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## A Birthday for the Upper Peninsula

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## **A Birthday for the Upper Peninsula <sup>1</sup>**

By Mark Ruge

In January, 2017, the State of Michigan celebrates its 180th birthday. Michiganders and others look forward to the celebration of the people, place, and history. However, Michigan's Upper Peninsula (U.P.) often considers itself apart from the Lower Peninsula. The region's sparse population, remote geographic location, and water separation from the "Mitten," often engenders a separate identity. While most Yooper's are excited to be part of that celebration, proud to be part of Michigan, others consider it an oversight that the U.P. has no official birth date and celebration. This article briefly traces the history of Michigan's U.P. and identifies the legal machinations that made the region part of the state. While doing so, it offers a logical date for the U.P.'s birthday celebration.

### ***Background***

This abbreviated history of Michigan, including the ironic and irregular way that the U.P. became part of Michigan, begins with the Northwest Ordinance of 1787. In that Act, the Congress of the Confederation of the United States designated a block of land as the Northwest Territory, an area surrounding the Great Lakes. The legislation declared that within this area at least three but not more than five new states would be created. In the early 1800s, three states were formed: Ohio (1803), Indiana (1816), and Illinois (1818). The remainder of the original Northwest Ordinance territory remained open with plans to eventually mold it into one or two additional states.

In 1805, Michigan became the Michigan Territory, a precursor to statehood in those days. The map of the old Michigan Territory had a different shape than the state of Michigan today. Only the easternmost quarter of the Upper Peninsula, along with the current Lower Peninsula, was included in the newly formed Michigan Territory.

Through much of this period, the leader of Michigan's statehood efforts was Steven Mason, called the "boy governor" because he was elected at age twenty-three, the youngest United States' governor ever. Mason wanted Michigan to become a state. But for years, the efforts to do so failed because of a dispute over an approximately 500 square mile piece of land on the southern border of Michigan near Toledo, Ohio, the so-called Toledo Strip.

### ***The Toledo War***

Most students who took a Michigan history class knows this story of Michigan's multi-year battle with Ohio, Illinois and Indiana, but mostly Ohio, over a little stretch of land near Toledo. Today, the whole thing sounds ridiculous, with the Michigan Territory and the State of Ohio passing laws and establishing militias to fight over the disputed land boundary. There were skirmishes and battles and even a small amount of bloodshed. This was not just a local battle—it had the attention of President Andrew Jackson, who saw it as a threat to the union.

One relevant point of the so-called Toledo War was that this boundary dispute delayed Michigan's entry into the union by years. After all, Ohio was already a state, and Ohio's representatives in Congress were among the very people who had to approve Michigan's entry into the union. And they were not going to do that with a bitter border war raging.

Ultimately, cooler heads prevailed, and a grand compromise was reached through legislation signed into law on June 15, 1836 authorizing Michigan's statehood. That grand

compromise gave Toledo to Ohio. The Ohio border issue was so important that the law making Michigan a state was officially titled, “An Act to establish the Northern Border line of the State of Ohio and to provide for the admission of Michigan into the Union upon the conditions therein expressed.” As a consolation prize, and it was not much of a consolation to the people of Michigan at the time, Congress added the full Upper Peninsula to the State of Michigan including what are generally its current boundaries.<sup>2</sup>

But there was one last twist, one last condition before Michigan could actually become a state, a “proviso” added into the statehood bill. In order for Michigan to become a state, the law read, the “boundaries of the said State of Michigan [as described in the law] shall receive the assent of a convention of delegates elected by the people of [Michigan]. . .”<sup>3</sup> In other words, elected delegates from Michigan had to convene and formally go on record in support of these newly established statutory boundaries. Obviously Congress did not want the State of Michigan coming back later to complain about the boundaries. Congress mandated if the elected delegates of Michigan did not agree to these boundaries on the record at a formal convention, Michigan would not become a state.

### ***The Ironies***

As context, there are at least three ironies relevant to this grand deal to make Michigan a state: Irony #1—Many people in the Lower Peninsula of the Michigan Territory did not really want the full U.P. in the state. They felt it was a very poor deal to lose Toledo and instead receive the U.P., described by some as “a barren and valueless tract in the region of perpetual snows.”<sup>4</sup> When Michigan’s then-Governor Mason spoke after the statehood bill was finally enacted, he never even mentioned the seemingly relevant fact that 22,000 square miles of the

U.P.—about 30% of the state’s land area—had been added to the state boundaries as part of the statehood legislation.<sup>5</sup>

Irony #2—Many U.P. citizens did not want to be part of Michigan. For years, before the statehood bill was enacted, residents of the U.P. had petitioned Congress to separate from the Lower Peninsula and align with the contiguous territory to the west.<sup>6</sup> There were many reasons for this but one is particularly obvious—the U.P. is not contiguous to the Lower Peninsula and there was no Mackinac Bridge, airports, or modern ships to help cross the Straits of Mackinac from the U.P. to the Lower Peninsula in the 1800s.

Irony #3 – Perhaps most ironic, just a few years after Michigan achieved statehood, after the U.P. was thrown in to the deal almost as an afterthought, vast mineral deposits of copper and iron ore were discovered in the U.P. Then, in 1855 the Soo Locks were built, connecting Lake Superior with the lower Great Lakes and allowing highly efficient lake ships to carry the raw materials throughout the Great Lakes. The combination of these massive mineral deposits and open shipping channels “transformed the industrial base of North America.”<sup>7</sup> It is a sweet irony that copper and iron ore, among many things, suddenly made the U.P. a prized part of the state.

### ***The Conventions of Assent***

Returning to the quest for a birthday, legislation had been enacted making Michigan a state. But there was one remaining condition: “the assent of a convention of delegates elected by the people” of Michigan. Once that condition was met, according to the legislation “without any further proceeding on the part of Congress” the admission of Michigan into the union would be considered complete.

And that is when the unthinkable happened. Michiganders elected delegates who met September, 1836 for the Convention of Assent to agree to Congress' deal. But they did not. After meeting in Ann Arbor for two days, the delegates rejected the Congressional deal by a vote of twenty-eight to twenty-one. They further adopted a resolution that complained bitterly about the injustice of the land boundary deal that gave them the U.P. in exchange for the Ohio strip.<sup>8</sup> After voting no, the delegates selected a representative to deliver the news to President Jackson and the Congress that read how the people of Michigan were unwilling to accept the newly proposed boundaries—even if it meant giving up statehood.<sup>9</sup>

### ***The Frostbitten Convention***

Imagine the situation. After years of trying, the Michigan Territory was on the doorstep of statehood but the decision by about sixty Michigan convention delegates, unbelievably, had brought the process to a grinding halt. Adding to the crisis, the federal government was on the verge of distributing special funding to all states—but only to states—and Michigan badly needed the money.

Territorial Governor Mason did something that was simply audacious. Not liking the result of the first Convention, Mason called a second convention—basically, he called for a “do over”—but with different people this time. He took specific steps to ensure that the result would be different, with most of the delegates “elected” through local Democratic party committees. Many counties did not participate in any way. This process of calling a do-over was so outrageous that the Whigs, the opposition party, which had led the dissent at the first Convention, this time simply refused to participate. They felt it was all a sham. That made it even easier for Mason to stack the deck to ensure a favorable result this time around.

The Second Convention of Assent met on December 14, 1836 in Ann Arbor, just three months after the first Convention.<sup>10</sup> It was so cold that day that the meeting has long been known as the Frostbitten Convention. Here is one piece of evidence that the deck was stacked. According to official records, the delegates to the Frostbitten Convention began their work at 2 p.m. and voted to assent before adjourning for dinner.<sup>11</sup> Their vote of assent this time was unanimous—that would be eighty-two to none, if all delegates voted—accepting all boundary conditions set out by Congress.<sup>12</sup> The next day they met again and prepared a letter to President Jackson pointing out that the Congressional legislation had not specified the exact process by which the people of Michigan would give their assent.<sup>13</sup>

Not surprisingly, there was *extreme skepticism* when Congress received word of the unanimous decision of the Second Convention of Assent. U.S. Senator John C. Calhoun of South Carolina called the Second Convention of Assent “a lawless assemblage.”<sup>14</sup> He said that if Congress accepted it as meeting the condition of statehood the U.S. government would be considered “one of the most odious and despotic governments ever existing on the earth.”<sup>15</sup>

But perhaps, ultimately, Congress was simply tired of the whole dispute between Michigan and Ohio. Unbelievably, Congress and President Jackson declared that assent had been received from a convention of Michigan officials and that Michigan had officially met the final condition for statehood. And on January 26, 1837, Michigan became our nation’s twenty sixth state. Here is how one author described the Frostbitten Convention and Congress’ acceptance:

Even for Congress, that bit of hypocrisy was astonishing. The act contained a preamble that the people of the state of Michigan had given their consent to the proposed boundary, when, it can be argued, they did no such thing. They didn’t give their consent at the First Convention of Assent or, according to many legal experts, at the illegal, boycotted, unrepresentative Frostbitten Convention. Five years after Michigan first applied for statehood, it was admitted as a state without

its people's consent but with Congress deluding itself into thinking they had given consent.<sup>16</sup>

Remarkably the audacious act of simply calling a “redo” of the convention with his own cast of delegates had worked for Governor Mason and established Michigan as a state once and for all.<sup>17</sup>

### ***The Birthdate***

As such, December 14, 1836—the date of the Frostbitten Convention—should be recognized as the official birthday of the U.P. The case for this date is simple. While the delegates at the First Convention of Assent rejected statehood because they thought that the 500 square miles of Ohio was more important than nearly 22,600 square miles of the U.P., the delegates to the Frostbitten Convention on December 14 corrected what would have been a colossal misjudgment. In doing so, December 14 became the date when the *final condition* was met to establish the boundaries of Michigan as a state—boundaries that for the first time included the entirety of the Upper Peninsula as we know it today. In effect, the U.P. was born into Michigan on December 14, 1836.<sup>18</sup>

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<sup>1</sup>This article is adapted from a presentation given by Mark Ruge at the Sonderegger Symposium XVI, sponsored by the Center for U.P. Studies, at Northern Michigan University on September 9, 2016. Ruge is an attorney for K&L Gates and a former chief of staff to Michigan Congressman Robert W. (“Bob”) Davis, who represented the Upper Peninsula.

<sup>2</sup> Annah May Soule, *The Southern and Western Boundaries of Michigan*, Publications of the Michigan Political Science Association, Vol. II, No. 2, (May, 1896), 54-71.

<sup>3</sup>*An Act to establish the northern boundary line of the State of Ohio, and to provide for the admission of Michigan upon the conditions therein expressed*, Acts of the 24th Congress of the United States, *U.S. Statutes at Large*, (1836): 49-50.

<sup>4</sup> Soule, 65.

<sup>5</sup> *Ibid.*, 66.

<sup>6</sup> *Ibid.*, 54-60.

<sup>7</sup> See *The Perils of Efficiency: An Analysis of An Unexpected Closure of the Soo Lock and Its Impact*, slide 4, prepared by the U.S. Department of Homeland Security, National Protections and Programs Directorate, Office of Cyber and Infrastructure Analysis, <http://onlinepubs.trb.org/onlinepubs/conferences/2016/CMTS/Presentations/57.CraigGordon.pdf>, (2015).

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<sup>8</sup>Journal of the Proceedings of the Convention of Delegates chosen by the electors of the State of Michigan in pursuance of an Act of Congress of June 15, 1836, and an Act of the Legislature of said state of July 25, 1836, for the purpose of taking into consideration [of] the proposition of Congress relative to the admission of the State of Michigan into the union begun and held at the court house in the Village of Ann Arbor on Monday, the 26th day of September, A.D.. 1836, 19. (“Journal of the Proceedings”)

<sup>9</sup> Ibid., 49.

<sup>10</sup> Journal of the Proceedings, 40-54.

<sup>11</sup> Ibid., 48.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 49-50.

<sup>14</sup> Don Faber, *The Boy Governor: Steven T. Mason and the Birth of Michigan* (Ann Arbor, The University of Michigan Press, Ann Arbor, 2012), Kindle edition, fn. 65-66, quoting from Roger Rosentreter, *The Quest for Statehood*, Michigan History 71 no. 1 (January-February 1987): 21.

<sup>15</sup> Ibid.

<sup>16</sup> Faber, chap. 4.

<sup>17</sup> Ironically, the U.S. House of Representatives version of the Michigan statehood bill, H.R., 382, read twice and committed to the committee of the whole U.S. House of Representatives on March 2, 1836, included different language that likely would have thwarted Governor Mason. Sec. 3 of H.R. 382 required that the boundaries “receive the assent and approbation of the Senators and Representatives elected to Congress, and the Legislature of the said State...” Between March and June of 1836, through the Congressional legislative process, that language was changed, allowing Governor Mason a narrow opening to conduct his famous “redo.”

<sup>18</sup> On September 9, 2016, the attendees at the Symposium adopted the following resolution: *That the attendees at the Sonderegger Symposium at the Center for U.P. Studies hereby support December 14, the date of the Frostbitten Convention, as the official birthday of the Upper Peninsula and, as result, December 14 of this year will be the U.P.'s 180th birthday.*