

A TALE OF TWO TOWNS

prelude

The wilderness and Indian lands first were to be tamed before settlement could begin. Georgia ceded its western lands, and the Mississippi Territory was created, also, by treaty, some Indian lands were acquired, and finally, General Jackson defeated the Creek Indians in 1814 and the way was cleared for migration. Alabama was established in 1819, and settlers rushed in to claim lands. Some settled in the area between the Luxapalila and Sipsey Rivers in Northwest Alabama. So many came, that it became necessary to establish local governments, so that on December 20, 1824, Fayette County was established.

That there were settlements in Fayette County is established by the act which appointed Commissioners of Revenue and Roads and set elections for the 2nd Monday in May, 1825, for the election of County Officials to be held at the Courthouse and at the homes of Horatio Robinson, William M. Strong, Littleton Bagwell, Parson Brewer and Michael Box. Acts, 1824, page 77.

This settlement ~~became~~ became to be known as Fayetteville or Fayette Court House.

COUNTY SEAT LOCATED

On January 12, 1826, the Senate and House of Representatives "In general assembly convened," enacted a statute authorizing the establishment of "the seat of justice" in Fayette County at a site between New River (now Sipsey River) and Lookapalila (sic) and within four (4) miles of the northwest corner of Township 15 South Range 12 West which point is near State Highway 18 and the present home of Horace Berry. Acts, 1825, page 58.

This site was to be selected by the Judge of the County Court and Commissioners of Roads and Revenue, presumably elected in May of 1825.

They were to acquire from 40 to 160 acres, lay off a town and sell lots to the highest bidder after advertising the sale in "each precinct" of the County and in some newspaper published in Tuscumbia and Tuscaloosa. Profits from the sale were to be used to construct a courthouse and other public buildings as necessary.

INCORPORATION OF TOWN OF FAYETTEVILLE

The Town of Fayetteville was incorporated by the General Assembly under an act approved January 15, 1831. James Bevill and Burr Wilson "of the Town of Fayetteville in the County of Fayette" were directed to hold an election on the First Monday in March, 1831, for five aldermen, "who shall be freeholders or householders" in said Town. The boundary of the Town extended one mile in every direction from the Courthouse. Act, 1830, Number 8, page 48.

Comment: It would appear that a Town had been laid out and a courthouse constructed under the 1826 act and that the town was called "Fayetteville" or "Fayette Court House" before the act of incorporation.

In 1835 The Court of Commissioners of Road and Revenue were authorized by the General Assembly to appoint an overseer for the streets of the Town of Fayetteville. Acts, 1834, Number 87, p. 93.

On March 2, 1848, an act to "Incorporate the town of Fayetteville" was approved. The act provided that "The inhabitants of the town of Fayetteville in the County of Fayette, shall be and constitute a body politic and corporate..... " and proscribes certain powers in the town. Acts 1847-48, Number 152, page 231.

Comment: It is suggested that while this Act provides for the "incorporation" of Fayetteville this act merely granted additional power and authority to the town (which had no home rule) which was already "incorporated" or created as a municipality.

ENLARGING THE CORPORATE LIMITS OF THE TOWN OF FAYETTEVILLE

The General Assembly, by act approved February 5, 1852, inter alia, set out the boundaries of the Town of Fayetteville as follows:

IN SECTION 6 TOWNSHIP 16 SOUTH, RANGE 12
W¹/₂ of NE¹/₄; E¹/₂ of W¹/₂ of NE¹/₄ AND E¹/₂ OF NW¹/₄

IN SECTION 31, TOWNSHIP 16, RANGE 12
SW¹/₄ of SE¹/₄ and SE¹/₄ of SW¹/₄

Source: Acts, 1851-52, No. 207, page 335.

Comment: While there is some overlapping in the description of the lands included in the Town of Fayetteville, it would appear that the town was a rectangle with the present Market Street

running North and South at the center and bisected by the present Elyton Road (then called Jackson Street) The South boundary line was near the South line of the City Cemetery at Jones Spring Branch and North boundary line around Range Street. The East and West lines were 1/4 mile from the intersection of Market street and Elyton Road.

PROBATE COURT MINUTES RELATING TO THE "INCORPORATION OF THE TOWN OF FAYETTEVILLE"

An entry in Probate Minutes, Volume 3 (Old Series) dated December 9, 1880, recites the following:

- a. Petition filed with Judge of Probate praying for election for purpose of incorporating the Town of Fayetteville. The entry recites the following:
- b. An order was made for an election.
- c. Election was held on December 8, 1880.
- d. Unanimous vote in favor of Corporation.
- e. Declaration that the inhabitants of the Town of Fayetteville are incorporated.
- f. Boundaries 1/2 mile in every direction from Court House.

Comment:

Nothing else appears of record. No petition, no return of officers conducting election. What is this entry? An incomplete report of an election enlarging powers of City?

While this date December 9, 1880 is cited as the first date of incorporation by M. L. Coons (Northwest Alabamian, July 2, 1931) and by others, this appears to be incorrect. There are too many prior legislative acts; not only incorporating Fayetteville on January 15, 1831, but several acts enlarging powers of the Town of Fayetteville.

Source: Probate Court Minutes, Fayette County, Volume 3, (Old Series), page 371; Deed Record Volume 4, page 567, office of the Judge of Probate of Fayette County, Alabama; Acts 1847-48 page 231; Acts 1834, page 93; Acts 1951-52, page 335; Fayette County Probate Court Minutes, Volume 1, page 116; Fayette County Probate Court Minutes, Volume 1, page 40; Deed Record Volume 4, page 566.

CREATION OF THE TOWN OF LATONA

On June 29, 1891, James J. Ray, Esq., filed a petition in the Probate Court of Fayette County which was signed by "Twenty and more of the adult inhabitants" of the Town of Fayette Depot, they being a majority of the owners of real estate situated within the proposed town limits stating that they desired to be incorporate as a Town with the name of "Latona".

The boundaries of the Town were to be 1/2 mile in every direction from a point where Fayette Depot house, "heretofore burned" was situated, provided that the North boundary line shall not extend farther than the Corporate limits of the Town of Fayetteville and provided the boundary line shall not extend farther than the slough bridge on the Tuscaloosa Road.

The Court, finding the petition in order and that the population affected was not less than 100 nor more than 3,000 inhabitants, ordered an election to be held at the School House near Fayette Depot on the Georgia Pacific Railroad on Saturday, July 11, 1891 under the direction and supervision of the following three inspectors, to-wit: Lewis P. Humber, Francis M. Caine and James S. Williams.

On July 13, 1891, Holland M. Bell, the Judge of Probate entered an order reciting that the returns of the election certified by J. S. Williams and H. Sudduth, the Inspectors holding such election reported that a majority of the votes cast are "for corporation". The Probate Judge declared that the inhabitants are incorporated under the name "Latona", setting the boundaries as set forth in the petition and that the Sheriff proceed to hold an election of Mayor and councilors for such Town. Probate Minutes, Book 5, page 196, 1989.

CHANGE OF NAME OF LATONA TO FAYETTE

On October 12, 1898, H. B. Propst, Esq, filed a petition signed by ten and more of the legal voters and inhabitants of the Town of Latona stating that they desired to change the name of said Town from Latona to that of Fayette, the boundary lines to remain unchanged. The Judge (T. B. Morton) found the petition in order and ordered an election to be held at the Mayor's office on Tuesday, November 8, 1898 under the direction of the following inspectors, To-wit: H. B. Propst, Joseph R. Robertson and James B. Mace.

On November 10, 1898, the inspectors of the election certified to the Judge of Probate (Judge T.E. Goodwin) that the election was held in compliance with the order of October 12, 1898, and that said election a majority of the qualified voters voted for the proposed change, whereupon the court ordered that such change from Latona to that of Fayette be allowed. Probate Minutes, Vol. 5, page 199, 201.

CHARTER FOR TOWN OF FAYETTE

The General Assembly, on February 20, 1899 enacted a Charter for the Town of Fayette providing for the government of the Town as provided the Constitution and Statutes then in force, respecting all laws in conflict with Charter. The boundaries were set as a circle one mile in diameter with the courthouse at the center, provided "it does not extend within the Corporate limits of any other Town." Acts, 1898-1899, Number 549, page 1033.

Comment: It does not appear that the distance of 1/2 mile from the location of the County Courthouse would extend to the Town limits of the Town of Fayetteville, as established in 1852.

EXTENSION OF TOWN LIMITS OF CITY OF FAYETTE

On January 9, 1911, the Town Council of the Town of Fayette, J. E. Chandler, Mayor, adopted a resolution providing for the extension of the Town Limits. A map was attached to the resolution which shows the location of the corporate limits. Upon the resolution being filed in the Probate Court in January 10, 1911, E. P. Goodwin, Judge of Probate ordered an election to be held on February 4, 1911 at the residence of J. W. R. Jones. On February 4, 1911, John M. Stewart, J. M. McConnell and G. C. Propst, inspectors, filed their report showing that 21 votes were cast "for annexation" and 4 were cast against, whereupon the Court declared the Town Limits extended as described in the resolution. Probate Minutes, Volume 4, page 401; page ____; and page ____.

Comment: The Map filed with the resolution, indicates that the boundary of the Town of Fayette as extended would encroach upon the corporate limits of the town of Fayetteville set in 1852. Thus it can be assumed that between the establishment of the Town of Latona in 1891 and the extension of the now Fayette corporate limits in 1911, that the Town of Fayetteville had ceased to exist.

WHAT HAPPENED TO FAYETTEVILLE?

M. L. Coons, a former Mayor of Fayette (1926-1930), in an article published in the Northwest Alabamian on July 2, 1931, stated that The Corporation was killed by an act of the legislature in 1891. No such act can be found in official acts of The General Assembly 1890-91.

Samuel A. Rumore, Jr., in an article on Fayette County Courthouses published in The Alabama Lawyer, January, 1992, suggests that after a popular vote of the people under an 1890 Act when a majority chose Latona as the site for the new courthouse, the old town "passed from importance".

The General Assembly, in an act approved March 28, 1873, (Acts 1872, Number 220 p. 218) a Board of Location was appointed (viz: George W. Julian, Dr. W. R. Willingham, Thomas P. M^cConnell, Thomas D. Enis and Thadeus Walker, Sr.) to select a place or places eligible for the location of the Courthouse of Fayette County. This board was to file a report with the Probate Judge who was directed to place it before the Court of County Commissioners, who should order an election within thirty (30) days for the purpose of ascertaining the wishes of the people as to the removal of the Court House, and the place to be selected for its removal. The electors were to be furnished a white paper ballot upon which was printed "For removal to (here inserting the name of the place voted for)" or " against removal".

The Act further provided that in case the location of the courthouse should be changed, The Commissioner's Court was authorized to dispose of the building owned by the county in the "Town of Fayette Court House".

Apparently, a removal of the court house from Fayetteville was not approved, because under an act approved on December 8, 1890, The General Assembly (Acts 1890-91, Number 29, p.40)

again provided for an election to be held on the first Monday in March, 1891, for the purpose of permanently locating the county site of the courthouse. If no place received a majority, another election was to be held on the first Monday in April, 1891, between the two places receiving the highest number of votes. The commissioners appointed under the Act (viz: William A. Musgrove, Willis B. Melton, Tennell M. Reese, William F. Baker, Philip M. Newton, John T. Ashcraft and John Tyler M^cCaleb) were to select a site within 1 mile of the place chosen and purchase land if a majority of the votes cast determined that the county site should be moved from its present site.

Comment: It would appear that a majority of the votes cast in either March or April 1891, voters favored removal of the courthouse from Fayetteville. Rumore, supra, states that at the second election, held in July, the decision was to move to Latona rather than the geographical center of the county (near the Stough Community) or remain in Fayetteville.

The Weekly News, a newspaper carrying the dateline *Fayette Court House, Alabama*, February 21, 1893, printed a notice to real estate owners residing within the cooperate limit of the town of Fayetteville to meet in Mayor John B. Sanfords office to correct mistakes in tax assessments. (reprinted in Sesquicentennial Broadcaster, September, 1969, page 127.) It would appear that as of such date, Fayetteville still was in existence.

In its issue of January 5, 1893, The Weekly News reported a New Board of Aldermen was organized in Colonel Sanford's office (a lawyer and editor of The Weekly News.) He also reported that two Saloons in Old Town were closed Monday__ and this New Town presents an attractive appearance in its mechanical construction.

In its issue of May 25, 1893, The Weekly News reported "We do not want our friends in Old Town to forsake us because we are in Latona. We desire cooperation and peace between the two corporations. We will name Old Town North Fayette and the new town South Fayette, until the "Florence and West Alabama __ is completed then we will give the two parts of the city one name." (News located on Temple Avenue)

In its issue of October __, 1893, The Weekly News reported, "The nicely arrayed business houses, beautifully gravelled walks, streets and avenues; the convenient water-works at the court house, the beautiful shades; the polite merchants, cheap goods, in South Fayette make this a very pleasant city."

In its issue of August 5, 1897, The Weekly News reported, "City Election last Monday: Mayor - R. F. Peters; Alderman - E. M. Harkins, George Howton, B. J. Ingram, John Kenny and Thomas Mace."

In its issue of December 17, 1897, the Sentinel reported. "There will be an election in old town of Fayette to select a Mayor and Board of Alderman for the ensuing year. The election takes place, Monday the 20th. The object is, we understand to keep up the corporation so as to collect sufficient revenues to keep the roads or streets in good order."

In its issue of November 12, 1898, the Sentinel reported, "There was a corporation election here last Tuesday. It was to change the corporate name from Latona to Fayette. The votes were all for Fayette (47-0). So it is now Fayette as well as in fact, it should have always been so.