note 10.

13. See KANSAS STATE BOARD OF AGRICULTURE, *FIRST BIENNIAL REPORT OF THE STATE BOARD OF AGRICULTURE TO THE LEGISLATURE OF THE STATE OF KANSAS FOR THE YEARS 1877-8* 267 (1878) (listing Walsh as owning a hotel on "Seneca street, between Third and Fourth"); MOORE, *supra* note 11, at 173 (noting that the hotel on "Fourth and Seneca" was originally named "The Woodward House").

14. See, e.g., SAMUEL KIMBALL & E.V. BANKS, *CHARTER, OTHER POWERS, AND ORDINANCES OF THE CITY OF LAWRENCE* (1866).

15. The Federal Writer's Project, *Leavenworth Kansas History*, KAN. STATE HIST., <https://www.kspatriot.org/index.php/articles/56-kansas-local-history/349-leavenworth-kansas-history.html> [<https://perma.cc/95SQ-QMTJ>] (last visited Jan. 11, 2021).

16. See *id.*

17. *Incorporation of Kansas Cities*, KAN. HIST. SOC'Y, <https://www.kshs.org/p/incorporation-of-kansas-cities/20047> [<https://perma.cc/T5P9-QJPL>] (last visited Jan. 13, 2021). Lawrence was classified as a city of the second class based on its population. See *id.*; see also *North Lawrence, Kansas: A Brief History*, THE KAN. COLLECTION 20, https://www.kancoll.org/books/north_lawrence/text.html [<https://perma.cc/KJ9X-BAHB>] (last visited Jan. 13, 2021).

1870 edition of the Charter and Ordinances was published, Leavenworth was a thriving commercial center with the largest population in Kansas.¹⁸ It was also a frontier town with all of the problems this brought.

Without question the three subjects which took up the most space in the 1870 ordinances were the sale of lands in the city, the building and financing of the city's infrastructure, and ordinances related to making Leavenworth a hub for railroads in Kansas. The predominance of ordinances about these three subjects is not at all surprising. During the territorial and early statehood period, the fate of the many towns and cities that were started—often by speculators—depended upon attracting immigrants. To attract immigrants, a new city needed to develop as a commercial center, and to do that it needed both basic infrastructure—roads, bridges, places for people to live, amenities, variety stores, entertainment venues, and places of worship. Cities also needed to provide at least basic services to residents—sanitary sewers, fire protection, even sidewalks. The more such necessities and amenities a city provided, the more likely that the city would survive and prosper. Cities also needed businesses—service businesses like lawyers and land agents, liveries and stables, doctors and pharmacies, and manufacturing facilities to produce goods that residents wanted and that could be exported to other cities and states. A city that could become a transportation hub would prosper. The construction of roads, ferries, and railroads were crucial requirements for a city to grow. Thus, the 1870 Leavenworth ordinances contain a large number of provisions dealing with these subjects.¹⁹ Indeed, the large and growing population of Leavenworth in 1870 and the comparatively smaller size and slower growth of Lawrence at this period explains why there are more ordinances about building and grading streets in Leavenworth than in Lawrence.²⁰

All frontier cities needed to build infrastructure in order to survive and grow, but Kansas cities that were established during the territorial period also had a number of special problems relating to land transfers and ownership. The territorial period in Kansas was chaotic in many ways. In regard to land ownership there were problems that arose from conflicts

18. See MOORE, *supra* note 11, at 223–24 (“In the fall of 1857 the population of Leavenworth had reached nearly 5,000. No other city in the world, except San Francisco, ever equaled the rapidity of its growth At the close of the war in 1865, Leavenworth had a population of not less than 20,000 inhabitants, and continued to increase till 1870.”).

19. See, e.g., Leavenworth, Kan. Charter art. II, § 25 (1870) (providing for special taxes to be used for “improvement of any [] street, sidewalk, alley, avenue, or lane”).

20. See 1 U.S. CENSUS BUREAU, *Number of Inhabitants*, in 1940 CENSUS OF POPULATION 394 (1940) (noting that the population of Leavenworth in 1870 was 17,837, whereas Lawrence had a population of only 8,320 during that same period), <https://www2.census.gov/library/publications/decennial/1940/population-volume-1/33973538v1ch05.pdf> [<https://perma.cc/5LS2-LU6Q>].

between Native American land ownership rights and those of white immigrants.²¹ Another complicating factor was the large amount of land speculation by Eastern speculators that took place during this period and the validity of many of these transfers.²² The population of Kansas during the territorial period was highly mobile; people came for a few weeks or months and then left.²³ Land was claimed or transferred and then the parties to these transactions would disappear.²⁴ Records of such transfers were often incomplete or lost.²⁵ As a result, early ordinances were often devoted to regularizing earlier land transactions and reconfirming ownership rights.²⁶

Once we move past basic infrastructure and land ownership provisions in the 1870 ordinances, we can begin to get a sense of the other issues that were foremost in the minds of the Leavenworth founders. These were the social problems that plagued frontier towns. These social problems are highlighted in the 1870 Leavenworth ordinances.

Leavenworth was a town blessed with a large military outpost, but with the economic and political advantages a military post brought, so too came problems.²⁷ Throughout history, military posts have attracted entertainment facilities, including gambling parlors, drinking establishments, and brothels.²⁸ In addition, Leavenworth in 1870 was still

21. See Gunlög Fur, *Indians and Immigrants—Entangled Histories*, 33 J. AM. ETHNIC HIST. 55, 55–56 (2014) (noting the conflict between Scandinavian settlers and Native Americans because “[i]ndians were forced to vacate lands that became conveniently empty for occupation”).

22. See Ann L. Wilhite, *Cities and Colleges in the Promised Land: Territorial Nebraska, 1854-1867*, 67 NEB. HIST. 327, 327 (1986) (describing westward expansion by “[t]own builders and boosters” that set out towards Kansas and Nebraska, which they believed to be “the future garden of the Union,” and their efforts to “stimulate[] urban land speculation”).

23. See *id.* at 332 (describing “ghost towns” as “speculative enterprises that failed” after they were abandoned in favor of “more promising sites”).

24. See *id.* at 353 (noting that failed speculators would often become “transients” and leave behind “ghost towns, deserted enterprises, [and] paper promises.”).

25. See, e.g., M.H. Hoeflich, *An Unknown 1859 Notaries’ Ledger from Douglas County, Kansas*, 66 U. KAN. L. REV. 673, 675–77 (2018) (noting that nearly all records concerning land transfers in Douglas County were destroyed in a fire in 1863).

26. See, e.g., Leavenworth, Kan. Charter art. II, § 28 (1870) (ensuring that deeds transferred after a sale of land were conveyed “to the person owning the certificate of sale at the time such conveyance is given”).

27. See *Fort Leavenworth*, KAN. HIST. SOC’Y (Feb. 2017), <https://www.kshs.org/kansapedia/fort-leavenworth/17810> [<https://perma.cc/F9RJ-8YMY>].

28. See, e.g., Marc Askew, *City of Women, City of Foreign Men: Working Spaces and Re-Working Identities Among Female Sex Workers in Bangkok’s Tourist Zone*, 19 SING. J. TROPICAL GEOGRAPHY 130, 136–37 (1998) (“The U.S. military’s Rest and Recreation (R&R) programme brought thousands of servicemen to Bangkok, and stimulated the development of an extensive service infrastructure . . . [that] helped transform Bangkok’s premier middle-class district . . . into an entertainment strip.”); Donna M. Hughes, Katherine Y. Chon & Derek P. Ellerman, *Modern-Day Comfort Women: The U.S. Military, Transnational Crime, and the Trafficking of Women*, 13

very much a frontier town with a significant transient population and many single men.²⁹ Both of these were issues for the Leavenworth town fathers judging by the ordinances enacted to deal with them. Ordinance 53, Section 1 of the 1870 ordinances provides that:

[A]ny person who shall set up, keep, or maintain, in this city, any table or gambling device, adopted, devised, designated or used for the purpose of playing any game of chance, with card, figures, letters, or any other sign, for money or property, and shall induce, entice, or permit any person to bet or play upon any such gambling table, or gambling device, shall, on conviction, be fined not less than ten nor more than one hundred dollars.³⁰

Section 2 of the ordinance places a fine of “not less than ten nor more than one hundred dollars” on the better.³¹ Section 3 provides that any person who permits gambling to take place on his premises will be fined “not less than twenty-five dollars nor more than one hundred dollars.”³² Section 4 provides that anyone who presides as a “master or mistress” of a “gaming table, bank, or device” will be deemed to be the “keeper of the same.”³³ Section 5 prescribes that anyone who makes gambling his “livelihood” will be deemed a “common gambler” and face a fine of “not less than twenty-five nor more than one hundred dollars” and will also be liable for “imprisonment in the city jail” for “not less than one month nor more than four months.”³⁴ To put the severity of these fines in perspective, one hundred dollars in 1870 is the equivalent of \$1,996.81 in 2021.³⁵ Interestingly, when we look at H. Miles Moore’s *History*, we find no mention of gambling, although we do find a significant discussion of churches and public halls who offered “first-class entertainments.”³⁶ It seems unlikely that gambling was not something of a worry for the

VIOLENCE AGAINST WOMEN 901, 913 (2007) (“[T]here is a heavy concentration of Korean massage parlors in Waldorf, Maryland, close to the large military populations of Andrews Air Force Base, Bolling Air Force Base, the Naval Research Center, and the Pentagon.”); LARRY HOWARD WHITEAKER, *SEDUCTION, PROSTITUTION, AND MORAL REFORM IN NEW YORK, 1830-1860* 3 (Jerome Nadelhaft ed., 1997) (“The arrival of British troops during the French and Indian War increased the demand for prostitutes. During the 1750s, brothels that catered primarily to soldiers were established in the parts of the city that had military housing.”).

29. See Brent M.S. Campney, *W. B. Townsend and the Struggle against Racist Violence in Leavenworth*, 31 KAN. HIST. J. CENT. PLAINS 260, 265 (Winter 2008–2009).

30. Leavenworth, Kan., Ordinance No. 53, § 1 (June 18, 1862).

31. *Id.* § 2.

32. *Id.* § 3.

33. *Id.* § 4.

34. *Id.* § 5.

35. I have used the CPI inflation calculator found online at <https://www.officialdata.org/us/inflation> [<https://perma.cc/SZT2-R7AJ>] (calculated on Mar. 5, 2021).

36. MOORE, *supra* note 11, at 159–75, 204–07.

Leavenworth city fathers since they included Ordinance 53 in the 1869-1870 publication. Indeed, Lawrence included virtually the same prohibitions in the same language as Ordinance number 20 in its 1866 ordinances.³⁷

The presence of these anti-gambling ordinances in the 1869–1870 volume and the lack of any discussion in Moore’s 1906 history of Leavenworth provides several legal and historical insights. First, we may assume that gambling was enough of a problem in early Leavenworth to warrant prohibitory legislation. Second, we may also assume that Moore, Leavenworth’s first historian, was not above omitting unpleasant aspects of Leavenworth’s history in his own work in order to provide a “better” view of the city he helped found a half-century before.³⁸

While the 1869-1870 Leavenworth city ordinances took a prohibitory approach to gambling, as to drinking establishments they took, rather, a regulatory approach in most cases. City ordinance fifty-seven regulates “taverns, saloons, restaurants, and beer houses.”³⁹ Section one states:

That no person or persons shall keep a hotel, tavern, saloon, restaurant, or beer house, within the limits of the city, without first having obtained a license for that purpose and that any person or persons who shall sell, barter, or permit to be drank, or consent to be bartered, sold, or drank on his, her, or their premises, any beer, ale, porter, fermented or vinous distilled liquors, by any quantity, without being licensed as aforesaid, shall, upon conviction, be fined not less than ten nor more than one hundred dollars.⁴⁰

The second section of this ordinance sets forth the requirements for the application for a license.⁴¹ The third and fourth sections of the ordinance reflect the city fathers’ concerns about who would run such establishments:

That every such application shall be accompanied by a recommendation, signed by at least six, or a majority of respectable house holders residing or doing business on either side of the street within four hundred feet of where the hotel, tavern, saloon, restaurant, or beer house is intended to be kept, certifying the correctness of the statement in said application contained, and declaring the applicant to be a suitable person to keep a

37. See KIMBALL & BANKS, *supra* note 14, at 116–17; Lawrence, Kan., Ordinance No. 20 (Nov. 7, 1866).

38. Professor Malin, in his essay on Moore, demonstrates conclusively that Moore rewrote his own history during the territorial period in his later publications. See MALIN, *supra* note 11, at 168, 172. It would seem that he was equally willing to rewrite the history of Leavenworth.

39. Leavenworth, Kan., Ordinance No. 57 (Apr. 28, 1869).

40. *Id.* § 1.

41. *Id.* § 2.

public house, and every signer of such recommendation shall distinctly state the place of his own residence or where he does business.⁴²

And:

That every such application shall be read, or the contents thereof briefly stated to the city council; thereupon the same shall be referred to the standing committee on license, and if said committee, on careful examination, find the statements set forth in said application to be correct, then it shall be their duty to fix the price of such license, and report the same to the city council at as early a day as practicable, but not before the expiration of one week from the day of reference.⁴³

Sections five and six provide a process by which neighbors of a proposed licensee might protest against the issuance of the license:

That every remonstrance against the granting of licenses shall be in writing, signed by at least six respectable householders residing on either side of the street, upon the same square where such house is located against which such remonstrance is directed, and the same shall specifically set forth the objections of said remonstrance against the character and qualifications of the applicant, or such other reason as they rely upon for the purpose of defeating said license, and every signer of said remonstrance shall distinctly state the place of his own residence, and if any such remonstrance shall be signed by a majority of the voters living within four hundred feet of the tavern, coffee house, restaurant or saloon, petitioned for, then such license shall not be granted.⁴⁴

And:

That every remonstrance, after being presented to the council, shall be referred to said standing committee, whose duty it shall be to give it the same consideration as the application against which it is directed; and if said committee find, upon careful examination, said remonstrance to be respectable householders, residing as aforesaid, and, further, that the objections in said remonstrance are founded in truth and in fact, and are of sufficient importance, then said committee shall report against the granting of said license.⁴⁵

Sections seven through twelve set out the annual licensing fees, based on the type of establishment and the location of the establishment.⁴⁶ The lowest possible annual license fee was \$75, which applied to drinking establishments in locations not listed specifically in the ordinance

42. *Id.* § 3.

43. *Id.* § 4.

44. *Id.* § 5.

45. *Id.* § 6.

46. *Id.* §§ 7–12.

(presumably those not within the main part of the city) to \$300 for all “first class hotels and taverns.”⁴⁷ The distinctions in licensing fees based on location would seem to have been based upon the notion that establishments of higher class or in better locations would be able to charge more and, therefore, a higher license fee would be fair. It may also be that the higher licensing fees for more centrally located establishments was a form of quasi-zoning, making it more expensive for such businesses to locate in residential areas.

Section fourteen provides that intoxicating liquors were not to be sold on Sundays, and that the fine for doing so would be “not less than ten nor more than fifty dollars” for the first offense and forfeiture of the license for the second offense.⁴⁸ Section fifteen deals with cases in which drinking at a particular establishment led to “any kind of rioting, reviling, drunkenness, lewd or disorderly conduct.”⁴⁹ A fine of “not less than twenty nor more than one hundred dollars” was to be imposed on the owner in such cases.⁵⁰ Section sixteen makes it an offense to sell any alcoholic beverages to persons under fifteen years of age or to permit such underage individuals to drink on the premises and imposes a fine of “not less than twenty nor more than one hundred dollars” for violations.⁵¹ The remaining sections deal with how licenses are to be issued and displayed and when they must be paid for.⁵²

These provisions about the maintenance of drinking establishments are very telling both on their own and also in comparison to the parallel provisions in the 1866 Lawrence ordinances. Looking only at the Leavenworth ordinances, it becomes clear that the hotel and saloon business was important to the city and was a source of substantial revenue both from licensing fees, and potentially from fines. A glance at Moore’s history of the city proves this to be true, since Moore devotes several chapters to the number of hotels, saloons, and beer gardens that flourished in early Leavenworth.⁵³ This is not at all surprising. Leavenworth was a center for German immigrants to Kansas.⁵⁴ Consumption of alcoholic

47. *Id.* § 10, 12.

48. *Id.* § 14.

49. *Id.* § 15.

50. *Id.*

51. *Id.* § 16.

52. *Id.* §§ 17–23.

53. *See* MOORE, *supra* note 11.

54. *See* Stephan Fuchs, *Migration Routes and Settlement Patterns of German Immigrants in Douglas County, Kansas, 1860–1880* 36–39 (Mar. 13, 2007) (M.A. thesis, University of Kansas) (ProQuest).

beverages was a central part of German culture.⁵⁵ Indeed, in the latter part of the nineteenth century, Leavenworth was one of the areas most resistant to the temperance movement in Kansas.⁵⁶ At the same time that the ordinances indicate the importance of drinking establishments to the economy of the city, they also indicate that the city fathers wanted to ensure that they were well-controlled and did not cause social problems that might trouble residents or reduce the desirability of the city as a place for settlement.

Unlike Leavenworth, Lawrence was not dominated by a German immigrant population and had gone through substantial social and civil unrest during the territorial period.⁵⁷ Thus, it is not surprising that the Lawrence ordinances were tougher on drinking establishments than were those of Leavenworth. Most important, Section four of Ordinance 29 of the 1866 Lawrence Ordinances set out extremely stringent requirements for anyone who wished to own or run a drinking establishment.⁵⁸ Most notably, the fourth section of Ordinance 29 required the posting of a bond for \$2,000 accompanied by guaranties by two sureties:

No tavern license shall be granted until the petitioner therefore shall have filed with the clerk of the city, the bond required in section third of this ordinance; also an affidavit, verified by the oaths of at least three householders of the ward in which the same is to be kept, that the applicant is the keeper of a hotel, that he has therein fifteen rooms and fifteen beds, and other suitable accommodations for travelers, and stabling for ten horses, and shall have paid to the treasurer of the city not less than fifty nor more than five hundred dollars for the use of the city.⁵⁹

To put this into modern perspective, \$2,000 in 1866 was equivalent to \$32,903.40 in 2021.⁶⁰ This was an extremely large sum for a bond to operate a business.

Section 13 of the Ordinance provided that “every person found in a state of intoxication” would be fined five dollars.⁶¹ Section 16 is

55. See B. ANN TLUSTY, *BACCHUS AND CIVIC ORDER: THE CULTURE OF DRINK IN EARLY MODERN GERMANY* 103–04 (H. C. Erik Midelfort ed., 2001).

56. See Austin Charles Rhodes, *Good Saloon, Bad Saloon: Saloons in Wichita, Kansas 1865–1881*, 74, 81 (May 2014) (M.A. thesis, Wichita State University) (WSU Libraries Catalogue).

57. See Fuchs, *supra* note 54, at 48, 87 (noting that a “less-striking concentration of [German] migrants occurred in Lawrence” and that German migrants made up only 3.89% of Lawrence’s population in 1870); see also *Sack of Lawrence*, KAN. HIST. SOC’Y (Dec. 2017) (detailing one of the violent raids on Lawrence that took place during Kansas’s territorial period), <https://www.kshs.org/kansapedia/sack-of-lawrence/19754> [<https://perma.cc/J6CG-TFY9>].

58. Lawrence, Kan., Ordinance No. 29, § 4 (Apr. 30, 1864).

59. *Id.* § 3.

60. See *supra* note 35 (calculated on Mar. 5, 2021).

61. Lawrence, Kan., Ordinance No. 29, § 13 (Apr. 30, 1864).

particularly notable. It requires all drinking establishments to close no later than 11 P.M. each day, subject to a fine of ten dollars.⁶² Section 18 provided that anyone remaining in a drinking establishment after closing would be “deemed guilty of a misdemeanor and subject to the same penalties as therein provided.”⁶³ In addition, Section one of Lawrence ordinance thirty required that a majority of the neighbors to a proposed drinking establishment approve the issuance of the license, as opposed to Leavenworth’s requirement that only six neighbors do so.⁶⁴ It would seem that Lawrence was a bit less favorable to alcoholic consumption than was Leavenworth. This may well have been a result of Lawrence’s citizens’ experiences during the territorial period with drunken Border Ruffians,⁶⁵ but it also may be attributable to the demographics of the two towns. To a large extent, Lawrence’s population came from the New England states and were, for the most part, both Protestant and of non-German descent.⁶⁶ Indeed, it is interesting to note Moore’s comments in his history about such establishments:

As I am writing the early history of the town, in this connection I may be excused if I give place to a few incidents which occurred in and about the old Planters’ House, in early days and are a part of its history. As says the poet, “a little fun now and then, is enjoyed by the best of men.”⁶⁷

The fifty-eighth section of the 1869–1870 Leavenworth ordinances relates to “house of ill-fame, dance houses, and houses or halls where persons of bad character congregate.”⁶⁸ It is quite fascinating and instructive. According to the ordinance, persons who maintain “a house of ill-fame, or prostitution” could be fined “not less than ten nor more than one hundred dollars” for doing so.⁶⁹ Persons who lived or worked in such houses or frequented such houses were liable to a fine of “not less than five nor more than one hundred dollars.”⁷⁰ The second section of the

62. *Id.* §§ 16, 17.

63. *Id.* § 18.

64. Compare Lawrence, Kan., Ordinance No. 30, § 1 (May 3, 1865), with Leavenworth, Kan., Ordinance No. 57, § 5 (Apr. 28, 1870).

65. See *Survivors of the Border Ruffian Attacks, Lawrence, Kansas*, KAN. HIST. SOC’Y, <https://www.kshs.org/index.php?url=km/items/view/219481> [https://perma.cc/QE9Z-UXAV] (last visited Mar. 5, 2021).

66. See JAMES R. SHORTRIDGE, *PEOPLING THE PLAINS: WHO SETTLED WHERE IN FRONTIER KANSAS* 21–24, 31 (1995); see also *id.* at 32 (“Germans and Irish together accounted for nearly two-thirds of the foreign-born Kansans in 1865. They completely dominated the European presence in Leavenworth . . .”).

67. MOORE, *supra* note 11, at 164.

68. Leavenworth, Kan., Ordinance No. 58 (Feb. 14, 1870).

69. *Id.* § 1.

70. *Id.* § 2.

ordinance also created a presumption that any person found in such a place between the hours of 9 P.M. and 5 A.M. was there for an illicit purpose.⁷¹ Section three of the ordinance is also quite interesting:

That it shall not be necessary, on the trial of any case arising under the provisions of this ordinance, for the prosecution to show that the defendant, at the time of the commission of the offense charged, was an unmarried person, but the presumption shall be that at such time he or she was not a married person.⁷²

It would seem that the presumption that those who frequented such places were unmarried was to avoid subjecting these men to additional charges of adultery which would potentially have much more serious consequences.⁷³ One might well speculate why the Leavenworth city fathers would want to do this. Similarly, that a presumption that visitors to such establishments between 9 P.M. and 5 A.M. were there for illicit purposes, but visitors at other hours were not, raises questions. It may be that this was designed to protect tradesmen and others who might visit during the day for legitimate purposes. Or, again, it may be a form of quasi-zoning to protect neighbors from nighttime disturbances. The sixth section of the ordinance deals not with prostitution, but, rather, with places where dancing was permitted on Sundays:⁷⁴

That any and every person who shall keep or maintain in this city any house or other place, on the first day of the week, commonly called Sunday, wherein dancing, theatrical plays or exhibitions, tippling, carousing, reveling, or any conduct or language likely to disturb the peace of the citizens residing in the neighborhood, is or are carried on or indulged in, shall be fined not less than ten nor more than one hundred dollars; and any and every person who engages or takes part in such dancing, theatrical plays or exhibitions, tippling, carousing, reveling conduct or language, shall be deemed to be a person who keeps or maintains such house or other place, within the meaning of this section.⁷⁵

In this provision we obviously see the influence of religious prohibitions against such activities against dancing on the Christian Sabbath.

The fifteenth ordinance of the 1866 Lawrence ordinances also deals

71. *Id.*

72. *Id.* § 3.

73. See Kevin Wendell Swain, *Liquor by the Book in Kansas: The Ghost of Temperance Past*, 35 WASHBURN L. J. 322, 337-38 (1996) (pointing to adultery as an administratively defined "crime against morality").

74. Leavenworth, Kan., Ordinance No. 58, § 6 (Feb. 14, 1870); see also Lawrence, Kan., Ordinance No. 29, § 7 (Apr. 30, 1864); Lawrence, Kan., Ordinance No. 36, § 5 (Jan. 12, 1863).

75. Leavenworth, Kan., Ordinance No. 58, § 6 (Feb. 14, 1870).

with “Suppressing Disorderly Houses.”⁷⁶ The penalty for maintaining such a house, according to the first section of this ordinance is a misdemeanor and “a fine of not less than fifty dollars.”⁷⁷ Persons found in these houses were subject to “a fine of not less than five dollars nor more than fifty dollars,” except for city officers in pursuance of their duties as specified in the fifth section of the ordinance:

That for the purpose of suppressing any such house, or of arresting the inmates thereof, the city marshal, his deputies, and the policemen of said city, are hereby authorized and empowered to enter any house in said city, and any part of any house, which shall have the reputation in the neighborhood in which it is situated, of being a bawdy house, brothel, house of ill-fame, or of assignation, and at any time of night or day, without being liable for trespass.⁷⁸

Aside from the provision dealing with city officers, the most significant difference between the Leavenworth and the Lawrence ordinances relation to houses of ill repute seems to have been the fine for operating such an establishment. The minimum fine in Leavenworth was ten dollars, whereas in Lawrence it was fifty dollars.⁷⁹ Once again, this difference may well represent differences in the demographics of the two cities. Not surprisingly, none of this is mentioned in Moore’s history nor in other histories of Leavenworth.

So as not to seem preoccupied by vice and its regulation, I will finish this article by commenting upon another of the ordinances contained in the 1869–1870 volume—one that has string echoes to our life today. Ordinance fifty-six in the 1869–1870 ordinances is titled “An Ordinance relating to health.”⁸⁰ The first section requires the mayor to appoint a city health committee consisting of the mayor, the city physician, and three others.⁸¹ Section two provides that this committee will have a general supervisory power over the city’s health “with full power to take all steps, and use all measures necessary to prevent the introduction or the spreading of the small pox, and any and all other malignant, contagious, or infectious diseases within the city. . . .”⁸² This provision also requires than any citizen “liable to be attacked” by one of these diseases to be vaccinated against them.⁸³ Refusal to be vaccinated carries with it a fine of “not less

76. Lawrence, Kan., Ordinance No. 15 (Mar. 28, 1866).

77. *Id.* § 1.

78. *Id.* § 5.

79. Compare *id.* § 1, with Leavenworth, Kan., Ordinance No. 58, § 1 (Apr. 28, 1869).

80. Leavenworth, Kan., Ordinance No. 56 (Apr. 27, 1870).

81. *Id.* § 1.

82. *Id.* § 2.

83. *Id.*

than five dollars nor more than fifty dollars.”⁸⁴ It also provides that those who cannot afford the cost of vaccination will have the cost paid by the city.⁸⁵ Section three requires doctors within the city to report all cases of small pox or other contagious diseases that they attend which are in or within five miles of the city limits, and to do so within twelve hours.⁸⁶ Failure to do this will subject the doctor to a fine of “not less than five dollars nor more than fifty dollars.”⁸⁷ Section four authorizes the involuntary commitment of those having small pox or another contagious disease, either to the city small pox hospital or to another segregated place, and section five imposes a fine of “not less than fifty dollars nor more than five hundred dollars” on anyone who leaves such confinement without authorization.⁸⁸

The 1866 Lawrence charter takes a more general approach to regulating contagious diseases:

During the prevalence of any epidemic or contagious disease, to take prompt and efficient measures for suppressing it; to prevent, by stringent laws, its introduction into the city and to cause the removal of all persons affected with it to such places as may be deemed best for the general welfare; to select and establish, during the prevalence of such disease, as many temporary hospitals as the emergency may require, and provide them with the necessary physicians, nurses, drugs, and other essentials; to establish rules for the government of such hospitals and their physicians; and also to provide medical treatment and medicine for the poor during the prevalence of such epidemic or contagious disease.⁸⁹

The Leavenworth and Lawrence provisions for dealing with contagious diseases are quite interesting when we compare them to the controversies that have surrounded governmental actions that have attempted to limit the spread of COVID-19.⁹⁰ It would appear that our ancestors were more willing to impose restrictions on public actions in times of public health crises than we are today.

84. *Id.*

85. *Id.*

86. *Id.* § 3.

87. *Id.*

88. *Id.* §§ 4–5.

89. Lawrence, Kan. Charter Title III–B, § 7 (1866).

90. See Philip A. Wallach & Justus Myers, *The Federal Government’s Coronavirus Response—Public Health Timeline*, BROOKINGS INST. (March 31, 2020), <https://www.brookings.edu/research/the-federal-governments-coronavirus-actions-and-failures-timeline-and-themes/> [https://perma.cc/HX4K-XDV2].