STATE ADMINISTRATIVE REORGANIZATION

BY CONSTITUTIONAL REVISION

by

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A THESIS

Presented to the Department of Political Science
and the Graduate School of the University of Oregon
in partial fulfillment
of the requirements for the degree of
Master of Science

June 1953

APPROVED:

[redacted]

Gift ($7.25) bd. 1.35

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CHAPTER I

INTRODUCTION

In the last two sessions of Oregon's legislature bills have been introduced to provide for a constitutional convention. For some time there has existed a rather vague feeling of discontent with the Oregon constitution. Critics have pointed out useless and archaic provisions and the combination of basic law, statutory law, and administrative regulation which appear in the constitution. These deficiencies may or may not be sufficient reason for calling a constitutional convention. It is not likely such a convention would confine itself to the deletion of anachronisms and to the simplification of detail. Such a convention would have an opportunity to improve the whole constitution and the administrative structure of state government.

Administration is the most vital and important part of a state's government. This is not to belittle the importance of, or question the necessity for other departments. But the administration is the center around which most other activities revolve and the medium through which most governmental decisions are carried out. The administration itself makes many of these decisions. With the increase in scope and variety of governmental activities has come a corresponding increase in the power and importance of administration. It is to be expected, therefore, that the most significant changes in state government within the last decade have been in the area of administration. The most drastic and

comprehensive changes have been accomplished by constitutional revision. For these reasons this discussion concentrates on a consideration of state administrative reorganization by means of constitutional revision.

If constitutional revision in Oregon becomes a reality a study of the administrative reorganization effected by recent constitutional revisions should be of some value. The five most recent state constitutions are those of Illinois (1917), Louisiana (1921), Georgia (1945), Missouri (1945), and New Jersey (1947).

Considerable dissatisfaction with their present constitutions exists, however, in the states of Louisiana and Illinois. The Louisiana constitution has been amended 287 times since 1921. This huge number of amendments would, in itself, indicate dissatisfaction with the basic document. The Illinois constitution might possibly have been as frequently amended were it not for the particularly difficult amending process. At any rate, reformers in both states have been pressing for new constitutions. More valuable as examples of reorganization through constitutions are the experiences of Georgia, Missouri, and New Jersey. Happily, for this discussion, each of these three state governments typifies a form of state government: New Jersey is the highly centralized, Georgia the de-centralized, and Missouri about half-way between.

A description of the administrative structure and official acts of these three governments under their new constitutions would add little to an understanding of the problems and issues involved or the solutions decided upon. The official facts do not speak for themselves. Before these facts can have any real meaning an attempt at some analysis and interpretation is necessary. Such analysis or interpretation must be

based upon certain premises or principles. It becomes necessary then first to define those principles against which factual observation may be analyzed, interpreted, and possibly evaluated.

The study therefore begins with a discussion of the general concepts embodied in state constitutions. To illustrate the usual conditions under which constitutions were originally formed and the common problems attendant to their revision this study then continues with a historical sketch of the formation of the Oregon constitution and a brief report on current efforts at revision. The discussion continues from this example of constitutional formation and attempted revision to a description of types and methods of state administration and proceeds to a consideration of those principles of administrative reorganization which are believed to be of greatest merit. The three most recent constitutions are then examined in the light of the principles previously set forth.

In this examination of the constitutions of the states of Georgia, Missouri, and New Jersey, and the administrative structures which resulted therefrom, the many details, when taken together, form a pattern. Statutory elaboration is also included because, while this discussion is primarily concerned with constitutional revision, the statutes fill in the gaps left, or allowed by, the constitution.

It is generally recognized that state governments are deficient in many areas. State governments are generally unable or unwilling to shoulder their responsibilities and adequately discharge them. One evidence of these inadequacies is the increasing encroachment (or assistance, if you prefer) of the federal government upon state affairs--and this despite ever-increasing state budgets. When enough people demand a new service

or a changed or expanded service--some unit of government will supply that demand. If the state government abdicates, the federal government or local government will move in.

In many instances the deficiencies in a state's government are the fault of its administrative machinery. This thesis contends that overall reorganization of that machinery is ordinarily impractical without extensive constitutional revision. Patchwork revision by amendment is not as likely to produce a coherent, well-balanced organization as is wholesale revision by a constitutional convention. Holding a convention to revise a constitution does not provide all the remedies--but it does provide an opportunity to devise some remedies.

As our society grows more complex and interdependent, more and more demands are made upon government. Consequently the acts of government enter more and more into the daily lives of its citizens. The issue of constitutional revision is therefore a question which vitally affects everyone. This is no purely academic question nor is it a matter only of providing a more efficient organization so that economies may be effected.

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their Safety and Happiness.--Declaration of Independence

CHAPTER II

THE BASIC LAW

A government is not a permanent association of men based upon timeless and enduring principles. Even the concepts of the most cherished, sacred, and supposedly inviolate and fundamental political ideals have been qualified and changed with the passage of time. Government, to be most effective, must be dynamic. It should therefore be subject to constant scrutiny. Effective government must utilize the results of this scrutiny to accomplish adjustment to changing conditions and needs. The foundation of the structure of a state's government is its constitution. This constitution should be so constructed as to provide its citizens with protection from abuse by their government and to establish efficient machinery for the processes of government.

> In every human endeavor there is a periodic taking of stock, of review of the past, and of planning for the future. The most successful of individuals and enterprises regularly re-examine and re-evaluate the basic presuppositions on which their current activities rest. Normally, the result is a reaffirmation of present plans and purposes. Frequently, however, a thorough review leads to changes which better equip the individual or the enterprise for the challenge of the future. This is true of private activity. It is equally true of government. Every state constitution recognizes the fact by providing one or more methods of amendment. The constitutions of many states specify the procedure and method whereby the constitution may be completely revised or rewritten.[1]

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[1]Mark O. Hatfield, Oregon State Representative, in Memorandum to Hon. Paul L. Patterson, Governor of Oregon, January 5, 1953.

The Constitution of Oregon has been in effect since 1859 without serious review or taking stock. The age of the constitution of itself does not impair its validity. Old provisions may have been devised, however, to meet old situations which no longer apply. The Oregon Constitution was written in 1857 by a group of citizens who analyzed other state constitutions and culled out those articles they deemed most suitable and added a few of their own. These individuals were not oracles nor were they the instruments of divine inspiration. They were a group of individuals elected by a sparsely settled, pioneer, agricultural community. It is likely they were among the most capable people in the territory for the purpose. The immediate reason for drafting the constitution was the desired and impending recognition of Oregon territory as a state. It is likely the framers (aside from a few individuals) had no feeling they were framing a timeless and immortal document or that their work was much more than setting up a reasonable and sound framework of governmental organization that would be acceptable to Congress in their bid for statehood. They apparently approached their problems with a workmanlike attitude and wasted little time--the convention was in session a total of thirty-two days![1] Their constitution was, in a sense, a consolidation of the most generally accepted tenets of democratic government as expressed in previous state constitutions and the national constitution which in turn had taken their doctrines primarily from English and French documents and political philosophy.

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[1]Charles Henry Carey, The Oregon Constitution (Salem, Oregon: State Printing Dept., 1926), p. 57.

It is interesting to note that some state constitutions antedated the federal constitution.

> Before the Declaration of Independence had actually been adopted seven of the states had independent governments. . . .
> The original constitutions were, like most things governmental, a result of generations--and in some cases centuries of human experience. They were, in fact, little more than the previously existing constitutions adapted to changed conditions.[1]

This constitution then was a result of previous political and economic ideas and institutions. This political and economic development has continued--at an accelerated rate--but the constitution has stood still in the sense that no comprehensive study or revision has been accomplished. In 1857 the problems of Oregon government were relatively simple. Population was small. There were no cities of consequence. Industrial development was in its infancy. In 1857 the constitution was very likely an adequate and satisfactory constitution. This same constitution, however, may not satisfy the needs of the state in 1953.

It may be well to pause at this point to first define a constitution and to point up some of those principles which, through the passage of time, have come to be generally accepted in the United States.

> The state is a human grouping in which rules a certain power relationship between its individual and associated constituents. This power relationship is embodied in political institutions. The system of fundamental political institutions is the constitution.[2]

An earlier definition states,

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[1]W. Brooke Graves, American State Government (Boston: D. C. Heath and Co., 1946), p. 52.

[2]Herman Finer, Theory and Practice of Modern Government (New York: Henry Holt and Co., 1949), p. 116.

> By Constitution we mean, whenever we speak of Propriety and Exactness, that Assemblage of Laws, Institutions and Customs, derived from certain fix'd Principles of Reason. . .that compose the general System, according to which the Community hath agreed to be governed.[1]

In supplementing the above it might be said that a constitution should be a statement of those political beliefs which are generally accepted by the constituents and which are considered to be fundamental and necessary to provide a foundation and a framework on and around which the statutes and the machinery of government can be constructed.

It will be noted that the definitions quoted do not require a formal written constitution. Is a written constitution necessary in the first place? England, for instance, does not have a written constitution and its government seems to function without one. In a new government or a new subdivision of an older government there may be considered a need for laying out boundaries and marking out standards within which the more detailed and implementing statutes will operate. In an old and firmly established government in which basic principles are firmly established or in a slowly evolving society the need for a written constitution is not so keenly felt because after all,

> . . .no written constitution, not the French, nor the German, nor the American, nor the Australian, nor any, can stand by itself. It needs completion: for the virtue of the law resides in its detail. And the laws which give it completion are not different from the laws passed in a country with an unwritten constitution.[2]

If this premise is correct might it not be feasible to throw out the

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[1]Henry St. John, Viscount Bolingbroke, Dissertation on Parties (London, 1733), p. 108, quoted in Ibid., p. 116.

[2]Ibid., p. 127.

Oregon constitution entirely or simply disregard its provisions? Such a procedure is not feasible for two basic reasons: (1) Such a suggestion would be contrary to our political folklore and as such would meet with almost universal disapproval. Politics operates within the limits of the possible. It would not be possible to jettison the written constitution by democratic methods. (2) Throughout American history there has existed a high degree of sensitivity to the "legality" of actions. This attitude applies to both private and public actions. The phrase "Make it legal" is common to practically all forms of transactions and activities. There is, and has been, great confidence in the efficacy of laws to provide remedies for wants, needs, desires, and fears. The concept of legalism and constitutionalism is an inherent part of the mores of America. Every self-respecting association, whether it be an artist's society, a children's club, or a ladies social group, draws up a constitution setting forth its purposes, principles, and a plan of organization. To deviate from this idea of constitutionality and legality to the extent of eliminating a written constitution altogether in an association as important as state government is simply impossible. Furthermore, it is likely there still exists too little confidence in the legislature and the executive to allow them to make decisions without first deciding and putting in writing the limits of their discretion.

All of the states have written constitutions which expressly or impliedly contain certain basic ideas of government.

> Although the federal constitution does not require a state to have its own constitution, each state has seen fit to do so. Originally there were at least two purposes behind the adoption of such written instruments. The first was to set forth a bill of rights enumerating the prerogatives of the people as against

> those of the government then being created. All men were held to be born free and equal and to possess certain natural and inalienable rights which government must respect. The second major purpose was to create a framework of government.[1]

The framers of American state constitutions having been imbued with somewhat similar political doctrines naturally embodied those doctrines in the constitutions they drafted. In the first place a bill of rights has come to be an inherent part of state constitutions. In these bills of rights are expressed those rights considered to be natural, essential, and inalienable. Thus the Declaration of Independence states,

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

The Massachusetts Bill of Rights of 1780 repeated the same principles:

> Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

The Oregon Constitution of 1857 states,

> We declare that all men, when they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. (Art. I, Sec. 1).

There is expressed or implied in all state constitutions the concept of the separation of powers. A classic statement of this doctrine appears in the Constitution of Massachusetts of 1780:

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[1]Arthur W. Bromage, State Government & Administration in the United States (New York: Harpers Bros.), p. 55.

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men.[1]

A slightly diluted version of the doctrine of separation of powers appears in the Oregon Constitution,

> The powers of the government shall be divided into three separate departments--the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided.[2]

This concept of dividing the power of government as a measure for preventing tyranny was borrowed from early state governments, the federal constitution, and from the works of its framers who in turn appear to have appropriated this concept of government from Montesquieu.

Along with the doctrine of "natural" rights and equality of men has come, in the course of time, the concept of popular sovereignty. Government is conceived to be an organization operating for the benefit of the people. The personnel administering such a government should therefore be chosen by, and be responsible to, the people. The directness of this sovereignty varies among the states. In Oregon, since 1902, it includes the passage and repeal of both statutes and constitutional amendments by direct vote of the people and, since 1908, extends to the recall of office

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[1] Massachusetts Constitution, Article XXX.

[2] Oregon Constitution, Article III, Section 1.

holders.[1]

In connection with the principle of separation of powers an additional safeguard to the threat of tyranny is in the implementation of a system of checks and balances in which each department acts as a check upon another. Governors have veto power; legislatures confirm governors' appointments; courts examine constitutionality of legislative statutes, etc. The Oregon constitution gives the governor veto power over bills passed by the legislature but provides that the legislature may override his veto by a two-thirds vote of both houses.[2]

The most recent state constitutions embody these same fundamental precepts no less than do the oldest state constitutions. They have, however, put fewer obstructions in the way of legislative and administrative action. Some of the old constitutions so separated the powers and checked and balanced them as to make them virtually inoperative. The most recent constitutions adopted are those of Missouri, Georgia and New Jersey. Changes were made in all areas of state governments but the most important and significant field of revision seems to be in state administration and in the legislative branch and the governor's office as a result of, or in relation to, the change in administration. An attempt is made in succeeding pages to point up the most relevant changes in these three new constitutions, in these areas only, in an attempt to provide some basis for considering these problems in a revision of the Oregon Constitution.

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[1] Ibid., Article IV, Section 1; Article II, Section 18.

[2] Ibid., Article IV, Section 15-b.

We declare that all men, whey they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.--Constitution of Oregon, Article I, Sec. 1.

CHAPTER III

THE OREGON CONSTITUTION

The people of the Oregon territory were generally eager to change their territorial status to that of statehood. There was, of course, considerable opposition for various reasons which, though interesting, are outside the scope of this discussion. As a move toward statehood, agitation began early for the formation of a state constitution. Elections in which the holding of a constitutional convention was the question were held in 1854, 1855, and 1856. In each of these elections the question of a constitutional convention was defeated by smaller and smaller majorities. In another election in 1857 the vote was overwhelmingly in favor of the convention. The convention forthwith assembled in courthouse in Salem on August 17, 1857. It was composed of sixty delegates. Of these, thirty-nine were of Democratic party affiliations and the remainder were Whigs, Republicans and others. The delegation included thirty-three farmers, eighteen lawyers, five miners, two newspapermen and one civil engineer.[1]

The constitution finally agreed upon by this convention was not, in any sense, an original document. The following table shows that, of the 188 sections finally adopted, 136 were identical with, or similar to, provisions of other state constitutions.

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[1]Carey, op. cit., p. 29.

TABLE I

THE SOURCES OF THE OREGON CONSTITUTION[1]

Grand Summary

Source	Ind. 1851	Iowa 1857	Maine 1819	Mass. 1780	Mich. 1850	Ohio 1851	Ill. 1818	Conn. 1818	Wis. 1848	Tex. 1845	Ore.
Article I	31	1	1								2
Article II	8	2		1	1			1			4
Article III	1										
Article IV	29	1			1						1
Article V	16	1			1						
Article VI	6								4		
Article VII,	Judicial Dept., Source (1) the minds of the committee; (2) territorial judicial system; (3) Wisconsin constitution of 1848										21
Article VIII		1 (Iowa, 1846) 1							2		1
Article IX	3					2	1		1		
Article X	1				1					1	2
Article XI	2				4	1					3
Article XII											1
Article XIII											1
Article XIV											3
Article XV	3				1	1	1				2
Article XVI	1										
Article XVII	2										
Article XVIII											11
Total	103	7	1	1	9	4	2	1	7	1	52
Grand Total	188										

[1] W. C. Palmer, Oregon Law Review, April, 1926. Quoted in Carey, op. cit., p. 482.

The convention adjourned September 18, 1857 (one month and one day after assembling). The constitution as drafted by this convention was adopted by the people of the territory in a special election held November 9, 1857 by a vote of 7,195 to 3,215.[1] It did not become effective, however, until Oregon was admitted to statehood on February 14, 1859.

Oregon has now the twelfth oldest constitution among the states even though it was the thirty-third state admitted to the union. It has, however, been amended more times (96) than any other state constitution except California (352), Louisiana (287), South Carolina (220), New York (127), and Texas (107).[2] A constitution which is most rigid in its amending requirements will sooner become out of date and require revision unless that constitution is so vaguely worded and/or so loosely or liberally interpreted as to make it possible to adapt it to changing conditions. A case in point may be the federal constitution.

The procedure for amendment of the Oregon constitution is one of the simplest and easiest of any of the states. Amendments may be proposed in either branch of the legislative assembly or by initiative. If proposed in the legislature and carried by a majority of members elected to both houses it is referred to the people for their approval or rejection. If a majority of the electors voting on such amendment favor it, it becomes

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[1] Ibid., p. 27.

[2] These figures are as of September, 1951. The number of amendments quoted for various states differs with the method used in counting. If a single amendment amends more than one article or section it is sometimes counted as several amendments according to the number of articles amended. Thus, at this same date the same authority lists Oregon as having 113 amendments to its Constitution. Council of State Governments, Book of the States, 1952-53 (Chicago: Council of State Governments, 1952), p. 66-72.

a part of the constitution. Amendment by the initiative may be even easier. In this case it is necessary only to secure the required number of signers to the initiative petition to place it on the ballot where it enjoys the same status as an amendment referred by the legislature and is voted upon and accepted or rejected by majority vote of those voting on the particular amendment.[1]

Most other states have amending procedures that are considered to be more difficult than that of Oregon. For example, in the state of Tennessee no amendments to the constitution have as yet been adopted although the constitution has been in effect since 1870. In that state a proposed amendment must be passed by a majority vote of the entire membership of each house of the legislature and a two-thirds vote of the entire membership of each house of the succeeding legislature and then be ratified by a majority vote cast by the people for members of the legislature.[2]

The Indiana constitution of 1851 (from which much of Oregon's constitution originated) has been amended only seventeen times.[3] The amending process in Indiana is difficult. An absolute majority of both legislative houses in two successive sessions plus approval by the voters is required for adoption.[4]

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[1] Oregon Constitution, Article XVII, Section 1.

[2] Gossnell and Holland, State and Local Government in the United States (New York: Prentice-Hall, 1951), p. 146.

[3] Council of State Governments, Book of the States, 1950-51 (Chicago: Council of State Governments, 1950), pp. 88-94.

[4] Indiana Constitution, 1851, Article XVI, Section 1.

The difficulty in the amendment process in some states (such as Illinois with seven amendments since 1870) lies in the requirement that a majority of the total voters at the election must approve the amendment. It almost invariably happens that the votes on a constitutional amendment are less than the votes cast for governor. Thus, those electors not voting on an amendment are, in effect, voting against it.

Those state constitutions which have been most frequently amended are not necessarily the easiest to amend. In some instances the larger number of amendments is due to the number and kind of restrictions placed in the constitution or to the inclusion of specific details. This situation is exemplified in the present constitution of California (352 amendments), Louisiana (287 amendments), and in the old constitution of Georgia which had 301 amendments when the new constitution was adopted. In these three constitutions, especially, the amending process, for the most part, has consisted of attempts to circumvent restrictions and to change one specific to another specific. The multitudinous restrictions and specific details included in these constitutions forced legislatures to propose amendments if government was to continue with reasonable effectiveness. Since many of the proposed amendments were either of a relatively non-controversial nature or were obviously needed, there was little opposition to their passage--even though the amending process may not have been particularly simple or easy.

Despite the ease of the amending process in Oregon (and maybe partly because of it) there appears to be a growing sense of dissatisfaction with the constitution. Critics have pointed out such anachronisms as the section concerned with dueling (Article II, Section 9), the section

requiring the Secretary of State to maintain his residence at the seat of government (Article VI, Section 5), and the section which sets the Governor's annual salary at $1,500, the Secretary of State at $1,500, the Treasurer at $800, and judges of the Supreme Court at $2,000 (Article XIII, Section 1). Such sections, although obviously obsolete, cannot be considered sufficient reason for calling for a convention for constitutional revision. In the case of the examples cited, the dueling provision is of no consequence and the two latter are ignored. The 1951 legislative assembly, for instance, set the annual salary of the Governor at $11,000, the Secretary of State and the State Treasurer at $8,800 and the justices of the Supreme Court at $10,450.

Other critics have pointed out that the constitution has grown to be unnecessarily long, detailed, and specific. An example might be Article XI-F-(2)--World War II Veteran's Compensation Fund which contains several hundred words and concerns itself with such minute details as the information required to be set forth on the application form for veteran's compensation. Length and detail are contrary to the principle that constitutions should be basic laws and that specifics should be set forth in the statutes or in administrative regulations. One of the reasons for this belief is that inclusion of specific details in the constitution results in making government more cumbersome, costly, slow, and inefficient because specifics sooner become out of date and require revision. If these specifics appear in a constitution they can be changed only by constitutional amendment which is a slow, cumbersome, and costly process--even in Oregon. The tendency in amending a specific law seems to be to change the specific detail to another specific detail. A case in point

is the section on limitations on counties to create debts,[1] which has been amended six times.

Whether or not the removal of archaic provisions and the simplification or generalization of details is sufficient reason for calling a convention for constitutional revision is questionable. There is, moreover, no guarantee that such a convention would accomplish these ends--particularly in the matter of simplification. There may exist, however, more fundamental and important reasons for revising the constitution, as, for instance, an improved judiciary system, a reorganization of state administration to consolidate the present numerous agencies into a more workable pattern responsible to the governor, the transfer of some elected offices to appointive offices, provisions for a more effective legislative organization, and provision for a post audit of state agencies' accounts by an office responsible to the legislature. These are a few of the fundamentals which might be considered to advantage by a constitutional convention.

In the forty-sixth legislative assembly (1951) Senator Neuberger introduced a bill which proposed that a convention be held to revise the constitution. This bill was unsuccessful. The idea did not die, however. Governor Paul L. Patterson in his opening remarks to the forty-seventh legislative assembly, said,

> For some time I have had a growing conviction that the time has arrived for Oregon to modernize the state constitution. This instrument comprising basic laws has been in existence for nearly a century. It has grown in size and in detail until in some respects it is more a compilation of

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[1] Oregon Constitution, Article XI, Section 10.

bylaws than a constitution.

On January 13, 1953, Senate Bill No. 1 providing for a state constitutional convention was introduced by Senators Neuberger and Holmes.[1]

This bill provides for a constitutional convention to be held in 1956 to revise or draft anew the Oregon constitution. The bill provides that the Act be submitted to the people for approval or rejection at the next general election. Delegates to the convention are to be elected on a non-partisan ballot at the time of the general primary election in 1956. One delegate is to be elected from each county and "in each congressional district there shall be elected one delegate at large for each 20,000 population or major fraction thereof."

After the convention has completed its work the bill stipulates that the new constitution be referred to the people for approval or rejection in the general election of November, 1956.

On January 14, 1953, House Bill No. 10 providing for a constitutional convention was introduced by Representative Mark O. Hatfield and others.[2]

House Bill No. 10 contains essentially the same provisions as Senate Bill No. 1. The purpose and time schedule is the same. Election of delegates is to be on a non-partisan basis and delegates are to be elected on the same basis as senators and representatives in the legislature. The major difference between the two bills is in the method of delegate apportionment and total number of delegates. Senator Neuberger's

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[1]Appendix A, Senate Bill No. 1, Forty-seventh Legislative Assembly of Oregon.

[2]Appendix B, House Bill No. 10, Forty-seventh Legislative Assembly of Oregon.

bill calls for 112 delegates to the convention while Representative Hatfield's measure would have ninety.

On February 27, 1953, Mr. Hatfield proposed some amendments to his original bill. The amendment of primary importance read as follows:

> The assembly shall consist of delegates elected on a nonpartisan basis as follows: (1) in each county there shall be elected one delegate; and (2) additional delegates elected in each county for each 30,000 population or major fraction thereof as determined by the regular decennial census of the United States for the year 1950.[1]

The effect of this amendment would be to give still greater proportionate representation to eastern Oregon than existed in the original bill. For instance, under the original bill, Multnomah County with a population of 471,000, would be entitled to twenty-three delegates while the 247,000 Oregonians living east of the mountains would be entitled to nineteen delegates. Stated in another way, this area with about 52 per cent of Multnomah's population would be entitled to about 82 per cent of the number of delegates. Under the amendment eastern Oregon would gain six seats for a total of twenty-five. Multnomah County would have seventeen delegates. Stated fraction-wise, eastern Oregon with one-half of Multnomah's population would have one and one-half times the number of delegates. Within eastern Oregon the discrimination would also exist--the 13,000 people of Gilliam, Sherman, Wheeler, and Morrow counties would be entitled to four delegates. The 42,000 people of Klamath County would elect two.[2]

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[1]Appendix C, Amendments to House Bill No. 10, Forty-seventh Legislative Assembly of Oregon.

[2]Figures from The Oregonian, March 13, 1953, p. 22.

Mr. Hatfield and the other sponsors of constitutional revision are, of course, aware of these disproportions and it seems obvious that they have deliberately devised these "malformations" in an attempt to secure passage of the bill. It must also be obvious they would not have done so had there been a possibility of approval of the original bill by the legislature. They have decided apparently that a representatively unbalanced constitutional convention is better than no convention at all. A similar situation has occurred in several other states. The compromises rural constituencies forced upon constitutional revision planners will be discussed in the cases of Georgia and New Jersey in the following pages.

Another proposed amendment reads,

> If this Act is approved by the people when submitted to them as provided in Section 12 of this Act, the Forty-eighth Legislative Assembly may provide for the establishment of a constitutional commission or other group to study and review the organic laws of this state with a view to the correction and clarification of the Oregon Constitution and to make recommendations to the constitutional convention for its consideration. The Forty-eighth Legislative Assembly may impose other duties and powers on such constitutional commission or other group and may appropriate money for payment of the costs and expenses of such constitutional commission or other group.[1]

The original bill assumed that such a committee or commission would be appointed but at that time it was not considered necessary to include it in the bill. The establishment of such a commission is considered to be imperative in view of the short time which would be available to the convention.

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[1]Appendix C, ibid.

At about mid-session Governor Paul L. Patterson, President of the Senate Eugene E. Marsh, and Speaker of the House Rudie Wilhelm Jr. outlined to the legislature eleven bills they considered of prime importance for legislative action. Constitutional revision was first on the list.

If either bill passes the legislature steps in the formation of a new constitution would proceed somewhat as follows:

1953--Adoption by the legislature of the bill and formation of a referendum to the people calling for a constitutional convention.

1954--General election--the voters would either approve or disapprove the referendum.

1955--If the voters approved the referendum the legislature could create a commission to study and present their recommendations to the convention.

1956--Primary election--the voters (if they approved the referendum in 1954) would elect delegates to the constitutional convention.

July, 1956--The delegates would assemble to revise or re-draft the constitution.

1956--General election--the new constitution would be submitted to the voters for final approval or rejection.

The revision process could be expedited by electing delegates to a convention on the same ballot on which the voter indicated whether or not he desired a convention. If the measure was turned down by the voters the election of delegates would be void. The idea of electing delegates before the convention question is resolved may appear to be premature and somewhat ridiculous. Nevertheless, this system was successfully used in New Jersey in 1947. There are, of course, other

considerations. This method would not permit as much time for study and research. However, if the 1953 legislature passes one of the bills submitted it could also appoint an interim committee to conduct a study and submit recommendations to the convention if and when it assembled. Such a commission would have approximately one year's time which should be sufficient. Proponents of revision would not have as much time to publicize their case--but neither would opponents of revision. There might also be some advantage in holding the election and the convention in an off year (1954) when presidential campaigns and issues would not divert voters' attention.

Voting for convention delegates on the same ballot which presents the question of whether or not a convention should be held may not be considered entirely ethical. In such a situation the voter is subjected to somewhat the same sales technique as is employed by the question, "Do you wish one or two eggs in your malted milk?" This technique may give an unsuspecting voter the impression that approval of a convention is a foregone conclusion and that the only real question is the selection of delegates to that convention. This system also provides another psychological incentive to convention approval in that most voters like to vote for people--especially people they know. So some voters would vote in favor of a convention merely to gain the privilege of voting for delegates.

There is no subject more important--from its minute ramifications of unit costs and accounts to the top structure of the overhead--than this subject of administration. The future of civilized government, and even, I think, of civilization itself rests upon our ability to develop a science and a philosophy and a practice of administration competent to discharge the public functions of civilized society.--Charles A. Beard

CHAPTER IV

STATE GOVERNMENT ADMINISTRATIVE ORGANIZATION

In 1915 the total cost of state government in the United States was about $500 million.[1] By 1940 costs had risen to $5.6 billion and by 1950 to $12.9 billion. In 1940 permanent non-school state employees numbered 394,000. In 1951 the states employed 636,000 people.[2] These figures give no inkling of purposes or methods. They merely indicate that state government is big and getting bigger. More and more demands are being imposed upon government for more and varied services. Taxes increase and government, more and more, exerts an influence in the everyday life of its people. It is of utmost importance, therefore, that the administration of government be effective in accomplishing the ends desired by the people and at a minimum cost.

The importance of administration is further heightened by the recognizable fact that the authority and influence of state administration is increasing while the authority of the legislature is becoming comparatively less. Legislatures write the laws but the administration interprets them and enforces them. Administrators may even write some laws which are introduced by a legislator and voted upon. Furthermore, the legislature

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[1]Census Bureau, Compendium of State Government Finances in 1948 (Washington: Government Printing Office).

[2]Council of State Governments, Book of the States 1952-53 (Chicago: Council of State Governments, 1952), p. 148.

is in session a short time only while the administration works all year making millions of personal contacts and daily making decisions, both big and small. As state administration becomes more important and engages in more activities it becomes more than ever necessary that such administration be subject to popular control--that it does what the people want done and in the manner they want it done.

In a democratic society it may be said the general goals or ends of state administration are:

1. To be representative of, and responsive to, the public will, and;

2. To be effective and efficient in the performance of its duties.

In the matter of responsiveness to the public will it hardly seem necessary to mention that a state's administrative organization is formed and functions for the good of the public. Administration in a democratic government is considered to be merely the process or method by which given ends are accomplished. It is regarded as a means and not as an end in itself. It is, of course, sometimes difficult to determine what the ends are. A Milk Control Board may be considered by farmers as a means to insure fair prices for their product; creameries or distributors may consider it a means of protecting their profits; retail stores may consider it as a means to give them a competitive advantage over distributors; the milk buying public may consider the Board as a means of insuring sanitation and quality of milk at a low retail price. All these ends are probably considered by each of the above groups as <u>the</u> primary purpose for which the board is organized. How then, even in theory, should such a board construe its mission? In an actual situation these academic

difficulties will be further aggravated by the relative powers of pressure organizations, legislative representation, etc.

This illustration serves to point up the need for a type of administration which has means of determining what the large overriding needs are and an administration which responds to those needs. This must also be a type of administration where responsibility can be fixed if the people are to know whom to blame for acts which are contrary to their desires. This observation is made on the premise that moderate, rational, and humanitarian government is desired. This may not always be the case. Probably all of us if we were approached with the direct general question, "do you want a humanitarian, rational, and coherent government?" would answer, "of course." But if we were asked "should milk be controlled by an impartial, deliberative body?" we might respond with some hesitation and uncertainty or with qualification.

Administration must be effective if it is to have any value. An ineffective agency may be worse than useless. An agency charged with maintaining mine safety, for instance, must make adequate inspections and enforce its decisions. Otherwise mines may become more hazardous than they would be without regulation because of the erroneous assumption that they have been inspected and that they are safe.

Again there may be other considerations. We assume that miners and the general public desire safe mines. In general no one would contradict such an assumption. But in a particular mine it may not apply. A marginal mine might not be able to operate at a profit if necessary safeguards were installed. In such a situation both owners and miners might conceivably prefer to take a chance on an unsafe mine than to lose profits and jobs.

Variations of this kind of contingency might appear in any administrative program. So, while we may subscribe to the idea of an effective administration, it must be understood that certain groups in certain circumstances might prefer a weak and ineffectual organization. It must also be understood that while some of these groups may be activated by sinister or selfish motives, some other groups may prefer a weak and dispersed administration for the most altruistic reasons.

The administration should be efficient. The term efficient, to most people, probably means maximum output with minimum input--or getting the most for the least. Measuring efficiency in any organization is difficult but more so in government because most of the services performed by government do not show a profit. How can one measure the efficiency or value of a highway patrol, an orphan's home, or a malarial control campaign? It is likely that many such "measures" must be value judgments or comparison with past records in the same field in the same state.

When we speak of the goals of responsive, effective, and efficient administration we admittedly are speaking of what "ought to be" rather than of "what is." That we recognize some of the obstacles, difficulties, and complexities does not invalidate these goals. It is assumed that these ends are generally approved in our society. Compromises and adjustments and re-definitions of specific aims may be necessary but the general goals are regarded as basic and necessary to the continuance and improvement of democratic government.

The problem, then, is how to obtain the most efficient, effective, and economical administration at the highest possible level of responsiveness to the public. How can administration be made both more effective

and more sensitive to the public will? How can we give administration more and more duties, powers, and responsibilities and still make it subservient to the public? One thing is certain--we cannot do it by dividing responsibility until no one knows whom to praise and whom to blame.

In answer to the growing demands for additional state services and in an attempt to attain the goals of effectiveness and responsiveness there have evolved two primary types of state government--the consolidated or centralized and the dispersed or de-centralized. It must not be inferred that new services were added to the states' responsibilities in an orderly or logical manner with the above values clearly in mind. Rather, the pattern has been that the public, or a segment of the public, has demanded a new service or the expansion of an old one, and that this demand has been granted by creating a new agency or giving an existing agency additional duties depending upon various conditions existing at the moment. For a great variety of reasons there has seldom been any attempt to fit the new service or agency into a coherent whole. State administration has expanded like most city street systems--it "just growed." In most states this unplanned growth has been followed by sporadic attempts at reorganization when it became obvious that the machinery of government had become inadequate, excessively expensive, outmoded, or generally undesirable. These reorganization movements have proceeded with varying purposes and with varying degrees of success. More recent reorganization attempts have been made in the direction of greater centralization.

Before proceeding to a discussion of centralization versus decentralization it may be well to list the various types of state administrators

with a brief commentary on each because these are the offices or devices through which government operates and the organizational devices with which reorganization works.

Elected Administrators

Every state elects officials who are administrators in varying degrees depending upon the constitution and statutes of the particular state. Every state elects a Governor. Most states also elect a Secretary of State, Treasurer, Auditor, or Comptroller, and Superintendent of Schools. The following survey, Table II, shows the method of selecting the major administrative officers and also some minor officials in the forty-eight states.

In their quest for a more representative and responsive government the reformers of the Jacksonian period conceived or developed the principle of elected administrators which has continued with varying degrees since. The principle, simply stated, is that the more officials the voters are permitted to select the greater will be their control. The greater the control, the more representative the government. This principle has several defects. First, the qualities which win elections are not necessarily the same qualities which make good administrators. Second, the direct election of numerous officials makes over-all conformity to a policy or program impossible. Third, it is difficult to secure cooperation among the little elected kingdoms. Fourth, duplication and overlapping of activities with consequent waste of manpower and money is inevitable. Fifth, since most offices will be primarily concerned with one or a few occupations, industries, or activities they are likely to

TABLE II

SELECTION OF STATE OFFICIALS[1]

Department	Number of States in which Elected	Number of States in which Selected by Other Means[a]
Governor	48	
Lt. Governor	37	L-1, O-10[b]
Attorney General	42	L-1, GC-1, GS-3, JSC-1
Secretary of State	38	GS-6, L-3, GSH-1
Treasurer	42	L-3, GS-2, GSH-1
Auditor	32	O-5, B-1, G-2, GS-1, L-6 SX-1
Superintendent of Schools	27	GSH-1, GS-3, G-2, B-15
Agriculture	14	GC-2, GSH-1, L-1, G-8, GS-19, O-2, BA-1
Insurance	12	B-1, L-1, G-10, GS-20, O-1, GC-3
Labor	6	GS-30, G-7, O-2, GC-3
Health		GC-3, GS-28, B-4, G-13
Highways	3	L-1,[c] GSH-1, G-15, GS-23, GC-3, B-2
State Printer[2]	1	
Collector of Oyster Revenue[2]	1	
Surveyor General[2]	1	
State Librarian[2]	1	

[a]Legend: E Elected
GS Appointed by governor and approved by senate
GSH Appointed by governor and approved by both houses of legislature

TABLE II (CONTINUED)

O	Office or equivalent does not exist
G	Appointed by governor alone
L	Chosen by legislature
GC	Appointed by governor and council
SX	Secretary of state ex officio auditor
JSC	Appointed by judges of supreme court
B	Appointed by appropriate board
BA	Secretary appointed by board of agriculture

[b]The numeral following the letter indicates the number of states to which the letter symbol applies.

[c]Authority quoted erroneously shows Georgia Highway Department officials as appointed by Governor with Senate confirmation. Corrected to read selected by legislature.

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[1]Taken from Oklahoma State Legislative Council, The Chief Executive, Constitutional Study No. 4 (Oklahoma City, 1948), p. 13-14, quoted in Council of State Governments, Book of the States, 1952-53 (Chicago: Council of State Governments, 1952), p. 156.

[2]U. S. Department, Commerce, Bureau of the Census, Elective Offices of State and County Governments (Washington: Government Printing Office, 1946), quoted in Ibid., p. 22-23.

become the servants of these clientele or pressure groups who may finance their campaigns and dictate their policy. Only a few interest groups will thus be represented--and even if all were represented the sum of their parts would not make a whole. Sixth, it has been proven that the voting public does not have the knowledge, time, or inclination to make intelligent judgments on long lists of individuals and measures. One of the proofs of the impracticality of the long ballot was the rise of bossism. Somebody had to become informed of the voting complications and bring some order out of confusion. This the bosses did. In some instances the "order" they brought about was detrimental to the public. In the words of Woodrow Wilson:

> Elaborate your government; place every officer upon his own dear little statute; make it necessary for him to be voted for; and you will not have a democratic government. Just so certainly as you segregate all these little offices and put every man upon his own statutory pedestal and have a miscellaneous organ of government, too miscellaneous for a busy people either to put together or to watch, public aversion will have no effect on it; and public opinion, finding itself ineffectual, will get discouraged, as it does in this country, by finding its assaults like assaults against battlements of air, where they find no one to resist them, where they capture no positions, where they accomplish nothing. . . .What is the moral? . . . The remedy is contained in one word: simplification. Simplify your processes, and you will begin to control; complicate them, and you will get farther and farther away from their control. Simplification! simplification! simplification! is the task that awaits us; to reduce the number of persons to be voted for to the absolute workable minimum--knowing whom you have selected; knowing whom you have trusted; and having so few persons to watch that you can watch them.[1]

But the problem still remains and the quest for responsible and representative government continues. Even when we have, "so few persons

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[1]Woodrow Wilson, quoted in Charles A. Beard, American Government and Politics (New York: Macmillan Company, 1949), pp. 557-558.

to watch that we can watch them," this watching is not a simple process.

In the three new constitutions to be studied the principle of the short ballot has been applied in varying degrees. New Jersey has gone to the ultimate and elects only one official state wide. The new Missouri constitution eliminated the elective office of Superintendent of Schools and placed definite limitations on the authority of some other officials. The Georgia constitution added one officer, the Lt. Governor, to an already long list.

Appointed Single Administrators

Single administrators may be appointed by the governor to serve at his pleasure or for definite terms. Many states require senate confirmation of these appointments. Subordinate heads may be appointed by the director of the principal department but are oftentimes appointed by the governor. The appointing authority of the governor over large numbers of persons makes it impossible for him to have personal knowledge of the character and qualifications of his appointees. He is therefore forced to rely on advice from the political machine or from interest groups. Appointments are thus likely to become rewards for political service, bargaining material, or are given to pressure group selectees. A large number of appointees, ostensibly directly responsible to the governor, also defeats the purposes of functional integration and manageable span of control which will be discussed in more detail in succeeding pages.

Operating Boards

Many states place the administration of a department or a subordinate division in the hands of a board. Table III gives some idea of the extent of this practice. The board is the executive head of the department but usually appoints a director or superintendent to supervise the operation. Sometimes the governor appoints the director with the approval of the board; occasionally the board makes the appointment subject to the approval of the governor. As noted above, most boards are appointed by the governor--usually with the consent of the senate. The use of the operating board is most common in the field of education, in prisons and other corrective institutions, and in health and welfare agencies. Boards ordinarily are appointed for long staggered terms. The intent behind these practices is to maintain continuity of operation, provide for representation of several districts of the state or different interests, and to minimize partisan interference. Operating boards seldom function on a full-time, paid basis although some allowance is made for expenses. The intent is to set up a board of public spirited citizens who will act rationally and impartially without regard to partisan politics and who will perform their duties for the public good and not for monetary reasons. These aims may, of course, be questioned. Continuity of members may be undesirable because such continuity destroys responsibility to the elected chief executive. Operating boards are subject to the same drawbacks to which all boards are susceptible; irresponsibility, inertia, the promotion of conflicting divisions and factions, slowness of action, and lack of time, interest, and information. The lack of pay does not always secure financially disinterested members--for instance, lawyers, insurance

TABLE III

NUMBER OF MAJOR ADMINISTRATIVE DEPARTMENTS DIRECTED BY SINGLE HEADS OR BY BOARDS OR COMMISSIONS IN A SAMPLE OF 23 STATES[1]

	Number of Major Depts.	Single Headed	Plural Headed
Alabama	26	17	9
Colorado	9	6	3
Connecticut	32	21	11
Florida	26	11	15
Georgia	12	11	1
Illinois	15	14	1
Iowa	35	7	18
Kentucky	22	22	0
Massachusetts	20	12	8
Minnesota	35	22	13
Missouri[2]	15	11	4
Nevada	39	20	19
New Hampshire	47	15	32
New Jersey[3]	15	10	5
North Dakota	36	20	16
Ohio	12	12	0
Oregon	78	12	66
Pennsylvania	42	24	18
South Dakota	33	21	12
Tennessee	22	21	1
Texas	54	16	38
Wisconsin	25	12	13
Wyoming	33	17	16

[1]The Council of State Governments, op. cit., p. 17.

[2]Carl A. McCandless, Government, Politics, and Administration in Missouri (St. Louis: Educational Publishers, Inc., 1949), p. 175-180. Offices of Governor and Lt. Governor are considered major departments.

[3]Bureau of Government Research, Rutgers University, Handbook of New Jersey State Government (New Brunswick, N. J., 1952), p. 17-88. Governor's office is considered as one of the major departments.

representatives, real estate men, and building contractors, to mention a few, might conceivably turn board membership to financial advantage. Where no financial benefit is anticipated the low salaries will discourage some individuals from accepting appointments who might be superior appointees. Even the point of political interference may be questioned. Partisan political interference has not been avoided through the use of boards and commissions and it may not be desirable. The term "partisan politics" may have an unsavory connotation but, unless a party is boss ridden and corrupt, it is simply an organization of the people. Ideally, democratic politics is a method whereby the people express their wishes. When they have wishes about administration they should be heard. This last is admittedly an oversimplification of a subject about which chapters could be, and have been, written.

The operating board was probably originally conceived as a device whereby men of good judgment, imbued with a sense of civic duty, deliberated and balanced and came out with logical, equitable, and reasonable policies. In some instances, the operating board may have been all that was expected of it. In others it has failed miserably. While we are principally concerned in this discussion with principles and systems, personalities should not be overlooked in the consideration of any type of administrative organization. The same devices do not work with equal success for all individuals. Maybe all that can be said for a sound system is that it will enable a good administrator to do a better job and prevent a poor administrator from doing a poor job. Administration primarily involves functions wherein people deal with people. Consequently the personal element is of utmost importance.

Director with an Advisory Board

This type of organization is an attempt to combine the advantages of a single executive with the wider range of knowledge and interests and the possible higher degree of popular representation found in a board. The director is the actual head of the department but he receives information, advice (and pressure), from the advisory board. By this means the director is also able to maintain closer touch with the public. The advisory board will make him more quickly and keenly aware of new developments and trends.

Another facet of the advisory board device is that it may improve understanding among the public of administrative programs. The advisory board not only gives information and opinion but it ordinarily also acts as a reporter and expositor of the administration's programs and policies.

Although the board is technically an advising medium only, the mere fact of its existence presupposes that its advice will be most carefully considered. The administration is, therefore, not entirely free to go its own way. When the administration solicits the board's opinion it is under considerable compulsion to act in accordance with that opinion. If it acts at variance to the board's advice it will encounter more opposition than if it had gone ahead without requesting that advice. One of the surest ways of fomenting discussion, dissension, and conflict is to ask the advice of a public. If, however, a public is faced with an accomplished fact the resistance will be considerably less than if it were consulted beforehand. It is said with much truth that the democratic process depends upon discussion and dissension to clarify issues and crystallize opinion but such dissension can sometimes be an impediment to

effective administration. To illustrate, let us suppose that a department of banks was considering a proposed program and consulted a banking advisory board (composed of bankers) who advised against it. Let us further suppose that the proposed program was finally considered to be consistent with the administration's over-all policy and of benefit to the public even though it might be detrimental to bankers' interests. In the interim, if the issue was of sufficient importance, the advisory board would have notified the bankers and bankers' association who would have poured forth anti-program propaganda to the extent that when the program was put into execution it might meet with widespread opposition.

In the light of these observations we may conclude that an advisory board can be both a hindrance and a help. Certainly it is not an unmixed blessing.

Ex Officio Boards

Supposedly ex officio boards are operating boards but they may, in actuality, become advisory boards or nothing at all but names on a letterhead. The practice of utilizing individuals already in office for extra-curricular duties presumably originated as a device to save money. The ex officio board also reflects a belief that because an official is an executive in state government he has an interest in, and a knowledge of, practically any phase of the government. Another aim of the ex officio board plan may be to include the heads of various departments in one body and thus gain the advantages of specialized skills and knowledge for a given purpose. For instance, a board of prisons or corrections might be formed of the lt. governor (who should have a good idea of the

legislature's opinions--and who probably hasn't anything else to do anyway), the treasurer (he has the money), the attorney general (could give legal advice), and the director of prisons (who would have knowledge of prison problems). If these men take time to try to do a good job on the ex officio board their primary responsibility is neglected. If they neglect their ex officio duties (as most often happens) the activities under the board's direction are neglected. Furthermore, the more or less haphazard method of determining the composition of these boards entails the risk that men with little specialized knowledge or interest will be placed in positions of importance and responsibility. Ex officio boards are subject to the deficiencies of all boards plus those noted above. At best they tend to be inefficient, unskilled, and haphazard; at worst they may be worse than nothing because they may make wrong decisions or none at all. In the latter case the operating head of the agency is independent--but he cannot be held responsible.

The Regulatory Commission

In those areas of state administration where quasi-legislative or quasi-judicial functions are required a commission is usually appointed or elected. These commissions write rules or regulations on such matters as public utilities, factories, workmen's compensation, mine safety, etc. They also hold hearings and render decisions on rates, awarding of damages in accidents, etc. This device is quick, flexible, inexpensive, and supposedly is administered by experts. Thus, the legislature may enact a general statute stating broad aims and methods and leave the details to the commission which has more expert knowledge. When changes are required

they can be more quickly and easily accomplished then by further legislative action. Disputes may be settled quickly and inexpensively without recourse to the overcrowded, slow, costly, and inexpert courts. The danger, of course, is that the commission may become a law unto itself and may act with little regard for the general public and the rest of the state's administrative organization. Or, it may become a vassal of the groups which it supposedly regulates.

These are not the only mediums through which state government can operate. It has been suggested, for instance, that a manager plan be tried in state government. Under such an arrangement a chief administrator would be selected by the legislature or by a board of control or even by the governor. This executive would presumably have wide training and experience in state administration. The combination of the manager's administrative ability with the governor's political ability, it is argued, would produce superior results. Minnesota is experimenting with this device in a limited way. The governor appoints a Commissioner of Administration who supervises those administrative activities within the governor's control. The commissioner does not make appointments but successive governors have delegated considerable authority to this executive.[1] Michigan also has a department of administration but its activities are limited to budget and fiscal, purchasing and accounting. This department is a sort of business manager for the state.[2] Mr. Read Bain has suggested

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[1]Harold L. Henderson, "How a State Can Be Managed," National Municipal Review, November, 1946, p. 508.

[2]John A. Perkins and Frank M. Landers, "Michigan Seeks Better Management," State Government, September, 1948, p. 184.

a small, unicameral legislature, meeting almost continuously, which would select a state manager. This state manager would be the chief administrator of the state and control the department heads. The governor would be a sort of "front man" and honorary official.[1]

A cabinet form of government has also been proposed. Some governors have a kind of cabinet similar to the president's cabinet. This device has worked with varying success depending upon the situation and personalities involved. A cabinet system of the type operating in Britain would undoubtedly have many advantages in state government but such a drastic formal change is inconceivable in the foreseeable future. However, in weak, decentralized state governments the legislature, through the medium of interim committees, may sometimes arrive at a sort of informal cabinet system as a result of the default of the executive branch.

We come now to the question of centralization versus decentralization. A centralized form of organization is one in which only one or two executives (governor and lt. governor) are elected statewide. Boards and commissions are utilized only in quasi-judicial or quasi-legislative capacities. State activities are grouped according to function into a manageable number of departments headed by single directors appointed by the governor. New Jersey has the best example of the centralized form of state administration. Some of the advantages of such an administration are thought to be: better coordination between agencies; elimination of

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[1]Read Bain, "Theory and Practice of State Administration," American Political Science Review, June, 1938, p. 503.

overlapping and duplication of activities; better ability to carry out a comprehensive and coherent program; more representative of the whole public rather than interest groups; and most important--clearly defined responsibility and definite lines of authority.

A decentralized form of organization is characterized by: a large number of elected officials; numerous independent, or semi-independent, operating boards with long staggered terms; regulatory commissions, either appointed or elected, with long staggered terms; frequent use of ex officio boards; and single-headed agencies whose directors are selected by boards. The State of Georgia may not be the best example of decentralized administration but it definitely falls into that category. Between the two extremes there are gradations of all degrees. The State of Missouri is probably close to the mid-point although it may tend more toward centralization. The bases for these judgments will be recognized in ensuing chapters which describe the administrative organization of these states in some detail.

The defenders of decentralized administration have much in their favor. First of all, decentralization does exist in most states. Intentionally or otherwise, as additional services were added, additional independent or semi-independent agencies were created. The fact of being, in individuals and associations, may be, in itself, a reason for continuing to be. The burden of proof rests with those who desire to make changes. They must convince the constitution writers or the legislature, or both, and oftentimes the voters, that the old plan is undesirable and that their plan is superior. But this is not all--existing agencies become enamoured

with themselves and bitterly resent change if that change involves loss of prestige, independence of action, or loss of jobs. This is not to imply that the executives of old, independent agencies oppose consolidation only for reasons of injured pride or selfishness. More often than not, they are ardent supporters of the program they administer and believe that centralization will weaken their ability to perform that mission. It is also a commonplace that the persons actually involved in an operation are usually the last to detect anything wrong with their system. Not only do office holders oppose centralization but usually the clientele group which an agency serves or regulates will oppose such subordination. These clientele groups feel they will have less influence if "their" agency loses its independence; that they will receive less sympathetic and less expert treatment. These groups usually have the ability to bring pressure to bear on legislators, elected officials, publishers, and political organizations. Furthermore, there seems to be a prevalent idea among the bulk of the public that experts in given fields should administer those fields and that the composite of all this experience will bring about the most effective whole. Thus, it is generally assumed, for example, that public health should be administered by physicians, that finance departments be administered by bankers, that mine safety be administered by miners, and that milk control be administered by dairymen. While it is obvious that technical knowledge is necessary, or that such knowledge .. be readily accessible, it does not necessarily follow that such knowledge will be exercised for the good of the public. It is altogether possible that, in the examples cited above, physicians may administer public health for the primary benefit of physicians; that a

state's finances be administered primarily for bankers; and that mine safety and milk control be administered for the benefit of mine owners and dairymen respectively. Nevertheless, the public is generally not aware of this situation and is content to retain what appears to be on the surface a common sense arrangement. Again it should be noted that the expert may not deliberately and intentionally sacrifice the public for the good of his own group. But it is inevitable that the expert will be more acutely aware of his own group's needs and desires and also that by training, experience and association he will develop beliefs and attitudes common to that group.

In this connection John M. Gaus[1] has emphasized the need for overall coordination and correlation (which implies consolidation) of departments by pointing out the interrelationships between departments and the varied chain of reactions which may result from a single action of one department. He points out that building a highway between two cities, for instance, does not concern only the highway department. The determination of the route of the highway must consider the cities and towns through which it will pass, both for utilitarian reasons and for political reasons, because the legislature will appropriate the money. Expenditure of funds involves taxes and financing which brings in the revenue department. Additional personnel may be required which involves coordination with the personnel department, if there is one. The route may be through a forest area which involves the department of conservation and the

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[1]John M. Gaus, Reflections on Public Administration (University, Alabama: University of Alabama Press, 1948), p. 41-45.

Forest Service. Proximity of the route to recreational areas may bring in the wildlife or fish and game commission. Farmers along the way will have an interest in the road, so the department of agriculture is involved. Railroads and trucking companies will be interested. Safety on the highway will involve the highway patrol or the department of public safety. Location of the road with reference to schools will involve the department of education. This list could probably be expanded to include practically every department and agency in the state's government. The point is that acts of one department have interrelationships and repercussions within other departments which must be considered and weighed. This cannot be accomplished by a mass of independent or semi-independent agencies each going its own way and immersed in its own specialized problems. Neither can it be fully accomplished in a centralized administration without effective staff activities.

The defenders of decentralization have as their stronghold the fear that excessive concentration will lead to tyranny; that the concentration of power in the governor provides an opportunity for him to consolidate and buttress this power until he gains absolute control and that this absolute control will enable him to perpetuate himself, or his chosen successor, in office indefinitely. Clarence Manion, in apologizing for the hodge-podge of Indiana's administrative organization, admitted that such a government was unable to act quickly and efficiently, but that this waste, inefficiency, ineffectiveness, and incoherence was a necessary part of the price paid for democracy. Manion has also quoted Woodrow Wilson to support his point.

> The history of liberty is a history of the limitation of governmental power. When we resist, therefore, the concentration of power we are resisting the processes of death because a concentration of power precedes the destruction of human liberties.[1]

The fear of absolutism was undoubtedly one of the basic reasons for the rise of multi-headed government aside from the phenomena of unplanned growth. But this fear, when more thoroughly explored, may become less menacing. The constitutional power vested in a governor is different from power obtained in other ways: limits of authority are set; terms of office may be limited; legislatures may be empowered to conduct investigations and require written reports from administrators; legislatures have the sole money appropriating power without which no program can be carried forward; an auditor responsible only to the legislature, or possibly directly to the people, examines income and expenditure of state funds; and probably most important, responsibility can be fixed. Anything undesirable in state government can be blamed on the governor who cannot pass the buck.

Not only are limits and checks imposed from without. Within each division and department there exists continual competition and conflicting views and values. In the process of hierarchical decision-making these conflicts are "shook down" and weighed and balanced. In the process, facts are assembled and evaluated and opinions are presented. In this way departments check upon themselves and finally upon each other.

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[1]Quoted by Clarence Manion in Here is Your Indiana Government, (Indianapolis: Indiana State Chamber of Commerce, 1951), p. iii. The context from which this passage is quoted is unknown.

Department heads and governors are not, by any means, free agents. Probably in most instances their freedom of action is limited to assent or dissent or to a choice of proposed alternatives. This is not to imply that the ability to dissent or to choose is not important but it should be recognized that it is ordinarily a restricted choice.

As has been previously mentioned, a decentralized government is an invitation to the formation of pressure group government wherein each department is dominated by a particular industry, profession, etc. which tend to be politically irresponsible and over which the public exercises little control. Stated in another way, decentralization leads to the formation of many little tyrannies. The question will immediately arise --are not a multiplicity of petty tyrannies better than one supreme tyranny? The answer is that these are not the only alternatives but that it is possible to achieve a high degree of centralization and operating effectiveness and still maintain a higher degree of representative government and public responsibility than ordinarily exists in a decentralized system.

The "petty" tyrannies mentioned above are petty only if compared with an all inclusive tyranny. In themselves they are by no means petty. Actions taken by a public utilities commission, for instance, will vitally affect the lives of all the people of the state.

It might also be noted that decentralization is no insurance against tyranny. A decentralized Louisiana government did not stop Huey Long. On the contrary, the many petty tyrannies which that decentralization engendered provided the fuel which fed his propaganda machine. Other similar examples could be cited.

Proponents of a dispersed administration may also assert that even though most governors possess considerable political sagacity, few have the training, experience, or ability to administer the huge business of an entire state. But it is comparatively easy to find individuals of mediocre talents who can efficiently administer smaller separate agencies. This is a telling point--although it may sometimes be better to follow a bad decision with conformity than to have no conformity to policy and attempt to go all ways at once. It is better for an army to advance, retreat, or hold--as an army--even though the decision be wrong, than for each platoon leader to decide the course of action for his platoon. In the first instance, the wrong decision, uniformly carried out, would entail severe losses, but in the second, the dispersion of authority would mean annihilation. Again, however, these are not the only two alternatives. One of the concomitant conditions of effective centralization is the presence, in the governor's staff, of experts and trained professional administrators who advise and assist the governor. By this means a synthesis is attained of the governor's political ability and the experts' administrative or technical ability. Furthermore, as has been previously mentioned, decision making is a continuous process existing at all levels. It is altogether possible that a good state administrative machine could function satisfactorily with an administratively incompetent or inexpert governor. If his decisions on broad general policy were sound and if he had the authority to "hire and fire" his department heads it is likely the organization would function satisfactorily without an administratively expert governor. When a man becomes a governor,

to some extent, he ceases to be an individual and becomes an institution. His decisions are no longer solely his own.

It has also been said that speedier decisions are made in a decentralized system because it is not necessary "to go up the line for clearance." The answer here is that proper delegation of authority will prevent the need for top level clearance except in those matters which should receive top level clearance. The alternative, as has been reiterated several times, is irresponsibility and disregard of policy--or lack of policy.

It is also argued that decentralization limits buck passing because the bureau or agency cannot evade issues by passing them on to "higher headquarters." This is a worm's eye view. A decentralized administration is the buck-passer's paradise. He can always blame another department or excuse himself by laying the fault at the door of a board which cannot be pinned down. The attempt to fix responsibility becomes truly Mr. Wilson's "assaults on battlements of air." Here again, in a centralized system, proper delegation of authority will eliminate unnecessary "buck passing."[1]

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[1]George C. S. Benson, "A Plea for Administrative Decentralization," Public Administration Review (Summer, 1947), p. 170-178. For other criticism of the centralized form of administration see: Charles S. Hyneman, "Administrative Reorganization," Journal of Politics, February, 1939, p. 63-75; Hyneman, "Executive-Administrative Power and Democracy," Public Administration Review (Autumn, 1942), p. 335; Francis W. Coker, "Dogmas of Administrative Reform, as Exemplified in the Recent Reorganization of Ohio," American Political Science Review, August, 1922, p. 399-411; Arthur N. Holcombe, State Government in the United States (New York: Macmillan, 1931), p. 624-630; Herbert A. Simon, "Proverbs of Administration," Public Administration Review (Winter, 1946), p. 53-67; Wm. H. Edwards, "A Factual Summary of State Administrative Reorganization," South Western Social Science Quarterly, June, 1938, p. 53-62; Edwards, "Has State

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In some instances consolidating reorganization has not, in fact, been accomplished--although on paper such action appears to have been achieved. William H. Edwards states,

> Even on paper, consolidation by the reorganization laws is limited and in practice it is still more limited. Plural-headed, headless, and elective-headed departments have been retained in violation of the one-man-control principle. Attached agencies are relatively independent in spite of apparent consolidation.[1]

Mr. Edwards goes on,

> Consolidation was achieved to a greater extent by attaching semi-independent agencies to code departments than by abolishing agencies and merging their functions in integrated departments. Departments with attached agencies are often departments in name only. Many "attached agencies are unattached in practice."

He concludes that,

> . . .the limited scope of reorganizations makes general conclusions useless; that powerful independent agencies will probably remain such; that, therefore, opponents of reorganization need not be unduly alarmed because a comprehensive reorganization will probably not materialize; and that, as Dr. Beard says, "it will be difficult or impossible to prove tangible benefits from reorganization, except logical assumptions" which can be proved as well beforehand.[2]

Notwithstanding Mr. Edwards' frustration the movement for reorganizing state government by functional integration and centralization continued

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Reorganization Succeeded," State Government, October, 1938, p. 183-184; Dwight Waldo, The Administrative State (New York: Ronald Press Co., 1948), p. 130-155.

[1]Wm. H. Edwards, "A Factual Summary of State Administrative Reorganization," Southwestern Social Science Quarterly, June, 1938, p. 61.

[2]Wm. H. Edwards, "Has State Reorganization Succeeded," State Government, October, 1938, p. 193.

and notable gains were made. If, however, Mr. Edwards'words were true in 1938 and as true in 1953--that fact would not invalidate the soundness of these principles but would only point up the inadequacy of their implementation and the difficulties to be expected.

Charles S. Hyneman questions the whole principle of administrative consolidation,

> Vigorous government demands concentration of power. But concentration of power comes only by compromising with the checks of man on man which we have traditionally considered to be essential to democratic procedure. Can we reconcile these concentrations of power in the chief executive with our concern for popular control?[1]

This argument, or question, seems to assume that popular control now exists and that concentration of authority in the hands of the executive would reduce that control. Is popular control of administration a fact or a myth of our political folklore? Are departments, boards, bureaus, etc. responsive to the general public or are they a "law unto themselves" or the handmaidens of clintele groups? Would not the concentration of authority actually increase public control by "putting the finger" on one or a few executives whom the public could recognize? How can the public control or even have knowledge of scores of agencies? Does not totalitarianism emerge when hopelessly decentralized democracy has bungled?

We might also ask, how do independent agencies in a decentralized system check upon each other? What check can an independent conservation

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[1]Charles S. Hyneman, "Executive-Administrative Power and Democracy," Public Administration Review, Autumn, 1942, p. 335.

commission exert on an independent highway commission or an independent agricultural board? Is it not likely that fewer checks exist in a decentralized organization than in a consolidated organization?

There is probably no program, policy, or principle dealing with human relations which cannot, by a critical mind, be shown to have inconsistencies, areas of uncertainty, doubtful logic and questionable success. So it is with the general principle of centralized state government. Some criticism is of the "smart aleck" type wherein the author demonstrates his daring and cleverness in pointing up the errors, inconsistencies, and inadequacies of the "hallowed principles of administration." Other criticism is simply pointing out failures which may be picayunish trivialities as compared with a general overriding success.

Most criticism probably springs from a disillusionment with the failures or limited successes of attempted reorganization plans. This is to be expected. There is no principle regulating human conduct which can be stated in hard and fast terms. No principle can be formulated which can be buttressed with enough "whens," "ifs," and "howevers," to encompass all situations in all times and in all places and with reference to all people. The same system will work with different degrees of success depending upon the personalities, the area, the time, the pressure of other events and systems, and other variables. Even definitions of terms cause difficulty.

Much of the disillusionment in administrative reorganization can be traced to the naive belief that there exists a one best way for all men in all times and places; that it is possible to concoct a formula which will, in every instance, produce certain desired results; that a good

plan automatically produces good administration.

This thesis acknowledges that there are no "pat" systems, standards, or principles of administration; that difficulties can be expected with any system; that the best possible system cannot accomplish its mission if inadequately or improperly staffed, insufficiently financed or subject to many other defeating possibilities. It is assumed from the beginning that there will be disadvantages in varying degrees to any principle of administration and that value judgments will be necessary or that experiment and revision will be required. It also acknowledges that ends or purposes are often difficult to define and that worths or values are difficult of evaluation. This does not mean that experience may not establish sound principles of administration. There are certain principles of state administration which are considered to be generally sound, that is, their advantages outweigh their disadvantages. There are certain principles which have been tried and found to be superior to other systems. There are certain principles upon which the preponderant weight of informed authorities agree. These principles are:[1]

1. Consolidated departmentalization by function.
2. Concentration of authority and responsibility in the Governor.
3. Establishment of an effective Governor's staff.
4. Use of single-headed executives to head administrative departments.
5. An independent auditor responsible to the legislature.

Some explanation and discussion of these principles follows.

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[1]See Council of State Governments, op. cit., p. 3-5.

There is no danger in power, if only it be not irresponsible. If it be divided, dealt out in shares to many, it is obscured; and if it be obscured, it is made irresponsible. But if it be centered in heads of the service and in heads of branches of the service, it is easily watched and brought to book.--Woodrow Wilson

CHAPTER V

ADMINISTRATIVE REORGANIZATION

Consolidated Departmentalization by Function

Most studies of state administrative reorganization agree that all boards, commissions, and agencies should be consolidated into a few (usually ten to twenty) departments ordinarily organized with regard to a major function such as conservation, finance, agriculture, or public health. This grouping cannot be the same in all states because of differing conditions. In some situations it may even be necessary to group agencies by clientele, process, or location although such grouping can usually be better effected within the major functional department. In any event, the total number of departments should be small. This for two prime reasons: first, to bring together those activities whose functions are most closely related to provide for better planning and coordination; and, second, to reduce the number of executives reporting directly to the governor to a figure small enough to be effectively managed. It is unrealistic to assume that the governor can give any appreciable attention to scores or even hundreds of agencies.

The integration of agencies according to function is such a common-sense arrangement as to make comment seem unnecessary. The savings in increased efficiency, increased economy, increased cooperation and coordination are obvious. When then do so many--in fact most--state administrations possess the opposite? Many answers may be given.

Since many administrative services were created because of the demands of particular groups it may have been considered wiser, from a political standpoint, to create separate agencies rather than hook on the new services as appendages to existing departments. If a sportsman's organization, for example, had waged a victorious campaign for state control of hunting and fishing it would probably resent the subordination of the new service to an existing department of agriculture, or forestry, or even conservation. It might contend that the new service would be merely an additional duty for the old agency and consequently would be neglected, misunderstood, or mismanaged. In many cases this may have been true--the new agency may have become merely an unwanted stepchild of the old agency. In other cases the new agency may have been created at the instigation of a group which desired to gain as much power as possible or one which feared the encroachments of an existing agency into what may have been a hitherto unregulated field.

In some instances, it was probably easier to create a new agency than it would have been to reorganize an old one, because reorganization would usually be necessary if the amalgamation was to be more than a "paper" arrangement. Whatever the reason for the growth of the common disintegrated type of state government it continues to exist and is difficult to change regardless of the theoretical or actual advantages of functional integration. It is likely this objection to reorganization stems from five major sources:

1. Office-holders and bureau heads who wish to maintain their autonomy and fear the loss of power and prestige which reorganization might bring. These fears are oftentimes well founded, and if the bureau head

to be "amalgamated" believes in his program he will fight any move which might weaken his ability to continue that program. He may oppose consolidation for personal, selfish reasons but he may also be genuinely fearful of the effect of consolidation on the mission of his agency.

2. "Vested interests" who have found a splinter government most acquiescent to their demands. This is not to imply that such interests consider their special advantages as unfair or unethical or detrimental to the best interests of the state. It is all too easy to identify a particular good with the common good. The statement, "what's good for General Motors is good for the country," is believed by most groups with reference to themselves. The term "interests" as used herein is not confined to "big business." It includes any individual or association of individuals which has secured advantageous powers, privileges, or position through the medium of state government. Within this category might conceivably be included state professional licensing boards. These offices are ordinarily independent of the rest of the state administration and are responsible, in actuality, only to their professional organization. Nevertheless their association with state government enables them to give their decisions the force of law. Undoubtedly most members of such professional organizations believe such an arrangement is just and logical. One can well imagine the screams of protest which would greet any proposal to consolidate all state licensing boards into one central agency.

3. A fear that any move toward centralization or consolidation will be destructive of democratic representative government.

4. Inertia.

5. Difficulty of classifying some agencies.

As has been previously noted, it is sometimes difficult to determine just what is the primary function of an agency. The case of a Milk Control Board was cited.

The functional integration of agencies would result in fewer departments. This is generally considered to be an end in itself if the principle of centralizing authority and responsibility is accepted. Individual bureaus and bureau heads become responsible to a department head while before they may have been responsible to no one except the general public or to a particular trade, industry, or another group. In turn, the department head is directly responsible to the governor and the number of departments reduced to a small enough figure so the governor can control them.

> It has become axiomatic among students and practitioners of government that great numbers of agencies, either independent or reporting directly to the Governor, so diffuse responsibility as to create confusion, waste and frustration in bringing about a consensus for action.[1]

One objection to a short span of control is that there is a tendency to postpone or evade decisions by bucking them up to the next higher level. This process is aggravated by overzealousness and a lack of confidence in subordinates that exists in some executives. This type executive requires that even the most trivial decisions receive his attention. It should be emphasized again that no system eliminates the personal element and that no system can be successful if improperly

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[1]Council of State Governments, Reorganizing State Government, op. cit., p. 94.

staffed. Even assuming, however, that departments are properly staffed, it is obvious that if an executive is enabled to refer decisions to higher echelons he will sometimes do so. But, if no such channel exists he will be forced to make all decisions at his level. Some of the inevitable effects, then, of reducing the span of control are to make administration more inflexible, more impersonal, more red tape and procedural routines, and more delays. Furthermore, in the process of going up and down channels there is more chance that questions or directives will be misunderstood, distorted, diluted, or simply ignored.

In the process of decision making by "higher headquarters" the decision maker may be separated from the problem by distance and by lack of first-hand knowledge of the facts. Thus, it is argued, decisions are not made at the point of optimum expertise. This is the chronic complaint of the line officer. He often feels that the staff officer is not sufficiently acquainted with field operation, conditions, and problems and that he consequently makes bad decisions

The late David Lloyd George in commenting on this common deficiency of the staff officer remarked,

> Unfortunately, the General Officer who prepared the plans for attack after attack across kilometers of untraversible quagmire, and the general who had control of what was by a strange irony called "intelligence," and whose business it was to sift the information that came in, and to prepare the reports upon which plans were based, never themselves got near enough to the battlefield to see what it was like. They worked on the basis of optimistic reports in the shelter of a remote chateau.[1]

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[1]David Lloyd George, War Memoirs (Boston: Little Brown & Co., 1937), VI, 13, quoted in John M. Gaus, op. cit., p. 60.

But he also has this to say of certain line officers,

> That type in a narrow trench which had to be held at all costs, would have been invaluable; commanding a battlefield that embraced three continents their vision was too limited and too fixed. It was not a survey, but a stare. It was not that they were incapable of seeing any thing except what was straight in front of them, it was that they refused to look at anything else.[1]

Again, the degree of truth in such contentions depends upon personalities and particular conditions. It may be safely stated, however, that the line officer ordinarily has a very restricted view so that decisions which may seem unwise to him might become valid if he were familiar with all the facets of the problem.

These disadvantages can be minimized by proper staffing and delegation of authority. The executive should make clear the boundaries of each sub-executive's authority. He should also clearly define his policies so subordinate executives will know the limits of their discretion and so they can make decisions compatible with the known over-all policy. The last is admittedly an oversimplification. A realistic policy ordinarily cannot remain static. It usually requires continual modification to keep abreast of new developments. It is also necessary, therefore, to set auxiliary policies which prescribe the methods and procedures by which policy is changed or the means by which consent is obtained for exceptions to policy.

Even admitting the defects of a consolidated administration the question arises--is it not better to have a clear and coherent organization

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[1] Ibid., IV, 421.

working toward a common end, even though it may be slow and cumbersome, than to have a sprawling, disintegrated organization that makes decisions without reference to other agencies so that it contradicts, obstructs, or nullifies their efforts?

The need for departmentalization by function and a short span of control is becoming recognized as is evidenced by the following reports:

> Commission (legislative, 1950-51) reports evidence a trend toward grouping all state activities into a smaller number of departments organized as far as practical along functional lines. To illustrate, the Connecticut commission proposed that the activities of the executive branch (202 agencies) be grouped into fourteen operating departments and three central service agencies. Other states and territories whose commissions recommended functional organization included Arizona, Alabama, California, Delaware, Idaho, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire and Puerto Rico.[1]

An earlier report[2] listed Ohio, Oklahoma, New York, and Virginia as states in which some functional integration had been accomplished or in which a legislative commission had recommended such action.

In regard to reducing span of control,

> The Arizona staff report recommended that the present 115 separate organizational units be reduced to fifteen administrative departments. The Delaware report proposed that the present ninety-eight agencies be reduced to twenty-four. In addition the following states and territories made either specific or general recommendations to reduce the number of administrative agencies: Alabama, California, Connecticut, Idaho, Illinois, Iowa, Kansas

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[1]Council of State Governments, Book of the States, 1952-53, op. cit., p. 153.

[2]Council of State Governments, Book of the States, 1950-51 (Chicago: Council of State Governments, 1950), p. 94-103.

Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Oregon, New Hampshire, Wisconsin, and Puerto Rico.[1]

Reorganization according to function with a short span of control is best exemplified in the State of New Jersey which has fourteen principal departments organized with the intent of combining related activities into single departments.

Concentration of Authority in the Governor

We have seen that responsibility in government cannot be achieved or expected without commensurate authority; that divided, diffused, and diluted authority is no authority at all; that many conflicting independent programs amount to no program; and that more representatives do not mean more, or more effective, democracy.

Except in a few states the governor cannot be held responsible for the state's administrative machinery. He is only one of several independent elected officials. He usually has considerable appointing power but this power is limited by long and staggered terms of appointees, restrictive qualifications for appointees, and heavy pressures from partisan and special interest groups. The large number of appointments made by the governor may actually lessen his control because he cannot have personal knowledge of the qualifications of all his appointees and the fact of the large number makes it an inevitable method of rewarding party workers. Furthermore, the usual large number of agencies supposedly reporting directly to the governor makes it impossible for him to adequately supervise any of them.

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[1]Council of State Governments, Book of the States, 1952-53, op. cit., p. 149.

While his appointive powers may be considerable his dismissal powers are usually hemmed in with so many restrictions as to make dismissal impractical except in the most flagrant cases of misconduct. The power to dismiss is as important as the power to appoint. Unless the governor can dismiss inefficient or disloyal subordinates he cannot effectively control state administration. The governor in this type of administration has very little authority--and rightly so--say the supporters of decentralization. Their main argument boils down to this, "if one individual is given too much authority he may become a tyrant. But, if we sub-divide and disperse authority we will make it impossible for any official to do much harm." There can be no argument with the logic of this reasoning as far as it goes--but the next inevitable conclusion is that if the powers of an official are so limited that he can do no harm--neither can he do any good--and neither can he be held responsible. Where there is no power there can be no responsibility.

As long as the society remained somewhat primitive and no crisis threatened, the old type of decentralized, sprawling and hydra-headed state government probably operated reasonably well because, comparatively speaking, the state government did not have much to do in the first place. As the society has become more complex and interdependent, state governments have been pushed into attempts to provide more efficient and realistic administration. Such attempts have consistently encountered many difficulties. Even when the establishment of the new or improved service was accomplished, its performance was often disappointing. It was disappointing, not because its members were knaves or fools, but because the administrative organization of most states made it impossible. In the

words of Leslie Lipson,

> When structures that were designed to govern little were called upon to govern much, the gap between the services expected and the capacity for performance provoked a reexamination of fundamental concepts. . . .if a government that was too weak to tyrannize could be converted into one that was strong enough to serve.[1]

To many people, and maybe to most, the governor is a symbol of power and authority. He is elected by all the people of the state. He is called the chief executive. He has many of the vestments of power. He is the central figure in various traditional ceremonies. He lives in the "governor's mansion." The people are prone to expect much of their governors, but in the words of Austin MacDonald, "His is the kingdom and the glory, but not the power."[2]

If we are to have an effective and responsible government, it seems necessary to concentrate authority and responsibility for state administration in one official. The governor is the most logical choice. Clear lines of authority leading through the hierarchy to the governor should be established so there can be no doubt as to whom to praise and whom to blame; so that policy can be uniformly carried out; so that duplication and waste may be minimized. The governor's authority may be consolidated and clarified by adoption of a short ballot and by strengthening his appointive and removal power. His effectiveness in planning, in organizing, and in controlling his organization also depends, to a considerable

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[1]Leslie Lipson, "The Executive Branch in New State Constitutions," Public Administration Review, Winter, 1949, p. 11.

[2]Austin MacDonald, American State Government and Administration, (New York: Thomas Y. Crowell, 1951), p. 225.

extent, upon an adequate staff. These three factors will be treated separately.

The Short Ballot

The general disadvantages of the long ballot in dispersing voters' interests, in diminishing voters' ability to make intelligent choices, and in making for a confused, incoherent, and irresponsible administration, have been noted. We shall now turn our attention to each of the commonly elected administrators to see if there exists, in each case, any good reason for their election.

The Lieutenant Governor

Eleven states do not have a lieutenant governor.[1] In the other thirty-seven states his primary duty is a contingent one which is not often exercised. Aside from waiting for the governor's death, the lieutenant governor presides over the Senate and is usually saddled with several ex officio boards. If the office of lieutenant governor is to be maintained his duties should be made more important.[2] One suggestion is that he become a sort of assistant governor. This would relieve the governor of considerable work but it is not likely it would be a successful arrangement unless he appointed the lieutenant governor, and such an arrangement would have dynastic possibilities. If the lieutenant governor was elected and was still called upon to act as the governor's assistant,

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[1]Arizona, Florida, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, and Wyoming. Source: U. S. Department of Commerce, Bureau of the Census, Elective Offices of State and County Governments (Washington: Government Printing Office, 1946).

[2]R. B. Crosby, "Why I Want to Get Rid of My Job," State Government, July, 1947, p. 193.

the degree of his cooperation might be extremely limited. It is likely he may have different views, be from a different section of the state, or be a political competitor of the governor.

The services of the lieutenant governor might also be utilized as the head of a standing legislative research committee which would submit legislative proposals to the assembly. It would remain in session continuously.

The lieutenant governor might also head up a department--for instance, a Department of Administration. Such an arrangement would, however, be contrary to principles of sound administration as advanced in this discussion. It is considered to be better to allow the lieutenant governor to sit on his hands and await the governor's demise than to put him in charge of an administrative department.

In any case, if we are to have a lieutenant governor, there seems to be no doubt but that he should be an elected official. He may some day be the governor. He should, in that case, be a direct representative of all the people.

The Secretary of State

This official has varying duties in the different states. Generally speaking, he is the keeper of records and/or a business manager. Except in those instances where he acts on an ex officio board, he has no part in formulating policy. He exercises practically no discretionary authority but merely carries out the provisions of the statutes. There is no more reason for popular election of this officer than there is for the election of the state librarian or the superintendent of the state printing office. His job is to execute policy--not make it. There is,

therefore, no valid reason why he should be elected by the voters.

The Attorney-General

The attorney-general is the governor's legal adviser and the adviser of some, or all, of the administrative departments. He should, therefore, be appointed by the governor. Every private individual in the state has a right to choose his own counsel. Why should not the governor? An independent attorney-general may be at cross-purposes with the governor and be more of a hindrance than a help.

The above is only a part of the story, however. The attorney-general also renders opinions on legislative acts and generally assists the legislature, individually and collectively. He is, therefore, the legislature's legal adviser as well as the governor's. The logical solution to this problem of dual responsibility may be the creation of two separate offices --one selected by the legislature and the other by the governor. In any case there seems to be no good reason for electing the attorney-general.

The Treasurer

The state treasurer receives, deposits, and disburses state monies. He is hemmed in with so many elaborate safeguards that his operations are almost purely routine. He may exercise some discretion in choosing depositories for state funds, but here also he is restricted so the area of choice is small. He makes no policy and merely carries out routinized banking operations. There is no reason why he should be elected. Even if the limits of his discretion were extended there would be no better reason to elect him. An independent elective official might have more opportunity to willfully or unknowingly jeopardize state funds than an appointive official who has the governor and his staff "looking down his

neck."

State Superintendent of Schools

This official indirectly supervises some categories of local schools, advises and assists county superintendents, administers school laws, issues teaching permits and apportions state school funds. His duties are chiefly clerical, advisory, and to some extent, supervisory. He obviously should be appointed by the governor or selected by a board.

Commissioners of Agriculture, Labor, Public Utilities, and Insurance

These and other similar specialized officers should be appointed by the governor in order to maintain necessary departmental coordination and in the interests of economy and over-all policy implementation. They should not be elected because of the natural tendency of such officials to serve a clientele group to the exclusion of the public. The appointment of such officials will not remove the tendency to become clientele group representatives, but it will place those officials under supervision and remove much of their former power, independence, and irresponsibility.

The Auditor

The executive section of state government operates with funds appropriated by the legislature regardless of whether it is a centralized or decentralized system. The duties of the auditor should be restricted to a post-audit of receipt and expenditure accounts to determine whether or not monetary transactions have been accomplished for the purpose, and in the manner, prescribed by the legislature. He is, or should be, the legislature's auditor. He should accordingly be selected by the legislature.

If the foregoing skeletal analysis is correct the governor and lieutenant governor (if there is one) are the only administrative officers who should be elected. At present forty-seven states elect more than these two officers. The forty-eighth state, New Jersey, has no lieutenant governor so it elects a governor only.

The Governor's Tenure in Office

At this point a comment on succession in office may be in order. Some states prohibit the governor from succeeding himself. Twenty states have some restrictions on the governor's tenure in office.[1] One of these restrictions is that the governor may not serve more than eight years in any twelve year period. It is not considered to be good business or good sense to limit the governor to one term only or to prevent him from succeeding himself at least once. The governorship of any state is a complicated business. It is just not sensible to lose the experience a governor has gained in one term if he is otherwise acceptable. Many programs also take more than one term to establish. A successor may allow a beginning program to lapse into discard before it has been given a fair trial.

Twenty-one states elect their governors for two-year terms. The other twenty-seven give the governor four-year terms. The two-year terms are vestiges of the old fear of governors first engendered in this country by the colonial governors appointed by the crown. Indeed, it was not until 1918 that the last state (Massachusetts) abandoned one-year

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[1]MacDonald, op. cit., p. 230.

terms.[1] A governor elected for a two-year term is up against a tremendous disadvantage. He hardly has time to learn the ropes before he must be out campaigning again. He has little time to devote to policy formation and less to administrative supervision. State employees do not take him very seriously for they know he is a transitory figure. Political organizations and interest groups apply the pressure with better results because the election comes sooner. When the usual decentralized system is added to the short term, about all the governor can do is sit in the governor's chair and play politics so he can have a chance to do it over again a second time or run for congress. To a governor who has plans and ideas and programs; who has a sense of responsibility; who attempts to accomplish something; the pitiful impotence of his office must be a futile and frustrating experience.

Strengthening the Governor's Appointive and Dismissal Powers

By integrating agencies into a few departments we have reduced the span of control into a manageable number of departments. By eliminating the long ballot we have made the governor and lieutenant governor the sole elective administrative officers. The heads of the primary departments now are to be appointed by the governor. Since the number is few, the governor can have personal knowledge of the ability and integrity of these appointees. He is, therefore, enabled to make better choices. He cannot now make appointments for political reasons only because he is responsible for the operation of the department and he cannot evade the responsibility--as he could in a decentralized system even though he did

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[1] Ibid., p. 230.

make the appointments.

Unless bureau and division heads are selected through civil service, department heads should be allowed to choose their own subordinate officers. Otherwise they cannot be held responsible for the operation of a particular bureau in their department. If the governor appoints subordinate division or bureau heads he is, in effect, creating another department. If, for example, a department of conservation is composed of a division of mines, a division of forests, and a wildlife protection division, and if the governor appoints the three division heads, he tends to create three separate departments.

The governor's administrative authority can be further strengthened by allowing him to make appointments to serve at his pleasure. Unless he can dismiss a department head he cannot be held responsible for the acts of that department. In such a situation the department head becomes independent and answerable to no one.

Most states now limit the governor's appointive power by requiring confirmation by the Senate. At first glance this arrangement might appear to be prudent and sensible--but a first glance is not enough. What are the actual effects of this provision? Through the passage of time senators have come to regard the appointment of administrative officials as <u>their</u> prerogative. The effect has been that various senators actually make the appointments. Suggestions for appointment are made to the governor with the understanding that unless he makes the appointments suggested, his own appointees will be rejected and his legislative program stymied. Another approach, which amounts to the same thing, is one in which the governor offers appointing choice to given senators in

return for legislative support of his program. This vicious arrangement undermines the whole principle of responsible governorship. Under this system the governor cannot be held responsible for his appointments or for the operation of those administrative agencies which are headed by his appointees. Neither can the Senate be held responsible. The experience of the past indicates that this procedure should be jettisoned and the governor freed from senatorial interference in making appointments.

Establishment of an Effective Governor's Staff

The governor cannot be expected to cover all the bases himself. He needs help. If a centralized administration is adopted it is doubly important that he have an effective staff at his disposal because of his increased responsibilities. The Hoover Commission in speaking of the president said:

> The wise exercise of authority is impossible without the aids which staff institutions can provide to assemble facts and records upon which judgment may be made and to supervise and report upon the execution of decisions.[1]

The same statement could probably be made with equal truth for state governors. Requirements for staff assistance vary in the different states. Probably all that can be said with accuracy is that the principle of the need for an adequate governor's staff should be recognized and provided for, dependent upon the type and extent of the governor's responsibilities. An adequate staff is difficult to define because of the great variations in needs and circumstances. A statement of the generally

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[1]Hoover Commission, General Management of the Executive Branch, p. 1, quoted in Council of State Governments, Reorganizing State Government, op. cit., p. 10.

accepted purposes of a staff organization may be of some value: to supply data and information which includes research, observation, and reporting; to maintain liaison between the executive and administrative departments and to correlate and coordinate activities among departments; and to observe, inspect, and investigate administrative units and to report their findings to the governor.

In addition to the staff sections, other functions, usually termed auxiliary, are required to round out a state's administrative organization. Agencies ordinarily considered as auxiliary units are: budget, personnel, and purchasing.

Thirty-five years ago none of the states operated under a budget system.[1] Legislative sessions, in consequence, often degenerated into scrambles for appropriations. Former Governor Young of California has described what probably was a typical situation in pre-budget days.

> When I first entered the legislature in 1909, there was little short of chaos as far as any orderly provisions for state expenditures were concerned. There had been no audit of the state finances for over twenty years. The finance committees of the two houses were scenes of a blind scramble on the part of the various institutions and departments of the state in an endeavor to secure as large a portion as possible of whatever money might happen to be in the treasury. Heads of institutions encamped night after night in the committee rooms, each alert for his own interest regardless of the interests of other institutions. Logrolling and trading of votes on appropriation bills was the common practice among members of the legislature.[2]

At best such a system, or lack of system, resulted in a haphazard administration. Agencies lived a precarious hand-to-mouth existence

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[1] MacDonald, op. cit., p. 389.

[2] Ibid., p. 389.

from one session to another. Long-range planning was impossible. An integrated, well balanced state organization could not be expected. The evils of this situation were recognized and state budget systems began to appear until today every state has a budget system of some sort. In most states, in the early days of state budgets, the budget and consequent appropriation was made in a lump sum for each department or agency for the two-year period between legislative sessions. Although this was an improvement over no budget at all, it led to many abuses. Since department heads were allowed considerable discretion in the expenditure of the appropriation much of it was spent unwisely, sometimes dishonestly, and almost invariably the total appropriation was expended whether it was needed or not. The natural reaction to such abuses was the formation of a detailed budget for each department. The segregated budget may have prevented some of the most flagrant abuses of the lump sum budget but it also made administration undesirably rigid. Minutely detailed requirements cannot be anticipated two years or even six months in advance.

The next step in the evolution of the budget was an allotment plan which sought to provide the flexibility of the old lump sum budget with the necessary degree of control. In this system the appropriations are lump sums but are parcelled out to the departments, usually each quarter, in accordance with the needs of a work-program, approved by the governor. Thus, every quarter programs and needs are re-examined and re-evaluated anew.

The allotment system appears to be superior to the other methods which have been tried. It is flexible and it not only gives the governor a control over his administration but it fixes the responsibility for that

control. At the risk of tiresome repetition, the writer again advances the idea that the people cannot control their government unless they can fix responsibility.

If the governor is to be made responsible for the preparation of a budget and if, as in the allotment system, he supervises the expenditure of appropriations, he requires an expert budget staff. Budgeting is one of the most vital functions of the governor's office. In actuality, the budget is not concerned with money alone because the appropriation bill decides what programs will be carried forward and which will be neglected. It determines, "who gets what, when, and how."

A second auxiliary function is a personnel section. All the states have some sort of a "merit system." Of these merit systems, forty-two have been established since 1933.[1] In all probability these merit systems were forced upon many of the states as a prerequisite for obtaining federal grants-in-aid. As a consequence, in some states, the merit systems apply only to those departments which participated in grant-in-aid programs. Other states have a general coverage of practically all state administrative units.

Originally, the intent of these personnel offices was to "get rid of politics" in the employment of state personnel so employees would be chosen on their merits rather than for political reasons. But an effective personnel office does more than hire employees on their "merits." It must also be concerned with the retention, training, and morale of these employees. This includes such matters as salaries, leaves,

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[1] Ibid., p. 195-196.

training, and incentives.

Regardless of the excellence of the organization on paper it cannot be successful unless staffed with capable employees. As state government continues to expand, to become more varied in its activities, and to enter more vitally and personally into the lives of all its citizens, it becomes increasingly important that the people who carry out the day to day activities of that government be competent to effectively perform their duties.

The third important auxiliary function is that of purchasing. Most states have some kind of centralized purchasing agency. Sometimes this agency buys practically all types of commodities for all agencies. In other states there exist varying exceptions. The principle of increased economy in centralized purchasing has been well established and can be documented. The losses in efficiency and morale caused by the delays, substitutions, and excessive standardization which inevitably accompany centralized purchasing are more difficult to measure. In any event, the director of the central purchasing agency is considered to be of sufficient importance to require appointment by the governor in twenty-three states.[1] It would seem to be more logical to incorporate the purchasing section into a department of administration or finance. While it is admittedly an important function there would appear to be no good reason why the governor's span of control should be increased by the addition of this section. Eighteen states have considered the purchasing agent in this category and have included his office within one of the major

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[1]Council of State Governments, The Book of the States, 1950-51, op. cit. p. 182-187.

departments.[1]

Single Versus Multiple-headed Directors

In the latter part of the 19th century there developed a marked propensity toward the use of boards and commissions to head administrative sections. This was a part of the wave of reform that spread through state governments as a result of the common abuses of political authority. It happened that this reform period was also a period of rapid growth in state government. Consequently, as new services were demanded, new agencies, headed by boards or commissions, were created.

Multi-headed administration was probably never very successful. According to Alexander Hamilton,

> A single man in each department of the administration would be greatly preferable. It would give us a chance of more knowledge, more activity, more responsibility, and, of course, more zeal and attention. Boards partake of a part of the inconveniences of larger assemblies. Their decisions are slower, their energy less, their responsibility more diffused. They will not have the same abilities and knowledge as an administration by single men. Men of the first pretensions will not so readily engage in them, because they will be less conspicuous, of less importance, have less opportunity of distinguishing themselves. The members of Boards will take less pains to inform themselves and arrive to eminence, because they have fewer motives to do it.[2]

The reformers of the latter part of the last century were very likely aware of the shortcomings of a plural-headed administration.

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[1] Ibid., p. 182-187. Authority quoted indicates seventeen states, but Oregon has since integrated purchasing into the department of finance. Oregon Blue Book, 1951-52, op. cit., p. 33.

[2] Letter from Alexander Hamilton to James Duane, 1780. Henry Cabot Lodge (ed.), The Works of Alexander Hamilton, Vol. 1 (G. P. Putnam's Sons, 1903), p. 219-20, quoted in Albert Lepawsky, Administration (New York: Alfred A. Knopf, 1952), p. 242.

They must have believed that the slowness, inefficiency, and diffused responsibility of plural government was preferable to the extravagance, mismanagement, and corruption which had so often appeared in single-headed organizations. If single-headed administration was found to be unsatisfactory in previous experience, is there any reason to expect anything better of it today? Apparently there is. President Hoover in a message to Congress in 1929, said:

> It seems to me that the essential principles of reorganization are two in number. First, all administrative activities of the same major purpose should be placed in groups under single-headed responsibility; second, all executive and administrative functions should be separated from boards and commissions and placed under individual responsibility, while quasi-legislative and quasi-judicial and broadly advisory functions should be removed from individual authority and assigned to boards and commissions. Indeed, these are the fundamental principles upon which our government was founded; they are the principles which have been adhered to in the whole development of our business structure, and they are the distillation of the common sense of generations.[1]

In commenting on the transfer of factory management in Soviet Russia in 1930, from three-member commissions to single factory managers Stalin remarked, "We can no longer tolerate our factories being transformed from productive organisms into parliaments."[2]

A more recent opinion on this subject was submitted by the Connecticut Commission on Reorganization (1950) which proposed that every department, without exception, should be headed by a single

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[1]Quoted in A. E. Buck, The Reorganization of State Governments in the United States (New York: Columbia University Press, 1938), p. 27.

[2]Stalin, Report of the Central Committee to the Sixteenth Congress of the Communist Party, June 27, 1930. Leninism, Vol. 2, p. 376, quoted in Lepawsky, op. cit., p. 245.

commissioner, not by a board. These commissioners should serve at the pleasure of the governor and be appointed by him without legislative confirmation.[1]

Similar opinions were expressed by state reorganization committees in Arizona (1949), Minnesota (1949), Ohio (1948), Oklahoma (1948), and Washington (1948).[2]

Despite the almost universal acceptance of the belief that a single head is preferable as an administrative executive many states continue to use commissions or boards for strictly administrative functions. The difficulties involved in effecting a changeover from a diffused administration to a centralized administration were discussed in Chapter IV, but there may be valid reasons for retaining plural-headed administration. Let us consider some of the arguments advanced in favor of boards and commissions. The most common may be the old adage about "two heads being better than one"; that discussion and varying backgrounds and interests will provide a better basis for policy formation or decision making. This argument is questionable. Another old adage says, "one boy is a boy; two boys are half a boy; three boys are none at all." Mr. James F. Byrnes, speaking from a lifetime of varied governmental service said,

> I assert whenever there are executive functions to perform, if there are three men performing them, the bigger the men the more certain it is that functions will never be performed. . . . The only way to have executive functions performed by such a commission is to have one Bergen and two Charlie McCarthys. The

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[1]The Council of State Governments, op. cit., p. 89-90, condensed from Connecticut, Commission on state government organization, The Report to the General Assembly and Governor of Connecticut (February, 1950), p. 34-39.

[2]Ibid., p. 89-92.

> Bergen will dominate. . . .If a commission is to function efficiently, it is necessary to have one dominating character on the commission, with the other agreeing.[1]

The assumption is that boards will deliberate and, to the best of their ability, decide in the public interest. It may very well happen, however, that "deliberations" may be confined to bargaining among themselves. In the matter of policy formation an administrative unit ordinarily decides policy matters of minor importance. If it has the authority to make major policy decisions it becomes an independent entity and over-all supervision and conformity to policy is lost. Finally, several heads may not be better than one--it depends on who the heads are and what conditions were involved in their selection.

Another defense of boards and commissions is that, by the use of overlapping terms, a continuity of policy is assured which would be lost if a single executive died, resigned, or for other reasons, vacated his post. Continuation of policy may be desirable, not only for the sake of the policy, but also to protect the investment that may have already been expended on such policy. Of course the appointee who fills a vacancy may not be in accord with existing policy so continuity cannot be assured but there is admittedly less likelihood of an abrupt change or the precipitous abandonment of an existing program. But this continuity is purchased at the price of destruction of gubernatorial control and responsibility. In such a situation the governor cannot be responsible for acts of the board because he ordinarily appoints only a minority of its members and has no real dismissal powers. The board members are responsible to no one. So,

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[1] U. S. Congress, Congressional Record, March 14, 1938, quoted in A. E. Buck, op. cit., p. 20.

while continuity of policy may be safeguarded--that policy may be detrimental to the public interest and contrary to both legislative and executive programs.

Another argument for the use of boards and commissions is that such action will bring together individuals from diverse sections, occupations, or political organizations so that each will be represented and each will act as a check upon the other. Appointments by section may be more likely used as a means of rewarding political efforts or to gain the favor of a particular section than to provide a representative cross-section of the state. Where appointments are made in an attempt to provide a balance between industries such as labor, employers, and farmers the danger lies in the possibility that board action may degenerate to time consuming debate and may finally conclude with weak compromise decisions or the postponement of decisions.

Notwithstanding these possible deficiencies there may be areas of state government wherein boards or commissions are necessary. It is generally considered that if an agency is concerned chiefly with the determination of policy in the form of regulations more than one individual should be involved. The agency in this instance assumes the duties of a legislative body and as such should be composed of several members.

It is also said that those agencies which function in settling disputes should be multi-headed. These agencies operate in much the same fashion as a court. An industrial accident board or a public utilities commission may be included in this category.

Bi-partisan boards were frequently used in the past so each party could play watch dog on the other. In matters wherein the parties are

directly concerned, such as election boards, it may be the most satisfactory method. But most functions in state administration are neither quasi-legislative, quasi-judicial, nor purely partisan, and arguments based upon these responsibilities cannot be applied to the bulk of administrative agencies. Plural-headed agencies seem most desirable in these instances, but in the rest of the administrative structure it seems evident that a single administrator is most likely to provide effective and responsible government.

Some pages back the question was asked, "if single-headed administration was found to be unsatisfactory in previous experience is there any reason to expect anything better of it today?" The relative merits of both types of organization have been considered to the general detriment of boards and commissions except in specialized areas. But the merits and defects of these types of administration were probably essentially the same in 1890. So the question, thus far, remains largely unanswered. The answer seems to be that in a centralized, single-headed administration responsibility is also centralized and fixed so it cannot be evaded, and further--that controls are now available which were non-existent sixty years ago. So we can now give an administration greater flexibility and make possible rapid and efficient government and still control its direction and purpose. Among these controls are the initiative, referendum, and recall. By the utilization of these recently adopted controls the voters can directly exert their authority over both legislators and executives. Admittedly these devices have sometimes been misused or used unwisely, but their presence and availability for use exercises a type of control over a state's officialdom.

Another effective control is the process of hierarchical decision making which has been previously discussed. This type of control may have existed prior to modern times, but it has now been augmented by the utilization of state civil service. When the bulk of state employees are chosen through the civil service agency the opportunity for graft is considerably lessened because collusion is more difficult. But the deterrent to political graft is only one, and the most obvious, of the controls exercised by the civil servant. The controls operating in hierarchical decision making extend to all areas of the administration and determine to a considerable extent the efficiency, effectiveness, and responsibility of state government.

One of the most effective controls, within and over, state administration is the use of a state budget. As has been previously stated, the executive budget is a fairly recent innovation in state government. By means of the budget, department heads exercise a measure of control over their subordinate units and the department heads themselves are controlled by the governor. The budget forces a periodic re-examination of goals, policies, programs, and day-to-day operation. When the budget is submitted to the legislature it is referred to a committee which again evaluates the program for which finances are sought. After the committee refers the budget to the assembly, with its recommendations, it is again open for discussion and examination. The appropriation bill finally passed by the legislature is actually a statement of the administrative program for the ensuing biennium. Al Smith once said that the best way to understand the government of a state was to study the appropriation bill. If the allotment system is used another control is exercised in

supervising the expenditure of the appropriation.

By means of the executive budget the administration, in effect, tells the legislature, "this is what we want to do and this is what it will cost." The legislature replies, in the appropriation bill, by saying, "this is what you may do and this is the amount of money you may spend in doing it." After making the appropriation the legislature, obviously, should be kept informed as to whether or not the revenue appropriated was expended for the purpose, and in the manner, specified. This control is exercised by the auditor.

An Independent Auditor

The primary duty of the auditor is to examine the accounts of the administrative agencies of the state. It logically follows that he should be independent of the administrative branch. In most of the states (see Table II) this independence has been provided by direct election. In two states, Minnesota and Ohio,[1] he serves a longer term than does the governor. In Oregon, the "Secretary of State keeps segregated accounts of appropriations and the receipts and disbursements of all state funds. . . .audits the accounts and financial affairs of all state departments."[2] This means the auditor examines his own books. Such an arrangement cannot be considered good business practice. Of course the Oregon secretary of state does not personally make entries in the ledgers nor does he personally examine them. Nevertheless, both functions are

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[1] MacDonald, op. cit., p. 246.

[2] Oregon Blue Book 1951-52 (Salem: State Printing Office), p. 7.

under his supervision.

There has been a tendency in many states to add various administrative duties to the auditor's primary duty of post-audit. Thus, the Missouri auditor, before the new constitution was adopted, was responsible for the collection of the sales tax and the income tax and was also required to pre-audit and approve proposed expenditures.[1] If such duties are required of the auditor he should be appointed by the governor because they are functions strictly within the governor's field of administrative responsibility. But if he is appointed by the governor we again have a situation wherein the auditor examines his own accounts and those of his employer--the governor. The new Missouri constitution seems to have solved this problem by stipulating, "no duty shall be imposed upon him [the auditor] which is not related to the supervising and auditing of the receipt and expenditure of public funds."[2]

The practice of electing the auditor is considered questionable because: first, it may be particularly true of this office that the qualities which endear a man to the voters may not be the same qualities which are desired in an auditor; second, an elected auditor is likely to be of the same party as the governor and the other state officials and very possibly has close friends among them. He may thus be inclined to "stretch a point" for his friends. Third, the auditor is primarily an agent of the legislature. As such it seems only reasonable that he should be selected by the legislature. Table II indicates that in only six

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[1] Leslie Lipson, op. cit., p. 19.

[2] Missouri Constitution of 1945, Article IV, Section 13.

states, Maine, New Jersey, Virginia, Texas, Georgia, and Nevada, is he thus selected.

Selection by the legislature seems most likely to produce best results. By this means the auditor is directly responsible to the legislature rather than to a vague and nebulous public. This method would also give the legislature greater control over the administration. Such control is generally considered desirable regardless of the type of administrative organization. This arrangement would also make impractical and untenable the practice of giving the auditor operating administrative duties. Greater continuity of office might also be one desirable result. If, on the other hand, the incumbent auditor was considered unsatisfactory he could be quickly and easily dismissed. An elected auditor, however, remains in office until the end of his term--even though he may not be satisfactory to the legislature. Such an official may even be re-elected contrary to the desires of the legislature.

It hardly seems necessary to mention that appointment by the governor tends toward self-audit and is therefore inadvisable.

It seems reasonable to conclude that legislative selection of an auditor whose duties are confined to post-audit is superior to other methods that have thus far been used.

If the auditor's duties are restricted to a post-audit and if his prime responsibility is to the legislature, it follows that some other official, responsible to the governor, must be charged with pre-audit and accounting duties. There also exists some opinion that the governor needs an auditor to maintain financial control of his organization. The states of Arizona, Montana, Wyoming, and Washington make provisions for

this type of audit.[1] A separate governor's audit would, to some extent, duplicate the work of the state auditor but it would undoubtedly be a considerable benefit to the governor. By using his own staff he could direct his auditor's activities to certain departments or to an investigation of individual transactions and thereby gain the advantage of quick and particularized information.

A separate governor's staff auditor need not be an item of any considerable expense. Ordinarily such an office would not attempt a complete audit of all state accounts. It would usually be confined to special investigations. As such only a small staff would be required.

It is believed the exercise of the controls discussed above would prevent many of the abuses which all too often accompanied single-headed administration in the 19th century. They are not submitted as a complete and final answer to the problem of administrative control. As new contingencies arise new methods will be required. In the words of John Dewey, "a state is ever something to be scrutinized, investigated, searched for. Almost as soon as its form is established, it needs to be remade."[2]

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Within the last decade three states have attempted to "remake" their governments by means of new constitutions. This chapter has attempted to point up those principles of administrative reorganization which are

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[1]MacDonald, op. cit., p. 247.

[2]John Dewey, The Public and Its Problems (Chicago: Gateway Books, 1946), p. 31.

considered to be "the distillation of the common sense of generations." We shall next examine the administrative structure which grew out of these three new state constitutions in an attempt to determine the degree to which these principles were accepted and put into practice. In so doing some of the problems and difficulties of reorganization, which have been discussed, will be exemplified and some of the solutions, or compromise solutions, will be pointed out. It is one thing to set out principles which may be considered valid; it is quite another to apply those principles.

The experiences of these states will indicate the difficulties which can be expected in securing consent to constitutional revision. The results achieved by these states may provide some answers to the question, would a constitutional convention in Oregon be worthwhile? What kinds of results might be expected from such a convention? The experiences of these states may also help answer the question, is wholesale constitutional revision by convention or commission a satisfactory method of accomplishing administrative reorganization?

The problems of legislative re-apportionment and convention delegate apportionment arose in these states as it has in Oregon. Different solutions were tried with differing results.

Some promoters of Oregon constitutional revision are opposed to such revision if it is to be accomplished by a convention which is disproportionately weighted in favor of rural areas. The results obtained by other states under similar circumstances may be of some value in forecasting the probable results of such a convention in Oregon.

We may also find that there may be other methods than those proposed in Oregon Senate Bill No. 1 and House Bill No. 10 for reconciling sectional differences and producing a new constitution which is enough of an improvement to warrant the time and expense of a convention.

Such an examination may also point out what not to expect from a constitutional convention.

Georgia is on the move.--Ellis Arnall

To form itself, the public has to break existing political forms. This is hard to do because these forms are themselves the regular means of instituting changes.--John Dewey

CHAPTER VI

GEORGIA

Before proceeding to a consideration of Georgia's administrative organization under the new constitution it is first necessary to attempt some description of the electoral process. Any discussion of Georgia politics which omits this item must necessarily be a superficial one, because the peculiar electoral process is the basic consideration in the whole political system.

Legislators and state officials are elected on a county unit basis. This system was carried over from the old constitution and is incorporated in the new. Members of the House of Representatives are elected on the following basis: three representatives from each of the eight counties having the largest population; two from the thirty counties having the next largest population; and from the remaining counties, one representative each.[1]

State senators are elected from senatorial districts; one senator from each district. The new constitution increased the number of districts by two for a total of fifty-four. It also limited the number of districts to fifty-four. District boundaries may be changed but the total number may not be increased.[2]

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[1] Georgia Constitution of 1945, Article III, Section 3.

[2] Ibid., Article III, Section 2.

The method of apportioning representatives is, of course, an arbitrary method of maintaining control by the rural districts. Voters living in Atlanta have only a small fraction of the representation enjoyed by the less populous counties. Even within the three population classes noted above there exist wide disparities in population--Fulton County (Atlanta) has a population around 500,000 while Troup County has 45,000--yet each has the same representation in the legislature. "Of the smaller counties, seven have fewer than 5,000 inhabitants each, forty-eight fewer than 10,000. These fifty-five counties, with a total population less than that of Fulton County have fifty-five representatives to the latter's three."[1]

This disproportionate rural power extends to the election of all statewide elected officers through the primary election system. Georgia is a one-party state. So the winners in the primary election are actually elected when nominated. The primaries are conducted on a county unit system in which each county has a unit vote of twice the number of its representatives in the legislature. Thus, Fulton County has six unit votes as against 110 unit votes of the fifty-five least populous counties.

> It is possible, and indeed it has happened more than once, for a candidate to carry 103 of the small, two-vote counties, with only one-third of the state's population, and win nomination. His election, in this one-party state follows automatically. In 1946, for example, the late Eugene Talmadge received 297,245 votes for Governor. Against him, James V. Carmichael scored 313,000 votes. Yet "Ol' Gene" was nominated by 242 unit votes to 146 for Carmichael.[2]

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[1] Robert S. Allen, Our Sovereign State (New York: Vanguard Press, 1949), p. 134.

[2] Ibid., p. 135.

The obvious result of such a system is that rural elements will ordinarily dominate the whole state government. A less obvious result may be the susceptibility to special interests which such a situation engenders. Another result may be the inclination toward bossism. If a county of 5,000 persons (which may have 2,000, or fewer, voters) has one-third the political strength of Fulton County with 500,000 people it might be profitable to become a political boss in that county because it would be much easier to gain control of a majority of the small number of voters. The undesirable potentialities of this system could be considered indefinitely.

Georgia has 159 counties. By comparison, Oregon, with somewhat less than twice the area, has thirty-six counties.[1] This tremendous number is a basic factor in the maintenance of rural supremacy both in the legislature and in state-wide elections.

The General Assembly has the power to consolidate counties or parts of counties--but only with the concurrence of two-thirds of the qualified voters in the areas affected. The General Assembly may also consolidate county and municipal governments--with the concurrence of a majority of the qualified voters of the county involved.[2]

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[1]Oregon, 96,350 sq. miles, population 1,521,000.
Georgia, 58,518 sq. miles, population 3,444,000.
Hammond's World Atlas and Gazetteer (New York: C. S. Hammond & Co., 1951), p. 1. The comparison does not imply that Oregon has the optimum number of counties.

[2]Georgia Constitution of 1945, Article XI, Section 1.

Such consolidations are difficult in Georgia, or any other state, because county office-holders and legislators are political leaders and ordinarily will not allow themselves to be "consolidated out of office."

The principle of divided and limited responsibility runs throughout the whole of Georgia government. In the Assembly there is a total of 259 senators and representatives, too many for prompt or efficient action. Intelligent and rational legislation is made still more difficult by a constitutional provision limiting the regular session to seventy days in each biennium.[1]

The General Assembly controls the executive department to the extent that it "shall have power to prescribe the duties, authority, and salaries of the executive officer,"[2] and it may provide by law for the suspension of "any Constitutional officer or department head. . .and also for the appointment of a suitable person to discharge the duties of the same."[3] The assembly, of course, also exercises the taxing and appropriating power.

The foregoing comments are the "facts of life" in Georgia politics. These are the conditions which must be taken into account in any consideration of constitutional revision or administrative reorganization.

A new "streamlined"[4] state constitution was adopted by the voters of Georgia at the general election of August 7, 1945. This was Georgia's

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[1] Ibid., Article III, Section 4.

[2] Ibid., Article V, Section 2.

[3] Ibid., Article V, Section 1.

[4] Christian Science Monitor, August 8, 1945.

eighth constitution. Previous constitutions had been adopted in 1777, 1789, 1798, 1861, 1865, 1868, and 1877.[1]

Georgia's Constitutional Commission

The constitution in force in Georgia prior to the adoption of the present constitution, on August 7, 1945, was drafted in 1877 soon after the state was freed from carpet-bag rule. It was a long and complicated document with many provisions of a statutory nature. As a result continual amendment was necessary. In the sixty-eight years this constitution was in force it was amended 301 times.[2]

According to Ethel K. Ware,

> The last constitution (1877) tried to meet all needs. Consequently, they (the framers of the constitution) ignored the admonition to consider only fundamental law. Many things of a temporary nature were included, and there was certain to be need for amendments as Georgia developed. By the time the latest constitution was proposed in 1945 the amendments had increased to 301. There was a great effort to prevent individuals, majorities, and government from wrongdoing.[3]

The old constitution was a negative instrument in that it restricted the operations of government to the point of impotency.

In the words of Ellis Arnall,

> The framers of the 1877 document had seen the reckless abuse of the authority of the Governor so they shackled that office. They had seen the public monies wantonly wasted by the legislature, so they limited to the barest minimum the purpose for which public funds could be appropriated. They had seen the public credit of the state, its counties and municipalities, loaned to dishonest promoters, so they curtailed drastically the authority of local government. In

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[1] Ethel K. Ware, Constitutional History of Georgia (New York: Columbia University Press, 1947), p. 193-194.

[2] Ibid., p. 168.

[3] Ibid., p. 168, 172.

> most respects the provisions were realistic solutions of pressing problems; nevertheless, they put the state and local governments into strait-jackets.[1]

Substantially the same sentiments are expressed by Tarleton Collier,

> The old constitution was written in 1877, when Georgia was emerging from reconstruction and was bitter with memories of violence and carpet-bag profligacy. Accordingly the "Constitution of Redemption" was a maze of prohibitions.[2]

Realizing that the old constitution was inadequate and also as a result of pressures from various civic organizations the General Assembly in March, 1943, passed a resolution, sponsored by Governor Ellis Arnall, for the formation of a twenty-three member commission to revise the old constitution. This commission consisted of the Governor, the President of the Senate, the Speaker of the House of Representatives, three members of the Senate appointed by the President, five members of the house appointed by the Speaker, a justice of the Supreme Court designated by the court, a judge of the Court of Appeals designated by the court, the Attorney General, the State Auditor, two judges of the Superior Courts, three practicing lawyers, and three laymen to be appointed by the Governor. The resolution provided that the proposals of the commission were to be submitted to the General Assembly for consideration. If ratified in the General Assembly the new constitution was to be submitted to a vote of the people.[3]

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[1]Ellis Arnall, "A New Constitution for Georgia," State Government, July, 1945, p. 109.

[2]Robert S. Allen, op. cit., p. 154.

[3]Albert B. Saye, "Georgia's Proposed New Constitution," American Political Science Review, June, 1945, p. 459.

It is likely the commission form of revision was chosen in preference to a constitutional convention because the old constitution required a two-thirds majority vote in both houses before a constitutional convention could be held, and, further, that distribution of delegates to that convention be based upon population. Rural districts had a predominant voice in the Assembly. They would be considerably weakened in a convention based on population. Consequently, fear of legislative reapportionment by a new constitution had heretofore stymied attempts at a constitutional convention. The Commission plan eliminated this bogey by first, including in the Commission ten members of the Assembly, and second, requiring submission of the new constitution to the Assembly for amendment, revision, and ratification before referral to the voters.

Governor Arnall, as chairman, divided the members into seven committees and appointed the chairman of each committee. Some public hearings were held and some expert opinion was solicited. Among these latter were Frank Bane, Executive Director of the Council of State Governments, W. Brooke Graves and Walter F. Dodd--all recognized authorities on state governments.

The new constitution, as drafted by the Commission was submitted to the General Assembly in January, 1945. The General Assembly made a number of revisions and additions (the constitution was increased from 87 pages to 92 pages), approved the new revised constitution, and submitted it to a vote of the people at the general election of August 7, 1945. It was adopted by the voters and was proclaimed in effect by the Governor on

August 13, 1945.

Governor Ellis Arnall in commenting on the aims of the revision commission said,

> One of the greatest problems of American democracy is that of simplifying all our governments, from the sprawling federal establishment to the smallest local unit. Good government cannot exist when its operations are masked in mystery.[1]

Georgia's state government falls far short of Governor Arnall's goal of simplicity as will become obvious from the description of its administrative organization in succeeding pages.

Georgia Administrative Organization

The Georgia Constitution of 1945 provides for the following elected officials: Governor, Lt. Governor,[2] Attorney General, Secretary of State, State School Superintendent, Comptroller-General, Treasurer, Commissioner of Agriculture, Commissioner of Labor,[3] and five Public Service Commissioners.[4]

The constitution also provides for the following eight executive boards: (1) Board of Regents of the University system, (2) State Board of Education, (3) Public Service Commission, (4) Board of Pardons and Paroles, (5) Board of Corrections, (6) Game and Fish Commission, (7) Personnel Board, and (8) Veterans Service Board.

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[1] Ellis Arnall, "25 Study Georgia Basic Law," National Municipal Review, January, 1944, p. 13.

[2] Georgia Constitution of 1945, Article V, Section 1.

[3] Ibid., Article V, Section 2.

[4] Ibid., Article IV, Section 4.

TABLE IV

SELECTION AND TENURE OF GEORGIA EXECUTIVE OFFICERS[1]

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Terms in Years	Staggered Terms
Governor	X					4	
Lt. Governor	X					4	
Secretary of State	X					4	
Comptroller-General	X					4	
Attorney General	X					4	
Treasurer	X					4	
Superintendent of Schools	X					4	
Commissioner of Agriculture	X					4	
Commissioner of Labor	X					4	
Public Service Comm.	X					6	X
Board of Veterans Service		X[a]				7	X
Director, Board of Veterans Service				X		Indef.	
State Board of Corrections		X[a]				5	X
Director, Penal Institut.				X		Indef.	

TABLE IV (CONTINUED)

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Term in Years	Staggered Terms
Board of Pardons & Paroles		X[a]				7	X
Game and Fish Comm.		X[a]				7	X
Director, Fish & Game Comm.				X		Indef.	
State Personnel Board		X[a]				7	X
Board of Regents, University of Georgia		X[a]				7	X
Board of Education		X[a]				7	X
Board of Health			X			6	X
Highway Commission					X	6	X
Public Safety Commission		X[2]				Unk	
Director of Entomology		X[a]				4	
Commerce Commission		X				Unk	X
Secretary of Commerce		X				Unk	
Social Security Board		X[a]				4	
Director, Dept. of Public Welfare		X[a]				4	
Adjutant General		X				Indef.	
State Auditor					X	Unk	

TABLE IV (CONTINUED)

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Terms in Years	Staggered Terms
Superintendent of Banks		X[a]				4	
Revenue Commissioner		X[a]				6	
Supervisor of Purchases		X				4	
Director, Dept. of Mines, Mining and Geology		X[a]				4	
Director, State Parks		X[a]				4	
Forestry Commission		X[a]				7	X
Director, Forestry Comm.				X		Unk	
Medical Board of Workmens Compensation			X			2	Unk
Board of Workmens Compen.		X[a]				4	X
State Librarian		X[a]				Unk	
Aeronautic Advisory Board		X				Unk	Unk
Commission on Alcoholism		X[a]				7	X
Code Commission		X[3]				Unk	
State School Building Authority for the Deaf and Blind		X				4	X

TABLE IV (CONTINUED)

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Terms in Years	Staggered Terms
Board of Trustees Employment Retirement Fund		X				4	X
Board of Review Employment Security Agency		X				6	X
Hospital Advisory Committee		X[4]				3	
Jekyll Island Parks Author.		X				10	X
Judicial Council		X				Unk	Unk
Milk Control Board		X[a]				6	X
Oil and Gas Commission		X				6	X
Park Authority		X				4	X
Georgia Ports Authority		X				4	X
School Building Authority		X				4	X
Soil Conservation Committee		X				4	Unk
Board of Control Southern Regional Education		X				4	X
Building Authority of University Systems			X			Unk	Unk

TABLE IV (CONTINUED)

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Terms in Years	Staggered Terms
Professional Licensing Boards as follows:							
Accountancy		X[a]				4	X
Architects		X[a]				5	X
Barbers and Hairdressers		X[a]				3	X
Chiropody Examiners		X[a]				3	X
Chiropractic Examiners			X[a]			3	X
Dental Examiners			X[a]			5	X
Engineers and Land Surveyors			X[a]			Unk	
Foresters			X			5	X
Funeral Services		X				6	X
Librarians			X[a]			5	X
Medical Examiners		X[a]				4	X
Naturopathic Examiners		X				4	
Nurses			X[a]			5	X
Optometry		X[a]				3	X
Osteopathic Examiners			X[a]			3	X

TABLE IV (CONTINUED)

Title of Office or Agency	Elected by Voters	Appointed by Governor	Appointed by Governor from Organization List	Selected by Board	Selected by Legislature	Length of Terms in Years	Staggered Terms
Pharmacy			X[a]			5	X
Psychologists		X				3	X
Real Estate Commission		X[a]				3	X
Veterinary Examiners			X[a]			5	X
Warm Air Heating Contractors[5]		X				4	

[1]Sources: Georgia Constitution of 1945, Articles III, IV, V, VI, VII, VIII, X, XI, XIV. Georgia Acts of 1943, p. 215; 1949, p. 1622; 1950, pp. 168, 238; 1951, p. 581; 1952, p. 457. Department of Archives and History, Georgia Official and Statistical Register 1951-52 (Atlanta, 1951), p. 1-150.

[2]Primarily ex officio. Governor appoints two members out of five.

[3]Primarily ex officio. Governor appoints three members out of nine.

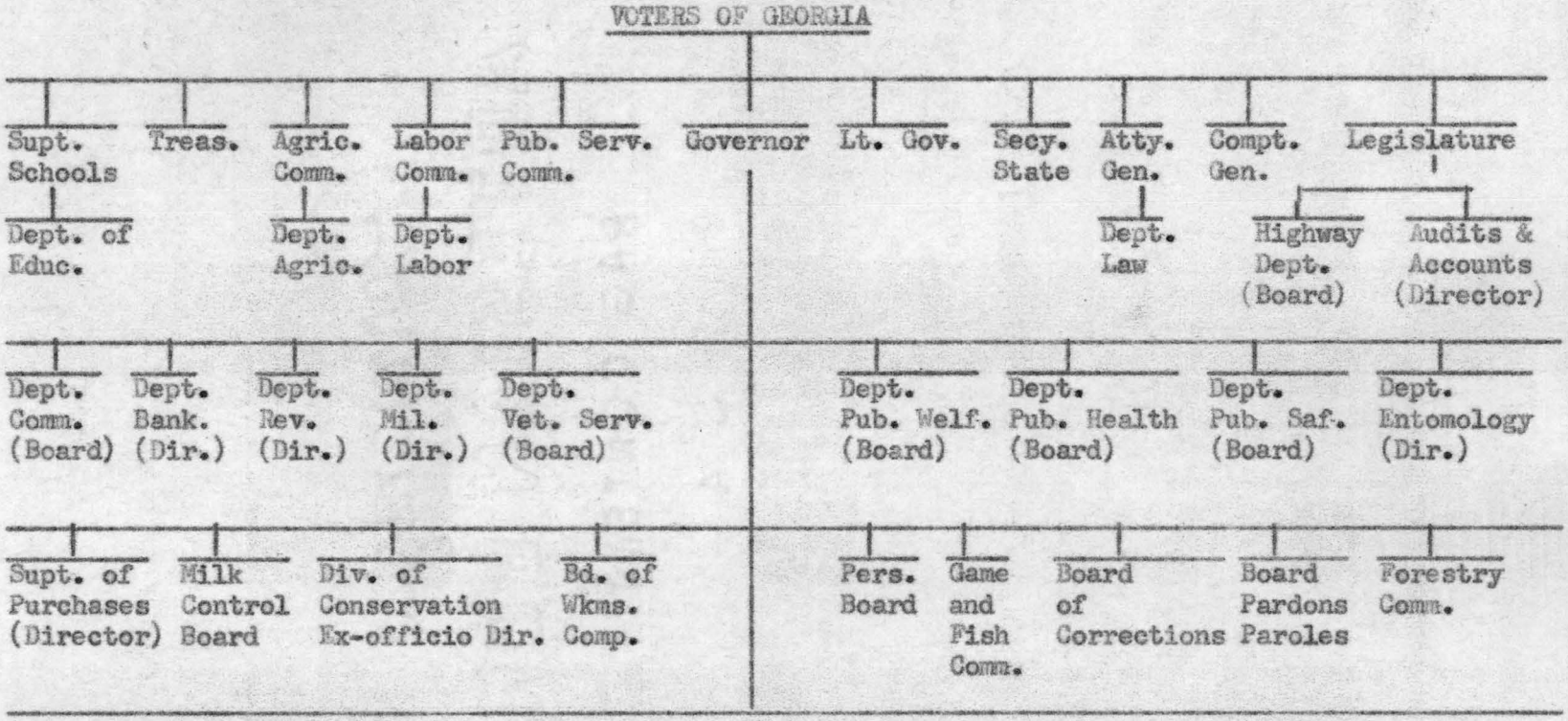
[4]Nine members selected by the Medical Association, four ex officio members, and five members appointed by the governor.

[5]Agencies completely ex officio or minor advisory boards are not included.

[a]Senate confirmation required.

TABLE V

MAJOR STATE ADMINISTRATIVE DIVISIONS[1]



Board of Regents of University of Georgia, Board of Education, Social Security Board, Adjutant General, Director of Department of Mines, Mining and Geology, Director of State Parks, Medical Board of Workmens Compensation, Board of Workmens Compensation, State Librarian, Aeronautic Advisory Board, Commission on Alcoholism, Code Commission, State School Building Authority for the Deaf and Blind, Board of Trustees Employment Retirement Fund, Board of Review Employment Security Agency, Hospital Advisory Committee, Jekyll Island Parks Authority, Judicial Council, Oil and Gas Commission, Park Authority,

TABLE V (CONTINUED)

Georgia Ports Authority, School Building Authority, Soil Conservation Committee, Board of Control Southern Regional Education, Building Authority of University Systems, Accountancy, Architects, Barbers and Hairdressers, Chiropody Examiners, Chiropractic Examiners, Dental Examiners, Engineers and Land Surveyors, Foresters, Funeral Services, Librarians, Medical Examiners, Naturopathic Examiners, Nurses, Optometry, Osteopathic Examiners, Pharmacy, Psychologists, Real Estate Commission, Veterinary Examiners, and Warm Air Heating Contractors.

[1]Georgia Official and Statistical Register 1951-52, Department of Archives and History (Atlanta, 1951).

The following agencies are called departments: Law, Education, Agriculture, Labor, Audits and Accounts, Banking, Revenue, Military, Veteran's Services, Public Welfare, Public Health, Public Safety, Highways, Entomology, and Commerce.

There are twenty examining boards, twenty other independent or semi-independent boards, nine commissions, four committees, three councils, eight "authorities," one "office," and two separate divisions. There are therefore some eighty odd autonomous, or semi-autonomous, executives and boards shaping policy and administering policy. Of these agencies and individuals ten are directly elected by the people and two (Highway Commission and Auditor) are elected by the Legislature.[1]

There appears to be no consistency in the method of organization unless it is in the prevalence of boards with long, staggered terms. Some agencies are headed by a single elected executive; some by a single appointed official. One is administered by an elected operating board; others by appointed operating boards. Other agencies are organized around a board which appoints a director; in others the governor appoints the director.

Some elected officers head sections called departments while others apparently have only offices. Thus the Attorney General, Superintendent of Schools, Commissioner of Agriculture and Commissioner of Labor head up

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[1]Department of Archives and History, Georgia Official and Statistical Register 1951-52 (Atlanta: Department of Archives and History), p. 1-150. Figures quoted may not be entirely accurate because the source quoted did not give this data for all agencies. Also many agencies are established by statute and are subject to statutory change. They are, however, close approximations.

the departments of Law, Education, Agriculture, and Labor. The Secretary of State, Comptroller-General, Treasurer, and Public Service Commissioners are in charge of sections which are not dignified by the term "departments." These inconsistencies extend to the titles of agencies. Major agencies of government are commonly called departments, and so they are in Georgia, except that within the Division of Conservation there exists two departments. Within the office of the Secretary of State there exists a section called the Department of Archives and History.

All the elected officials serve four-year terms[1] except the Public Service Commissioners who are elected for six-year staggered terms.[2] There appears to be no particular reason why this agency should enjoy longer terms than other elected officials. The advantages of long terms might be applied with equal rationality to most other state officials.

The governor is ineligible to succeed himself until the expiration of four years after his last day in office.[3] The commission which drafted the new constitution was evenly divided on this matter so Governor Arnall, Chairman, cast his vote in favor of removing this prohibition. When the new constitution was referred to the Assembly, however, it reversed the Commission's recommendation.[4] The assembly's decision was in keeping with the concept of dispersion of authority which exists throughout the whole of Georgia's administrative organization.

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[1] Georgia Constitution of 1945, Article V, Section 2.

[2] Ibid., Article IV, Section 4.

[3] Ibid., Article V, Section 1.

[4] Saye, op. cit., p. 461.

Apparently the legislature feared that a governor who held office for two consecutive terms might be able to gain more authority than they wished him to have. As has been noted the wide dispersion of authority is apt to have the opposite effect intended. Dispersed authority makes every bureau head a "lone wolf" who is fair game for organized interests. Dispersion of authority means weakness and irresponsibility--and weakness and irresponsibility invite waste, graft, and corruption. The writer does not imply that waste, graft, and corruption exist in Georgia--but certainly the opportunity exists.

The authority of the Georgia governor is weakened in many ways. He appoints the executive membership of some seventy agencies, but most appointments are subject to senate confirmation. Of the boards and commissions whose members he selects, twenty-three have longer terms than his and forty-one have staggered terms which overlap the governor's term. Twelve of these boards are selected by the governor from lists submitted by various organizations.[1] His appointments are usually made on a term basis and appointees cannot be removed except for cause.

The governor's office is one of ten elected state administrative offices. He is only one of the state's executives. He obviously cannot direct the activities of other elected officials although he, "may require information in writing from Constitutional officers, department heads and all State employees on any subject relating to the duties of their respective office or employment."[2] Such a "requirement" from the governor is of

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[1] Georgia Official and Statistical Register 1951-52, op. cit., p. 132-150.

[2] Georgia Constitution of 1945, Article V, Section 1.

limited effectiveness unless such employees are directly under his control.

In those instances where the governor appoints a single administrative head, he is sometimes responsible to a board as is the case in the Department of Commerce and Public Welfare.

The governor is the ex officio director of the Division of Conservation[1] and heads a board which administers the Department of Public Safety.[2] He is also an ex officio member of the Board of Control for Southern Regional Education.

Apparently the governor actually controls the Military Department. He appoints the Adjutant-General to serve at his pleasure. The late Eugene Talmadge, on one occasion, "used troops to kick out the State Treasurer and the State Auditor because they would not honor his warrant in a dispute over the legality of an appropriation bill."[3]

Georgia utilizes the executive budget,[4] a centralized purchasing agency whose director is appointed by the governor, and the new constitution provides for a state "merit system."[5] It may be that the governor's greatest administrative strength lies in these auxiliary functions.

In a state where authority is concentrated in the hands of the executive it is necessary that adequate reporting be made to the

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[1]Georgia Official and Statistical Register 1951-52, op. cit., p. 116.

[2]Ibid., p. 105.

[3]Robert S. Allen, op. cit., p. 149.

[4]Georgia Constitution of 1945, Article VII, Section 9.

[5]Ibid., Article XIV, Section 1.

legislature and that the legislature exercise, potentially at least, control over the governor. In the State of Georgia such concentration has not been accomplished. Authority and responsibility has been dispersed intentionally. If the governor cannot be held responsible for state administration then the state legislature should assume that responsibility, but the larger the number of executive units the more difficult is the task of legislative surveillance. Supposedly such dispersion prevents the rise of state dictatorships and makes government more truly representative by having more elected officials and more people making policy. Unfortunately, such is not the history of the American states. The more offices the less attention the voters can or will give to each one. Minor state executives are usually elected by smaller pluralities than is the governor. A multiplicity of autonomous boards and commissions makes supervision by the legislature or the people impossible and the fixation of responsibility more difficult. As a result there is a tendency for individuals, industries, trade associations, and others to take over segments of the government. Certainly the legislature of Georgia can exercise little realistic control over the state government. Generally speaking the legislature may have enough authority--but such authority cannot be adequately exercised over the myriad of executives (who may be backed by powerful interests) which now exist. Such control has been made more difficult by the large number of legislators, the disproportionate strength of rural areas in both the primaries and in the legislature, the limited length of legislative sessions, the

inadequate pay of the legislators,[1] and their short terms.[2]

If the legislature cannot be expected to supervise the administration, can such supervision be exercised to any appreciable degree by the electorate? A. D. Lindsay says, "only he, the ordinary man, can tell whether the shoes pinch and where; and without that knowledge the wisest statesman cannot make good laws."[3] It is true that the people may know when the shoe pinches but such knowledge will avail them little unless they also know who or what caused it to pinch. With the wide dispersion of administrative authority existing in Georgia such identification by the voters is practically impossible. It is also possible that after several generations of "shoes that pinch" the electorate may assume that such pinching is to be expected and is the natural order of things.

The new constitution created a new office of lieutenant-governor. He is elected at the same time as the governor and acts as president of the Senate. He presently receives a salary of $2000 per year. In the event the governor's office becomes vacant he serves as governor only until the next general election for members of the legislature which occurs every two years.[4] The intent of the framers was apparently to provide a standby executive at standby pay. This may be one solution to the lieutenant-governor problem--at least it is an inexpensive solution.

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[1]Fifteen dollars per day during the session. Georgia Constitution of 1945, Article III, Section 11.

[2]Two years for both Senators and Representatives. Ibid., Article III, Section 4.

[3]A. D. Lindsay, The Modern Democratic State (London: The Oxford Press, 1951), p. 270.

[4]Georgia Constitution of 1945, Article V, Section 1.

The Secretary of State supervises those affairs which are traditionally attached to that office such as Custodian of the State Seal, Land Grant Records, Office of the Surveyor-General, Commissioner of Deeds, Historical Research Division, Georgia Historical Commission, Department of Archives and History, and the Corporation Division. He also heads up a Legislative Services Section, a Notary Public Division, a Trade Mark Division, a Securities Division, and a Building and Loan Division. He also supervises the secretariat of the State Examining Boards.[1] These twenty state examining boards have been "consolidated" under a joint secretary.[2] This central office takes the place of the various secretaries of each board. It is actually not a consolidation but only a centralization of clerical help and office space. The joint secretary is appointed by the Secretary of State. Members of the various examining boards, however, are appointed by the governor. A listing of these boards with terms of members appears in Table IV. Of these examining boards the governor's appointive power is limited in that in nine of them--Chiropractic Examiners, Dental Examiners, Engineers and Land Surveyors, Foresters, Librarians, Nurses, Osteopathic Examiners, Pharmacy, and Veterinary Examiners--his appointments are made from lists submitted by the professional or trade organization concerned.[3]

These examining boards, in actuality, are not organs of the state government. The Board of Osteopathic Examiners, for instance, primarily

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[1] Georgia Official and Statistical Register 1951-52, op. cit., p. 26.

[2] Ibid., p. 28.

[3] Ibid., p. 30-36.

represents the Georgia Osteopathic Association--not the people of Georgia. The secretary of state has no control of these boards. The governor appoints the members, but, as noted above, in some instances his choice is limited to the trade association's choice. Furthermore, some terms are longer than his and/or are staggered to overlap his term in office. He therefore inherits his predecessor's appointments. These factors conspire to create a set of independent and irresponsible semi-private agencies whose determinations have the force of law. This situation is not confined to the State of Georgia.

The members of the eight executive boards set forth in the new constitution are appointed by the governor with the confirmation of the Senate except the Public Service Commission whose five members are elected for six-year terms. All the members of these executive boards serve staggered terms and all of them have longer terms than does the governor.[1] The Board of Veterans Services, the State Board of Corrections and the Fish and Game Commission each appoint the administrative head called the director. The Board of Pardons and Paroles was created to remove pardoning power from politics as much as possible and to relieve the governor of considerable time-consuming work. The govenor may not be a member of this board except in the event of disability of one of the members. The board may grant reprieves, pardons, and paroles,

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[1] Georgia Constitution of 1945.
Board of Veterans Services, Article V, Section 6.
Board of Corrections, Article V, Section 5.
Board of Pardons and Paroles, Article V, Section 1.
Game and Fish Commission, Article V, Section 4.
State Personnel Board, Article XIV, Section 1.
Board of Education, Article XIII, Section 2.
Board of Regents, Article VIII, Section 4.
Public Service Commission, Article IV, Section 4.

commute penalties, remove disabilities imposed by law, and remit any part of a sentence with some exceptions. The governor may suspend death sentences until a hearing of the board and may suspend sentences of persons convicted of treason only until they may be reviewed by the General Assembly. The State Personnel Board, composed of three non-salaried members, administers the merit system. The State Board of Education is composed of ten members--one to be appointed from each congressional district.

The composition of those agencies designated as departments is as follows:

(1) Department of Education

The Department of Education is headed by the State Superintendent of Schools who is elected by the people and a ten-member Board of Education appointed by the governor.[1]

(2) Department of Agriculture

A Commissioner of Agriculture elected by the people is the administrative executive of this department.[2]

(3) Department of Law

The Department of Law is headed by the Attorney-General who is elected by the people for a four-year term.[3]

(4) Department of Public Health

The Department of Public Health is headed by a board of fourteen

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[1] Georgia Official and Statistical Register 1951-52, op. cit., p. 135.

[2] Georgia Constitution of 1945, Article V, Section 2.

[3] Ibid., Article VI, Section 10.

members appointed by the governor for staggered six-year terms from lists submitted by the Georgia Pharmaceutical Association, Georgia Dental Association, and the Georgia Medical Association.[1] The question may well be asked, does this department represent the people of Georgia and is it designed to serve the public or is it designed to represent and serve the druggists, dentists, and doctors? The organization of this department would appear to be the institutionalization of pressure groups.

(5) Highway Department

The Highway Department is headed by a board of three members elected by the General Assembly for staggered six-year terms.[2] The building and maintenance of highways is one of a state's most costly activities. It is also a matter of intense individual and local interest as anyone knows who has lived in a small town which has been by-passed by a highway. The legislature has apparently particularly feared a concentration of authority in this department and has attempted to retain as much control as possible or has sought to divide that control.

(6) Department of Public Safety

The Department of Public Safety is headed by a board consisting of the Governor, Attorney-General, the executive officer of the highway department, and two other members appointed by the governor from the peace officers of the state.[3] This department in reality is the State Highway Patrol. The State Patrol also licenses auto drivers.

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[1] Georgia Official and Statistical Register 1951-52, op. cit., p. 139.

[2] Georgia Acts of 1951, p. 13.

[3] Georgia Official and Statistical Register 1951-52, op. cit., p. 105.

(7) Department of Entomology

The State Director of Entomology is the administrative head. He is appointed by the governor for a four-year term.[1]

(8) Department of Commerce

The Department of Commerce is under the supervision of a five-member board appointed by the governor for staggered terms. Governor also appoints a secretary who is the administrative executive.[2]

(9) Department of Public Welfare

The Department of Public Welfare is headed by a Social Security Board composed of a Director and ten members appointed by the governor for four-year terms. Duties: Administer all forms of public assistance, all child welfare activities, and all mental hygiene work. It supervises county welfare activities. It also administers hospitals for the insane and the mentally defective and juvenile correction schools.[3]

(10) Military Department

The head of this department is the Adjutant General who is appointed by the governor to serve at his pleasure.[4] He also acts as the ex officio head of the governor's personal staff.

(11) Department of Veterans Services

The Department of Veterans Services is headed by a board of seven members appointed by the governor for staggered seven-year terms. Board

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[1] Ibid., p. 109.

[2] Georgia Acts of 1949, p. 249.

[3] Georgia Official and Statistical Register 1951-52, op. cit., p. 90.

[4] Georgia Constitution of 1945, Article X, Section 1.

appoints the administrative head called the Director.[1]

(12) Department of Labor

The executive officer of the Department of Labor is the Commissioner of Labor who is elected by the people.[2]

(13) Department of Audits and Accounts

This department is headed by a State Auditor who is elected by the General Assembly. This official supervises both pre-audit and post-audit.[3]

(14) Department of Banking

The Department of Banking is headed by a Superintendent of Banks who is appointed by the governor for a four-year term.[4]

(15) Department of Revenue

The Department of Revenue is headed by the Revenue Commissioner who is appointed by the governor for a six-year term. Duties: Administer and supervise all tax laws of the state.[5]

Other agencies of major importance are:

Office of Supervisor of Purchases

This agency is the centralized purchasing agent for the state. It does the actual purchasing for all state agencies. The supervisor is

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[1] Georgia Official and Statistical Register 1951-52, op. cit., p. 85.

[2] Georgia Constitution of 1945, Article V, Section 2.

[3] Council of State Governments, Book of the States 1952-53, op. cit., p. 165.

[4] Georgia Acts, 1919, p. 135.

[5] Georgia Official and Statistical Register 1951-52, op. cit., p. 78.

appointed by the governor for a four-year term.[1]

State Division of Conservation

The governor serves as ex officio Commissioner of Conservation. This division is divided into two departments--the Department of Mines, Mining, and Geology and the Department of State Parks, Historic Sites and Monuments. Each department is headed by a director appointed by the governor for a four-year term.[2]

State Forestry Commission

The State Forestry Commission is composed of five members appointed by the governor who select a director.[3]

State Board of Workmen's Compensation

The State Board of Workmen's Compensation is composed of three members appointed by the governor for four-year terms.[4]

Milk Control Board

The Milk Control Board is composed of seven members appointed by the governor for staggered six-year terms. Members are to be distributed among producers, producer-distributors, dealers, consumers, and stores.[5]

Oil and Gas Commission

The Oil and Gas Commission is composed of three members appointed by

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[1] Ibid., p. 96.

[2] Ibid., p. 116.

[3] Georgia Acts, 1949, p. 1079.

[4] Georgia Official and Statistical Register 1951-52, op. cit., p. 150.

[5] Ibid., p. 142.

the governor for six-year staggered terms.[1]

Georgia Ports Authority

The Georgia Ports Authority is composed of three members appointed by the governor for four-year staggered terms.[2]

Social Security Board

The director of the Social Security Board is appointed by the governor for a four-year term concurrent with the governor's term and ten board members are appointed by the governor for four-year terms concurrent with the governor's term. This board heads the Department of Public Welfare.[3]

Medical Board, Workmen's Compensation

The Medical Board of Workmen's Compensation is composed of five members appointed by the governor for two-year terms from a list submitted by the Medical Association of Georgia.[4]

Other boards and commissions which may be considered of less importance are: Division of Confederate Pensions and Records,[5] State Library,[6] Aeronautic Advisory Board, Georgia Commission on Alcoholism, Atlantic States Marine Fisheries Commission, Civil Defense Advisory Council, Code Commission, State School Building Authority for the Deaf and

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[1] Georgia Acts, 1945, p. 366.

[2] Georgia Official and Statistical Register, 1951-52, op. cit., p. 144.

[3] Ibid., p. 145.

[4] Ibid., p. 150.

[5] Ibid., p. 97.

[6] Ibid., p. 89.

Blind, Board of Trustees of Employment Retirement Fund, Board of Review Employment Security Agency, Board of Eugenics, Board of Managers, Factory for the Blind, Hospital Advisory Committee, Georgia Commission on Interstate Cooperation, Jekyll Island State Parks Authority, Judicial Council, Office Building Authority, Park Authority, School Building Authority, Soil Conservation Committee, Board of Control for Southern Regional Education, Building Authority of University System of Georgia, Veterans Service Board, Stone Mountain Memorial Advisory Committee, Turnpike Authority, and Vocational Trade School Building Authority.[1]

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In the preceding chapter certain standards of administrative organization were set forth. To what extent have these standards been adhered to in Georgia state government under the new constitution?

Departmentalization by function has not been accomplished to any appreciable degree. There are still scores of independent agencies.

The long ballot, with the addition of the lieutenant governor, is now longer than it was before.

The number of executives supposedly reporting directly to the governor is too large for any individual to supervise. In many instances, however, the intent is plainly that he shall not supervise.

The governor's tenure in office is limited in that he may not succeed himself.

His appointive power, numerically, is tremendous but the great number of appointees makes it impossible for him to make free and

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[1] Ibid., p. 132-150.

intelligent appointments. While his appointing power may be large numerically it is weakened and hedged in by the large number of appointments which must be made from specified districts or occupational groups or from lists submitted by professional organizations. It is further weakened by the predominance of boards and commissions with long staggered terms. In such cases the governor is ordinarily unable to appoint a majority of a particular board. It is also limited in that most appointments are made for fixed terms.

The governor's appointive power is further limited in that most appointments of any consequence require senate confirmation.

If his appointive powers are severely limited--his dismissal powers are practically non-existent. Most appointments are made for definite terms and appointees may be removed only for cause.[1]

The executive budget is employed[2] but its formulation is shared with the auditor, who is a legislative appointee. No permanent budget staff exists.

The new constitution provides for a merit system for state employees.[3] Both the executive budget and the merit system were in effect as statutory provisions prior to the revision of the constitution but Governor Arnall, and other reformers, considered that constitutional provisions were necessary to insure their continuance. If there existed a real

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[1]Council of State Governments, Reorganizing State Governments, op. cit., p. 26.

[2]Georgia Constitution of 1945, Article VII, Section 9.

[3]Ibid., Article XIV, Section 1.

possibility that these functions might be compromised or eliminated, and if inclusion in the constitution closed off these possibilities, it may well be that these were the most progressive administrative provisions in the constitution.

There are few single-headed departments or agencies except those which are elected. Authority is decentralized and dispersed.

The auditor is selected by the legislature but he also heads an administrative department and is responsible for pre-audit so he supervises the examination of his own decisions and accounts.

From these observations we may conclude that no real improvement in Georgia's administration was accomplished by the new constitution. Administrative reorganization was, of course, not the only reason for the demand for revision. Gains were made in other fields of government which may have made the revision well worth while. Governor Arnall said,

> One of the major accomplishments of the Revision Commission, and a phase of its work in which the Assembly concurred without significant change, was the elimination of obsolete amendments. Many amendments permitting local bond issues could be stricken from the document, because the bonds long ago had been retired.[1]

This hardly sounds like a "major accomplishment." Apparently the amendments which were stricken off were of no consequence one way or another. This is probably why the assembly "concurred without significant change."

Some of the changes which might be considered genuine accomplishments are:

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[1]Ellis Arnall, "A New Constitution for Georgia," op. cit., p. 109.

> The elimination of the poll tax; the termination of special tax exemptions to favored corporations; the requirement of proper publication of notice of local legislation before it can be submitted to the legislature; the abolition of a twelve month "lame duck term" for members of the Public Service Commission; a provision that the state Supreme Court shall have seven members instead of six; the Budget System was written into the constitution; and merit and retirement systems were authorized.[1]

The new constitution seeks to protect itself by prohibiting the governor from vetoing constitutional amendments and by providing that any future constitution must be submitted to the people for ratification.

No realistic conclusions can be reached from Georgia's experience with regard to the relative merits of commission revision versus convention revision. It cannot be said that a convention might have produced a better constitution because the legislature would not have approved a convention based upon population, as was required in the old constitution.

In reality the new constitution was written by the legislature. Legislative leaders were members of the commission and the work of the commission was reviewed and revised by the Assembly before submission to the people. If the old constitution had been first amended to allow delegate apportionment to a constitutional convention on the same basis as legislative apportionment, it is likely such a convention would have drafted substantially the same constitution as did the commission.

At any rate the commission was an economical method of revision--its total cost was "less than $11,000."[2]

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[1] Ibid.

[2] Ibid., p. 110.

As long as the constitution of 1875 occupied the field, a rational administration was impossible.--Leslie Lipson

CHAPTER VII

CONSTITUTION OF MISSOURI

Missouri has been governed under three constitutions prior to the present constitution which was adopted on February 27, 1945.

The first constitution of the state was written in 1820. This constitution was adopted by the convention that drafted it and was not referred to the people. The drafting of Missouri's first constitution took thirty-seven days[1] as compared with Oregon's thirty-three days. This constitution is of particular interest because it embodied many of the principles which are generally considered to be modern innovations. According to Carl A. McCandless,

> The Constitution of 1820 followed the general pattern of state constitutions of the time. It established the principle of separation of powers in the state, provided for a single executive, a bicameral legislature, and an independent judiciary.
>
> The Constitution was short, containing about ten thousand words, and was general rather than specific in content. It established the broad framework of state government, but trusted the legislature to fill in the necessary details.
>
> It reflected the general feeling of trust and confidence in the law-making body which was prevalent at the time. This is evidenced by the absence of the specific restrictions on the legislature which are such prominent parts of present-day state constitutions.
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> It followed the accepted practice of the time by making only the Governor and Lieutenant Governor elective, and giving

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[1] F. A. Culmer, A New History of Missouri (Mexico, Missouri: McIntyre Publishing Company, 1938), p. 149.

> the Governor power to appoint and remove other executive officers. The spirit of popular democracy which characterized the Jacksonian Era had not yet been felt in Missouri.
>
> It emphasized the independence of the judiciary by providing for appointment rather than popular election of judges, and by providing for them to serve during good behavior rather than for limited terms.[1]

It might be concluded that since the short ballot and a comparatively unrestricted legislature were later abandoned, these principles were unsound and consequently failed and that further experiments with the same principles are also doomed to fail. However, it can also be shown that the long ballot and an impotent legislature have also been unsuccessful. More detailed examination of state constitutions might conceivably indicate a cyclical trend from centralization to decentralization and back again.

In 1822 and again in 1833 amendments were proposed to reduce the appointing power of the governor and make judges popularly elected. These amendments were defeated.[2] A constitutional convention was held in 1845 which drew up a new constitution. This constitution, among other things, limited the powers of the legislature, reapportioned seats in the legislature, provided for popular election of judges--and was defeated at the polls.

The defeat of this constitution by the people is a reminder to would-be constitution writers that the organization of a constitutional convention does not automatically produce a constitution that will be

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[1]Carl A. McCandless, Government, Politics, and Administration in Missouri (St. Louis: Educational Publishers, Inc., 1949), p. 8.

[2]Ibid., p. 9.

acceptable to the voters. Framers of a constitution must consider not only what elements are desirable but also what elements will be accepted. It might also be noted that a constitutional convention does not necessarily draft a document which is superior to the old constitution.

Missouri's next constitution was adopted in 1865. The major changes in this constitution were concerned with provisions dealing with slavery and suffrage. However, it did place some limitations upon the legislature and it reduced the governor's term from four to two years.[1] This constitution remained in effect for ten years only.

The new constitution of 1875 was longer, more restrictive, and more specific. Additional restraints were placed upon the legislature and biennial sessions were provided in lieu of the previous annual sessions. The governor's four-year term was restored and his veto power extended to include the rejection of specific items in an appropriation bill without killing the entire bill.[2]

Another constitutional convention was held in 1922-23. This convention did not draft a new constitution but proposed twenty-one amendments instead. All but six of the amendments were defeated in a special election. These six were considered to be of minor importance as compared with the amendments which were rejected.[3] Whether or not there is any significance in the failure of this method of constitutional revision is conjectural. A complete redraft (1845) of a previous constitution had

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[1] Ibid., p. 11.

[2] Ibid.

[3] Ibid., p. 13.

also failed of acceptance.

An amendment to the old 1875 constitution, adopted in 1920, required the submission to the voters of the question, "Shall there be a convention to revise and amend the constitution?" at the regular election in 1942 and every twenty years thereafter.[1] The question received a favorable majority and the convention met on September 21, 1943.

This provision for a constitutional convention to be held every twenty years appears in the new constitution.[2]

The delegates to the convention consisted of sixty-eight senatorial district delegates and fifteen delegates at large. Missouri has thirty-four senatorial districts so two delegates were elected from each district.[3] Delegates were definitely not elected on a non-partisan basis.

> The Senatorial District Committee of each of the two parties nominated one person only as district delegate, and the two persons thus nominated were the only ones whose names appeared on the ballot. Since two delegates were to be elected from each district, it is evident that nomination by the party committee was equivalent to election. Fifteen delegates were elected at large on a non-partisan ballot from a list of names placed on the ballot by nominating petitions. On March 13 prior to the election, the Democratic and Republican State Central Committees met in joint session in Jefferson City and endorsed a slate of fifteen candidates which each party organization agreed to support. Seven of the fifteen were Republicans, seven were Democrats, and the fifteenth was an anti-New Deal Democrat. This delegate later became the president of the convention. The Secretary of State gave semi-official recognition to this endorsed slate by printing their names as the first fifteen to be listed on the ballot.

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[1] Ibid.

[2] Missouri Constitution of 1945, Article XII, Section 3.

[3] Charlton F. Chute, "The New Constitution of Missouri," State Government, July, 1945, p. 111.

These fifteen were successful in the election by comfortable margins.[1]

This is one instance where political parties were given, and assumed, a definite responsibility in drafting a constitution.

Missouri apparently did not have as much rural-urban conflict as did New Jersey and Georgia. Nevertheless, it should be noted that delegates to the convention were elected from senatorial districts and that each district was entitled to two delegates regardless of its population. The last senatorial districting reapportionment was made in 1901. As a result, the smallest district had a population of 45,718 while the largest had 320,512.[2] This disproportionate rural influence was presumably lessened by the election of the fifteen delegates at large. This last presumption may not be valid, however, because the fifteen delegates elected were the candidates selected by the State Central Committee of each party.

The convention met on September 21, 1943, and adjourned on September 29, 1944, after spending 215 days in actual session. The new constitution was adopted on February 27, 1945.

In general the convention made no drastic changes but revised and modernized the old constitution; removed archaic and obsolete provisions and deleted considerable statutory type provisions. For example, discrimination against women was removed; freedom of speech and press was extended to radio; the right of labor to bargain collectively was recognized. It attempted some administrative reorganization by grouping

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[1]McCandless, op. cit., p. 14.

[2]Estal E. Sparlin, "The New Missouri State Constitution," Southwestern Social Science Quarterly, June, 1945, p. 68.

agencies and limiting the number of major departments and by limiting the powers of some elected officials. The number of articles was reduced from fifteen to twelve and the total length reduced by approximately 11,000 words.[1] The new constitution was submitted to the voters in toto on a "take it or leave it," basis and was approved by a majority of 312,032 to 185,658.[2]

Under the old constitution (1875) the legislature was free to establish new administrative agencies as it saw fit.[3] At that time (1875) there was a total of twenty-five administrative agencies. Eleven additional agencies were created from 1875 to 1895. By 1915 the total number had risen to seventy-five.[4]

Attempts at reorganization were made by Governor Hyde which were defeated in a referendum in 1922. In the constitutional convention held in 1922 and 1923 reorganization was attempted by constitutional amendment which was defeated at the polls. Again in 1927 a reorganization plan in the form of an administrative code was submitted to the legislature and again was defeated.[5]

In 1942 the Governmental Research Institute of St. Louis pointed out that there existed at that time seventy-eight administrative agencies

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[1]William L. Bradshaw, "Missouri's Proposed New Constitution," American Political Science Review, February, 1945, p. 61-62.

[2]McCandless, op. cit., p. 15.

[3]Missouri Constitution 1875, Article IV, Section 1.

[4]McCandless, op. cit., p. 173.

[5]Isidor Loeb, "The Development of Missouri's State Administrative Organization," Missouri Historical Review, Vol. 23 (October, 1928), p. 49-60.

in the state. Of these, seven were popularly elected, fifty-seven appointed by the governor, two by the Supreme Court, and three unclassified. Of the fifty-seven appointive agencies, fifteen were single headed and forty-two were boards and commissions. It was concluded that thirty-two of these boards and commissions were almost free from the governor's supervision because of bi-partisanship requirements and staggered terms.[1]

> As was true in many other states the administrative branch in Missouri had experienced periods of rapid expansion as the state assumed responsibility for new governmental functions and expanded the scope of old ones. When changes in administrative structures were made they were devised to meet immediate needs with little regard for the maintenance of a properly unified and coordinated administrative pattern. As a result of this haphazard growth the administrative organization was wholly unsatisfactory. Lines of authority were not clearly defined, considerable overlapping of authority existed, and overall supervision was practically impossible.[2]

The St. Louis Governmental Research Institute, in 1945, stated that there were seventy-two boards and commissions whose members enjoyed overlapping terms and were largely independent of the governor. Such a state of disorganization and lack of centralized control, among other things, lead to diffusion and duplication of functions--for instance, "Missouri has more agencies to assess and collect taxes than any other state. At the present time, the fourteen major state taxes are assessed

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[1]Governmental Research Institute, St. Louis, "State Administrative Organization in Missouri," Dollars and Sense in Government, No. 23, July 14, 1942, quoted in McCandless, op. cit., p. 175.

[2]McCandless, "Administrative Reorganization in Missouri," Southwestern Social Science Quarterly, March, 1948, p. 334.

or collected by ten state and five local government agencies."[1]

The 1945 constitution attempted to limit the number of administrative departments to a manageable figure and to departmentalize by function. It created six departments headed by the governor, lieutenant governor, secretary of state, attorney-general, auditor, and treasurer, respectively. It also created the departments of revenue, education, highways, conservation, and agriculture. It further empowered the legislature to create other departments not exceeding five in number. The section is quoted below:

> The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial departments. In addition to the governor and lieutenant governor there shall be a state auditor, secretary of state, attorney-general, a state treasurer and a department of revenue, department of education, department of highways, department of conservation, department of agriculture and such additional departments, not exceeding five in number, as may hereafter be established by law. Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane.[2]

In accordance with this article the sixty-third general assembly enacted implementing legislation so by July 1, 1946 the new administrative organization was under way.

Although Missouri's numerous agencies have been consolidated into fewer major departments no uniformity exists in the method of selecting

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[1]Government Research Institute, St. Louis, A New Constitution for the State of Missouri (St. Louis, 1945), p. 1.

[2]Missouri Constitution of 1945, Article IV, Section 12.

the chief executives of these departments. Thus the departments of Conservation and Highways are headed by commissions. The Department of Education is headed by a board which selects a professional administrator as does the Department of Conservation. The Highway Department, however, functions with a commission as its head. This commission appoints a chief engineer, chief counsel and chief clerk who divide administrative responsibility. These boards and commissions are (as before) supposedly appointed on a non-partisan basis and have long staggered terms. The Director of the Revenue Department and the Commissioner of Agriculture are single heads appointed by the governor.[1]

The above departments are included in the constitution. Other departments created by statute (as provided in the constitution)[2] include the departments of Business and Administration, Corrections, and Public Health and Welfare, all of which are administered by single directors responsible to the governor, and the Department of Labor and Industrial Relations which is headed by a three-man commission appointed by the governor as full time administrators--one each to represent employers, employees, and the general public.

It is perhaps not altogether correct to say that the Department of Public Health and Welfare was created by statute. During its closing hours the convention decided to include this department in the constitution. It therefore provided, "the general assembly shall establish a

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[1] Ibid., Article IV, Section 17.

[2] Ibid., Article IV, Section 12.

department of public health and welfare. . . ."[1] However, it did not change the basic article quoted above. There is therefore some disagreement as to the total number of departments which may be created. Is the Department of Public Health and Welfare included in the five additional departments or may five departments be created after the inclusion of the Department of Public Health and Welfare? The consensus seems to be that this department is included in the five. This would leave the legislature free to create only four additional departments. It has thus far created three.

Elected Officers

The constitution provides for the direct election of the Governor, Lt. Governor, Attorney-General, Secretary of State, State Treasurer and State Auditor. The Auditor is elected in the off-year elections for a four-year term. The other elected officers are elected for four-year terms in presidential election years. The Governor and the State Treasurer may not succeed themselves.[2] This list is the same as under the old constitution except that the State Superintendent of Schools has been eliminated as an elected official.

Governor

The new constitution attempts to strengthen the Governor's office by formally limiting the number of departments over which he is supposed to exercise supervision; by limiting the powers of other elective

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[1] Ibid., Article IV, Section 37.

[2] Ibid., Article IV, Section 17.

officers; and by the inclusion of a new clause which stipulates, "The heads of all executive departments shall be appointed by the governor by and with the advice and consent of the senate. All appointive officers may be removed by the governor."[1] Although the number of departments has been consolidated, some of this concentration appears on paper only. As will become evident in descriptions of departments which follow, some subordinate sections are attached to the major department in form but not in fact. In many instances the authority of the governor and the department head is diluted by the appointment of bipartisan boards for long staggered terms. These boards then select the operating head of the subdivision.

The governor's powers have been strengthened and responsibility concentrated in a negative fashion by limiting the powers and duties of the secretary of state, treasurer, and auditor. The secretary of state, "shall be custodian of such records and documents and perform such duties in relation thereto, and in relation to elections and corporations, as provided by law, but no duty shall be imposed on him by law which is not related to his duties as prescribed in this constitution."[2] With regard to the state treasurer, "no duty shall be imposed upon the State Treasurer, by law which is not related to the receipt, custody, and disbursement of public funds."[3] Duties of the auditor are limited also. "No duty shall be imposed on him by law which is not

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[1] Ibid.

[2] Ibid., Article IV, Section 14.

[3] Ibid., Article IV, Section 15.

related to the supervising and auditing of the receipt and expenditure of public funds."[1] As a consequence of these limitations the extra functions formerly performed by these offices have now been transferred to administrative agencies whose heads are appointed by the governor. These activities include: the collection of state sales, income, and inheritance taxes; registration of motor vehicles and issuance of driver's licenses; maintenance of the general accounting records of the state; pre-audit of expenditures; and the supervision of public education. This last is the result of elimination of the State Superintendent of Schools as an elective office.

The constitutional requirement for senate confirmation of governor's appointments weakens and compromises his freedom of appointment and relieves him of some responsibility. The undesirable results of this system were discussed in Chapter V. The governor not only appoints department heads; he also appoints many division and bureau heads. As has been previously stated, a large number of gubernatorial appointees does not increase the governor's personal authority or responsibility. It tends to have the opposite result.

In the matter of removal of appointive officers the governor's authority appears to be absolute because the constitution makes no qualifications or conditions.

The new constitution recognizes the importance of the budget by providing for a division of budget and comptroller in the department

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[1] Ibid., Article IV, Section 13.

of revenue.[1] It also provides that, "the governor shall, within thirty days after it convenes in each regular session, submit to the general assembly a budget for the ensuing appropriation period."[2]

The governor is given constitutional authority to control the rate at which appropriations are spent "by allotment or other means," and to reduce expenditures if revenues are less than estimated.[3] This power of the purse strings may very well be the governor's stronghold. He does not, of course, appropriate the money but the legislature is forced to act upon his budget recommendations before any other appropriation measures are considered except emergency appropriations requested by him.[4] He may also veto specific items in the appropriation bill without rejecting the whole bill. This prevents an old practice of tacking riders on to the original bill which the governor would be forced to approve for the sake of the major bill.

The constitution specifies that employees of the state's penal and eleemosynary institutions be selected on the basis of competitive examinations and gives the general assembly authority to extend the merit system to other agencies.[5] This the assembly has not done. It has, however, created a Personnel Division which acts as a central personnel agency for the Department of Public Health and Welfare, the

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[1] Ibid., Article IV, Section 22.

[2] Ibid., Article IV, Section 24.

[3] Ibid., Article IV, Section 27.

[4] Ibid.

[5] Ibid., Article IV, Section 19.

Department of Corrections and the Division of Employment Security in the Department of Labor and Industrial Relations.[1] The Personnel Division is headed by a three member board appointed by the governor for staggered six-year terms. This board selects the operating head of the division. Because of its limited scope and the long staggered terms of the executive board it is unlikely this organization is of much help to the governor or to the whole administrative organization of the state.

Within the governor's office, and not a part of any department, are the: State Highway Patrol (Superintendent); Liquor Control Department (Supervisor); State Military Forces (Adjutant General, State Service Officer, Naval Militia); Boards of Election Commissioners; and Boards of Police Commissioners.

It is not likely that this arrangement gives the governor any better control over these agencies than if they were included within major departments. The placement of these activities directly under the governor's supervision only works to "spread him thinner."

The governor is elected for a four-year term at the presidential election. He may not succeed himself.[2] He is subject to impeachment, as are all elected officials,[3] but the constitution contains no provision for recall of any such officers.

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[1] McCandless, Government, Politics and Administration in Missouri, op. cit., p. 207-208.

[2] Missouri Constitution of 1945, Article IV, Section 17.

[3] Ibid., Article VII, Section 1.

Lieutenant Governor

The lieutenant governor is elected for a four-year term at the same time as the governor and in the event the governor's post becomes vacant he completes the governor's term.[1] The constitution classes this office in the executive department. In the State of Missouri, however, he has no executive duties. His only regular duty is to preside over the state senate which meets bi-ennially. For this he is paid a salary of $7,500 a year. It would seem reasonable that the services of such an individual might be more effectively utilized--or eliminated. Since his position is largely concerned with legislation and since he is elected statewide might it not be a good idea to make the lieutenant governor the permanent chairman of a permanent interim legislative commission to conduct study and research and submit recommended legislation to the regular session of the legislature? Because of the complexity of modern state government and the short sessions of legislatures it is submitted that they have become essentially judicial in nature to the extent that they pass judgments on bills submitted by various groups and organizations through members of the assembly. The legislators themselves have become less and less the originators or producers of legislation. If this premise is only partially true it would seem reasonable that the legislature should create from itself an originating body, as nearly representative as possible of the whole public, to submit bills for consideration of the whole assembly in competition with (or in addition to) the bills submitted by private individuals, industries, associations,

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[1] Ibid., Article IV, Section 11.

and others. Heading up such an organization could be a more effective utilization of the lieutenant governor's office.

Secretary of State

Generally speaking the Secretary of State is the official keeper of records. He is the custodian of the State Seal.[1] He publishes state laws and the official manual of the state. He is the chief election officer and maintains records of elections, votes on initiative and referendum and constitutional amendments. He issues charters of incorporation and is responsible for the enforcement of state corporation laws. Under the old constitution he also supervised the registration of motor vehicles, driver's permits. This function has been transferred from this department. In an effort to prevent the prevalent practice of continual extension of the Secretary of State's powers and duties by legislative acts the new constitution provides,

> He shall keep a register of the official acts of the Governor, attest them when necessary, and when required shall lay copies thereof and all papers relative thereto, before either house of the General Assembly. He shall be custodian of such records and documents and perform such duties in relation thereto, and in relation to elections and corporations, as prescribed by law, but no duty shall be imposed on him by law which is not related to his duties as prescribed in this constitution.[2]

Attorney-General

The Attorney-General is the state's representative in criminal cases before the State Supreme Court and the United States Supreme Court and represents the state in civil cases to which it is a party. He also

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[1] Laws of Missouri, 1945, p. 1725.

[2] Missouri Constitution of 1945, Article IV, Section 14.

serves as the legal advisor for the legislature, the governor and other executive departments.

State Auditor

During the passage of time certain elected officers had enlarged the scope of their activities by legislative action. The auditor, in particular, had enlarged his sphere of activity to include items not relevant to the business of auditing.

> Before the present constitution was adopted, the Auditor was responsible for the collection of both the retail sales tax and the income tax, both of which required extensive office forces. The collection of these levies is now the responsibility of the Department of Revenue. The auditor was also required to pre-audit all proposed expenditures and to authorize such expenditures before they could be paid by the treasurer. This pre-auditing function has now been transferred to the comptroller who is appointed by the governor.[1]

The 1945 constitution does provide "payment of deposits on demand of the state treasurer authorized by warrants of the state auditor."[2] The statutes, however, provide that pre-auditing of all accounts shall be performed by the comptroller and that the auditor merely countersigns warrants after they have been drawn and approved by the comptroller.[3]

The new constitution expressly stipulates the duties of elective officers which may not be expanded by legislative statute. With reference to the auditor it states that "no duty shall be imposed on him by law which is not related to the supervising and auditing of the receipt

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[1] McCandless, op. cit., p. 178.

[2] Missouri Constitution of 1945, Article IV, Section 15.

[3] Laws of Missouri, 1945, p. 1443.

and expenditures of public funds."[1]

In an attempt to focus attention upon the auditor's office, and to separate it from the administrative officers, the auditor is elected at the mid-term election for a four-year term.[2]

The duties of the auditor, positively stated, are the establishment of systems of accounting for all public officials of the state, post-audit of the accounts of all state agencies, annual audits of the treasury, other audits as may be required by law (with the limitations noted above), and the submission of annual reports to the governor and general assembly. He is also charged with the responsibility for establishing and auditing accounting systems for political subdivisions of the state.[3]

State Treasurer

The treasurer is the custodian of state revenue. When money is collected by the Department of Revenue it is turned over to the treasurer for deposit. All money disbursed by the state is paid by checks drawn by the treasurer from warrants approved by the comptroller and countersigned by the auditor. The treasurer's duties are definitely limited by the constitution which states, ""No duty shall be imposed upon the state treasurer by law which is not related to the receipt, custody, and disbursement of state funds."[4]

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[1] Missouri Constitution of 1945, Article IV, Section 13.

[2] Ibid., Article IV, Section 17.

[3] Ibid., Article IV, Section 13.

[4] Ibid., Article IV, Section 15.

Appointive Offices

In addition to the elective offices discussed above the constitution specifically provided for five other departments--Revenue, Education, Highways, Conservation, and Agriculture and further provided that other departments, not exceeding five in number, could be established by law as needed.[1] In Section 37 of the same article the constitution instructs the General Assembly to establish a Department of Public Welfare, thus reducing to four the additional departments which could be created by the legislature. Three of these have thus far been established--they are the departments of Business and Administration, Corrections, and Labor and Industrial Relations. In summary, the executive branch of Missouri government is made up of six elective executives (this includes the Lieutenant Governor) and nine major departments.

(1) Department of Revenue

This department is administered by a single director appointed by the governor. Financial activities of the state except post-audit are concentrated in the Department of Revenue. These include: the Division of Collections which is reponsible for collection of all state taxes and other revenues; the Division of Budget and Comptroller which is responsible for budget making, maintaining the accounting records, pre-audit of state accounts, and drawing of warrants for payment by the Treasurer; the Division of Procurement which centralizes purchasing and printing contracts; the Tax Commission assesses public utility property and acts as a board of equalization; the Board of Fund Commissioners supervises

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[1] Ibid., Article IV, Section 12.

payment of interest and capital on the state's bonded indebtedness.

A genuine consolidation of tax collection, budgeting, accounting, and pre-audit functions appears to have been concentrated in this department. A centralized purchasing agency has also been integrated into the organization.

(2) Highway Department

The constitution provides, "the department of Highways shall be in charge of a highway commission."[1] The membership in this commission remains the same as under the old Centennial Road Law passed in 1921 which provided for "four members appointed by the Governor with the consent of the Senate. The terms of office of commissioners are arranged so that the term of only one commissioner expires in any one year. Not more than two members may belong to the same political party."[2] The commission appoints a Chief Engineer who is the Chief Executive of the Department. It is interesting to note that members of the commission receive $10.00 a day plus expenses for days spent on duty. Subordinate executives are appointed by the Chief Engineer with the approval of the Commission. The Commission does, however, appoint a Chief Clerk and a Chief Counsel.[3]

(3) Department of Education

Prior to 1945 the Department of Education was headed by a popularly elected State Superintendent of Schools. The new constitution, however,

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[1] Ibid., Article IV, Section 29.

[2] McCandless, op. cit., p. 231.

[3] Ibid.

provides for an eight member board which selects the operating head called the Commissioner. Board members are appointed by the governor for eight-year staggered terms. No more than four members may be of the same political party. The commissioner may be removed from office at the discretion of the board.[1]

The constitution also provides for a Board of Curators of nine members which governsthe operation of the State University. This board is also appointed by the governor.[2] Statutes have fixed the terms at six years with three members retiring every two years.

The constitution stipulates that "separate schools shall be provided for white and colored children."[3] Lincoln University was established for colored students. The University is governed by a Board of Curators chosen by the governor for six-year staggered terms.[4]

The governor also appoints five other boards for each of five other state colleges. Each Board of Regents consists of six members appointed on a bi-partisan basis for six-year staggered terms.[5]

The seven boards discussed above are ostensibly within the Department of Education. They are in reality autonomous boards, and are actually not responsible to the Department of Education. Neither are

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[1]Missouri Constitution of 1945, Article IX, Section 2.

[2]Ibid., Article IX, Section 9.

[3]Ibid., Article IX, Section 1.

[4]McCandless, op. cit., p. 218.

[5]Ibid., p. 218-219.

they actually responsible to the governor because of bi-partisan and locality requirements and long staggered terms.

A Division of Registration and Examination has been included within the Department of Education. Within this division are fifteen boards whose duties are to examine and license persons desiring to practice certain trades and professions within the state. These boards are independent and are not responsible to the Board of Education or the Commissioner. Their inclusion within the Department of Education can be accounted for only by the constitutional mandate that requires all administrative agencies to be included within one of the major departments.

Members of all examining boards are appointed by the governor with consent of the senate. Seven of these fifteen boards have terms exceeding the governor's term in length. Terms of thirteen boards are staggered. It is interesting to note that the Board of Chiropody and the Board of Osteopathic Examination must be bi-partisan.[1] As is evident, these examining boards are not responsible to the governor or to the Department of Education. As in the State of Georgia, they are independent organizations and are responsible to no one except their trade or professional organization.

The State Library

In compliance with the constitutional mandate regarding the abolition of separate agencies in government the general assembly abolished

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[1]McCandless, op. cit., p. 219-221.

the old Missouri Library Commission in 1945 and made the State Library a division of the Department of Education.[1] In this instance the department maintains only partial control. The division is headed by a State Librarian appointed by the State Board of Education with the approval of the State Library Advisory Board. The Library Advisory Board is made up of two members appointed by the governor for eight-year terms, the President of the State Board of Education, the Commissioner of Education, and the Librarian of the State University. This arrangement is rather unusual in that the appointment is made by one board and ratified by a second board--and further that the second board exercises supervision over the appointee.

Division of Public Schools

This division appears to be the primary operational division actually administered by the Board of Education and the Commissioner. Its duties include the certification of teachers, the apportionment of state financial aid to local school districts, the development of courses of study for elementary and high schools, the administration of special schools for handicapped children, and the inspection, accrediting, and classification of schools of the state.[2]

Division of Vocational Education

This division appears to be primarily concerned with examination of

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[1] Ibid., p. 221.

[2] Ibid., p. 214-217.

schools offering courses in vocational education (trades, industrial, on the job, home economics, and others) and the distribution of federal aid money to qualified institutions.

It would seem that the primary accomplishment of the new constitution in the Department of Education was the removal of the State Superintendent of Schools from direct popular election. The actual functions of the department remain about the same. The placement of the various boards administering the universities and colleges within the department are paper consolidations only. So too with the Division of Registration and Examination and to a lesser degree the State Library Division.

(4) Department of Conservation

> The control management, restoration, conservation and regulation of the bird, fish, game, forestry, and all wildlife resources of the state . . . shall be vested in a conservation commission consisting of four members appointed by the governor, not more than two of whom shall be of the same party.[1]

Members are to be appointed for six-year terms. Terms of two members are concurrent; the other two are staggered. Members receive no salary except expense money. The Commission appoints a director who is the executive head.[2]

The department is divided in these divisions:

Division of Fish and Game

This division is concerned with the conservation and replenishment

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[1] Missouri Constitution of 1945, Article IV, Section 40.

[2] Ibid., Article IV, Sections 40 and 42.

of fish and game and enforcement of fish and game regulations. The commission promulgates the fish and game regulations, fixes "seasons," bag limits, license fees, etc.

Forestry Division

This division is concerned with the protection and replenishment of forests. It maintains a nursery and a fire-control service.

Fiscal Division

The budgeting and accounting work of the department as well as the money handling (including money from hunting and fishing permits) is administered by this division.

The State Park Board

This is an ex-officio board consisting of the governor, the attorney-general and the director of the Conservation Department. This board selects a Chief of Parks who operates the state's twenty-three parks.

The existence of this board seems unnecessary. Very likely the director of the Conservation Department chooses the Chief of Parks and supervises his activities. If he does not--if the governor or the attorney-general actively participate in the operation of state parks, it is likely they are more of a hindrance than a help.

(5) Department of Agriculture

The constitution instructs the General Assembly to "provide the department of Agriculture with funds adequate for administration of its functions; and shall enact such laws and provide such other appropriations as may be required to protect, foster, and develop the agricultural

resources of the state."[1] The constitution did not stipulate what type of organization was to prevail. By executive order in 1945 the governor made the old department of Agriculture one of the major departments. The governor appoints a Commissioner of Agriculture to head the department for a four-year concurrent term with that of the governor.

The work of the department is broken down into functional divisions. A large part of the department's work is concerned with policing, the establishment of standards, and inspections. Those divisions which might be considered primarily policing organizations are: the Division of Dairy, Division of Feed, Division of Locker Plants, Division of Veterinarian, Division of Weights and Measures, and the Grain and Warehouse Department.

In the department are also included the Division of Entomology, Division of Crop-Reporting Services, Division of Livestock, and the Division of the State Fair.

A State Fruit Experiment Station, State Poultry Experiment Station, and a Soil Districts Commission have been placed under the wing of the Department of Education.

This sample may serve to illustrate the very real questions which sometimes arise as to just where an activity belongs in the administrative structure. The above agencies have as their purpose the improvement of select phases of the state's agricultural production. Possibly they might better have been included within the Agricultural Department. The same personnel could have been utilized. Such an arrangement,

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[1] Ibid., Article IV, Section 35.

however, might be considered an encroachment upon the field of education which, if carried to its ultimate, might find the Agricultural Department operating the Agricultural College. The discussion could be continued indefinitely. The point is that there are many instances where a genuine doubt exists as to just where an agency belongs.

(6) Department of Public Health and Welfare

The constitution instructed the General Assembly to establish a Department of Public Health and Welfare. It did not stipulate how such a department was to be organized.[1] The assembly has provided that the department shall have a single director appointed by the governor to serve a four-year term concurrent with the term of the governor.[2] The work of the department has been divided into three major divisions each headed by a director appointed by the governor rather than the department director. According to Estal E. Sparlin, no other state places all welfare, public health, and eleemosynary institutions in one department. He further remarks,

> There could have been a less-unhappy union: The doctors don't like the welfare people because of their public-medicine leanings and the stigma which will be placed on health by being associated with "relief" functions and the welfare people look askance at the doctors.[3]

This illustration again points up the difficulty of effecting a rational and workable departmental consolidation.

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[1] Ibid., Article IV, Section 37.

[2] McCandless, op. cit., p. 181.

[3] Estal E. Sparlin, op. cit., p. 73.

The Division of Health

The division includes the bureaus of Business Administration, Public Health Nursing, Public Health Education, Hospital Survey and Planning Service, Epedemiology, Missouri Trachoma Hospital, Missouri State Sanitarium, Ellis Fischel Cancer Hospital, Child Hygiene, Tuberculosis Control, Dental Health, Venereal Disease Control, Nutritional Service, Narcotics, and Vital Statistics. In addition, the division operates a general hospital, a Section of Laboratories, and a Section of Enviormental Sanitation.

Division of Mental Diseases

This division operates four hospitals for the care of mentally diseased persons and also operates a school for feeble-minded persons and epileptics.

Division of Welfare

The Division of Welfare is responsible for administering state old-age assistance, aid to dependent children, general relief, and aid to the blind. Each of these services is carried out in cooperation with federal agencies.

(7) Department of Labor and Industrial Relations

The Department of Labor and Industrial Relations is one of the departments not provided for in the new constitution. It was created by the sixty-third General Assembly in 1945.[1] Functions previously performed by the old Unemployment Compensation Commission and Department of

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[1]McCandless, op. cit., p. 191.

Labor and Industrial Relations have been transferred to this new department. The department is administered by a full-time industrial commission of three members appointed by the governor for six-year staggered terms. Appointments are to be on the following basis: one member representative of employers, one representative of employees, and one attorney who is supposed to represent the interests of the general public. The commission passes on administrative regulations of the subordinate divisions and acts as a quasi-judicial board in the case of disputes arising from acts or decisions of the divisions. The department is comprised of the Division of Workmen's Compensation, the Division of Employment Security, the Division of Industrial Inspection, and the Division of Mine Inspection.

Division of Workmen's Compensation

This division is headed by a director appointed by the governor rather than by the department director.[1] The primary function of the division is to administer the Missouri Workmen's Compensation Law which is designed to provide compensation for personal injuries or death of employees sustained during, or as a result of, their employment. All rules or regulations necessary for proper administration of the law are made by the Industrial Commission (likely on recommendations from the division). In this sense the commission acts in a quasi-legislative function.

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[1] Ibid., p. 192.

Division of Employment Security

This division is headed by a director appointed by the governor. Functions of the division are divided into two sections, one administering Unemployment Compensation and the other administers a State Employment Service. The statutes also provide for a seven member Governor's Advisory Council on Unemployment Compensation.[1]

Division of Industrial Inspection

The Division of Industrial Inspection is headed by a Director appointed by the governor. This division is concerned with the preparation of statistics concerning labor and also conducts inspections of industrial plants for conformation to statutory requirements concerned with safety and working conditions.

Division of Mine Inspection

This division replaces the old Bureau of Mines. It is administered by a director appointed by the governor. The division inspects mines to insure compliance with the mine safety laws of the state.

State Mediation Board

A State Mediation Board was created by the sixty-fourth General Assembly to mediate labor disputes in Public Utilities.[2] The board consists of five members appointed by the governor--two from labor, two from employers associations and a fifth person (the chairman) who is

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[1] Ibid., p. 194.

[2] Ibid., p. 196.

neither an employer or employee. The chairman is a full-time official. In jurisdictional labor disputes the Industrial Commission determines which union shall be officially designated as the official collective bargaining association.

This department may be a good example of dispersion of authority in a "consolidated" department--although the Department of Education is the best example. First, the department is headed by a three-member commission appointed by the governor with the approval of the senate for six-year staggered terms. This, alone, is enough to relieve the governor of responsibility. But neither can the commission be held responsible because the four division directors are appointed by the governor. The governor also appoints the Advisory Council on Unemployment Compensation and the State Mediation Board.

(8) Department of Business and Administration

This department houses those regulatory agencies which are concerned with enterprises which directly affect the public interest such as banks, insurance companies, savings and loan companies, and public utility companies. The department has also become something of a catch-all for unrelated activities in that it also encompasses the State Personnel Division, the Division of Resources and Development, and the Division of Geological Survey and Water Development.

The principle of departmentalization by function has been sadly abused in the organization of this department. This misassignment of agencies may be caused in part by the constitutional limitation on the number of departments. The question may be asked, for instance, in what department should the State Personnel Division be placed? Some

states have created a separate personnel department but in Missouri the sphere of activity of this unit is too small to warrant a separate department. Probably it would be better to place the personnel agency in the governor's office. But, in so doing we clutter up an already overcrowded governor's office.

The placement of these unrelated activities in one department has accomplished no real consolidation nor has it decreased the number of executives reporting directly to the governor.

The department is ostensibly headed by a director appointed by the governor for a four-year term concurrent with that of the governor. The director is in actuality only the office manager for the department in that he has no part in policy making and administration nor does he exercise any appointive or supervisory authority over division heads. His duties consist primarily of budgeting, payroll accounting, purchasing, and others.

Included within the Department of Business and Administration are: the Public Service Commission, Division of Insurance, Division of Finance, Division of Saving and Loan Supervision, Division of Personnel Administration, Division of Resources and Development, and the Division of Geological Survey and Water Resources.

The divisions of Public Service, Insurance, Finance, and Saving and Loan Supervision are regulatory agencies. The Division of Finance is the bank examining agency. The Public Service Commission regulates public utility companies. It is composed of a five member full-time board appointed by the governor for staggered six-year terms.

The divisions of Insurance, Finance, and Saving and Loan Supervision are headed by single executives appointed by the governor.

The Personnel Division was originally created to comply with requirements of the Federal Social Security Act which extended financial aid to the states for certain welfare services. The new constitution requires that employees in state penal and eleemosynary institutions be selected on the basis of competitive examinations and it authorizes the assembly to extend the merit system to other state agencies.[1]

The Division of Resources and Development is a promotional organization. It is headed by a ten-member bi-partisan board appointed by the governor for staggered six-year terms.

The Division of Geological Survey, as the name implies, is concerned with geological surveys and topographical mapping. The director is appointed by the governor.

(9) Department of Corrections

This department is composed of three divisions and is administered by a director chosen by the governor to serve at his pleasure. In actuality the director exercises direct control only over the division of penal institutions which is the state penitentiary.

A second division within this department is called the Division of Educational Institutions. This division includes corrective schools for delinquent minors. It is headed by a six member board appointed by the governor for staggered six-year terms. The two major parties must be equally represented on this board. The board appoints the administrative

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[1]Missouri Constitution of 1945, Article IV, Section 19.

supervisor.

A Board of Probation and Parole heads the third division. The board consists of three full-time members who are appointed by the governor for staggered six-year terms. Although this division is included within the Department of Correction the statutes specifically provide that it shall not be subject to orders of the department director.[1]

The organization of this department may be an illustration of some of the "departmentalization" achieved by the new constitution. This was, of course, one of the additional departments authorized. As is evident from the above description it is, in reality, three separate departments. Of these departments, the governor actually controls only the Division of Penal Institutions. Although he appoints the board members of the other two divisions he does so with senate confirmation and for long and staggered terms. In the case of the Division of Educational Institutions his appointing power is further limited because the board must be bi-partisan.

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One of the significant features of the new constitution was its recognition of the importance of the executive or administrative department of the state's government. Most earlier constitutions have casually alluded to executive functions in passing or have thrown them in with the legislature or have made provisions only for elective officers.

The 1945 constitution attempted to outline a coherent and rational state administration. It limited the number of departments to fifteen or

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[1]McCandless, op. cit., p. 247.

sixteen with the intent that similar or related functions be grouped within each of these departments. This departmentalization by function has been only partially achieved. Many agencies have been included in a department on paper only. Some of them are guaranteed independence by the constitution itself or by the statutes. Notable examples include the Division of Educational Institutions within the Department of Corrections; the Tax Commission in the Department of Revenue; the various boards which govern the state's colleges and universities, and the professional examining boards within the Department of Education.

Other bureaus and agencies have retained a measure of independence by means of gubernatorial appointment of subordinate department heads, by senatorial confirmation of appointments, and by the use of executive operating boards with long staggered terms.

Departmentalization of agencies by function into a small number of units directly responsible to the governor appears to have been the intent of the framers. The implementing statutes and executive orders have, to some extent, weakened and nullified this intent. It should be noted that a constitution is, or should be, only a framework of basic laws. The statutes and executive orders give meaning to those basic laws. If a legislature desires to act contrary to the constitution, it can, in many cases, do so while still paying lip service to that constitution. When the new Missouri constitution specified that all administrative agencies be consolidated into a limited number of departments according to function, the legislature enacted the necessary statutes but it did so in such a manner as to render ineffective and inoperative much of this consolidation.

The new constitution substantially increased the governor's authority in a negative fashion by limiting the authority and duties of the secretary of state, treasurer, and auditor and by giving him blanket dismissal powers over all appointive officers. His appointive powers are still weak because all appointments require senate confirmation and many are for long and staggered terms.

The governor's own term in office is restricted in that he may not succeed himself. This is considered by most students of public administration to be an unnecessary and undesirable limitation.

The governor's greatest positive control over the administration as a whole probably lies in the excellent budget plan outlined in the constitution. He not only prepares the budget but he may control the rate of expenditure of appropriations. He may reduce appropriations for the whole administration, if tax revenues require it, or he can reduce amounts available to a specific agency. The possibilities of this last are numerous, to say the least. To aid the governor in budgetary matters the constitution provides for a permanent budget staff.

The governor's fiscal control is further strengthened by a constitutional provision which allows him to veto sections of the appropriation bill without rejecting the whole bill.

The inclusion of a section in the constitution authorizing a state personnel merit system was a genuine achievement in Missouri because the state has been traditionally a strong supporter of the spoils system. Although its use is currently restricted to a few departments, the constitution allows for expansion.

A centralized purchasing agency is included within the Department of Revenue.

Too many administrative agencies are plural headed. A recent authority states that there are still fifty-six boards and commissions in operation.[1]

The constitution provides for an independent auditor who is elected in an off year and it specifically limits his duties to post audit.

We may conclude that, in general, the new constitution set up many sound and logical provisions of administrative organization but that the implementing statutes have somewhat distorted the intent of the constitution and have hampered the potential effectiveness of the administration.

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[1] McCandless, "Administrative Reorganization in Missouri," op. cit., p. 343.

DIAGRAM OF MISSOURI'S GOVERNMENT UNDER THE NEW CONSTITUTION

AS ADOPTED BY THE PEOPLE ON FEBRUARY 27, 1945; EFFECTIVE MARCH 30, 1945

PREPARED BY SAM R. HALEY OF THE COMMITTEE ON LEGISLATIVE RESEARCH AND V. D. NEFF OF THE DEPARTMENT OF BUSINESS AND ADMINISTRATION, DIVISION OF RESOURCES AND DEVELOPMENT

THE VOTERS OF MISSOURI

- **GENERAL ASSEMBLY** — House of Representatives; Senate
  - Committee on Legislative Research
  - Commission on Interstate Cooperation
- **STATE AUDITOR** — *Auditing, Accounting Systems, County Audits and Budgets*
- **STATE TREASURER** — *Custody of State Funds*
- **GOVERNOR** — Appointment of Board of Election Commissioners: St. Louis City, St. Louis Co., Kansas City, Jackson Co.; Board of Police Commissioners: St. Joseph, Kansas City, St. Louis
  - State Highway Patrol
  - Dept. of Liquor Control
  - Adjt. Generals Dept.
  - State Service Officer
  - Mo. Military Forces
  - Mo. Naval Forces
- **LIEUTENANT GOVERNOR** — *President of the Senate*
- **ATTORNEY GENERAL** — *Department of Law*
- **SECRETARY OF STATE** — *Corporations, Elections and Custody of Official Records*
- **SUPREME COURT** — *Judicial Conference*
  - Board of Law Examiners
  - Library
  - Judicial Commission

DEPARTMENT OF REVENUE (Director of Revenue)

- Division of Collection (Collector of Revenue)
  - Motor Vehicle Driver's License
- State Intangible and Income Taxes
- Inheritance Tax
- Motor Vehicle Registration Fees
- Sales Tax
- Motor Vehicle Fuel Tax
- Other Taxes, Licenses and Fees
- Division of Budget and Comptroller (Comptroller)
- Division of Procurement (State Purchasing Agent)
- Division of Fund Commissioners (Board of Fund Commissioners)
- Division of Public Buildings (Board of Public Buildings; Public Buildings)
- State Tax Commission

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Industrial Commission)

- Division of Workmen's Compensation (Director)
- Division of Employment Security (Director) (Advisory Council)
  - Missouri State Employment Service Section
  - Unemployment Compensation Section
- Division of Industrial Inspection (Director)
- Division of Mine Inspection (Director)
- State Board of Mediation (Chairman)

DEPARTMENT OF CORRECTIONS (Director)

- Bureau of Finance
- Bureau of Personnel
- Bureau of Research and Statistics
- Division of Penal Institutions
  - State Penitentiary (Warden; Classification Committee)
  - Women's Branch State Penitentiary (Superintendent; Classification Committee)
  - Intermediate Reformatory (Superintendent; Classification Committee)
- Division of Educational Institutions
- State Board of Training Schools (Director)
  - Training School for Boys (Superintendent)
  - Training School for Girls (Superintendent)
  - Training School for Negro Girls (Superintendent)
- Board of Probation and Parole (Secretary)

DEPARTMENT OF CONSERVATION (Conservation Commission) (Director)

- Park Board
- Moses Austin Memorial Commission

DEPARTMENT OF EDUCATION

- Division of Public Schools
- State Board of Education
- University of Missouri (Columbia)
- Missouri School of Mines (Rolla)
- Division of Registration and Examination
  - State Board of Accountancy
- State Commissioner of Education
  - Administration (Asst. Comm. of Ed.)
    - School Finance; School Building Services; Research and Statistical Information; Information and Publication; Certification and Teacher Education; Teacher Examination and Textbook Requisitions; Special Services and Surplus Property; District Reorganization; School Lunches
  - Instruction and Planning (Asst. Comm. of Ed.)
    - Special Education
      - Missouri School for the Blind (Sup. of Blind Child.)
      - Missouri School for the Deaf (Sup. of Deaf Child.)
    - School Supervision; Curriculum; Negro Education; Industrial Arts; Fine Arts; Health and Physical Education
  - Vocational Education (Asst. Comm. of Ed.)
    - Vocational Agriculture; Vocational Home Economics; Distributive Education; Veteran's Education; Trades and Industry; Guidance Services
    - Vocational Rehabilitation
  - Lincoln University (Jefferson City)
  - Northeast Missouri State Teachers College (Kirksville)
  - Central Missouri State College (Warrensburg)
  - Southeast Missouri State College (Cape Girardeau)
  - Southwest Missouri State College (Springfield)
  - Northwest Missouri State Teachers College (Maryville)
  - State Soil Districts Commission
  - Missouri State Anatomical Board
  - Board of Visitors University of Missouri
  - State Historical Society
  - State Poultry Experiment Station
  - State Fruit Experiment Station
  - State Board of Poultry
  - Missouri State Poultry Association
  - State Library Advisory Board
  - State Librarian
    - Public Document Service
    - Public Library and Adult Education Service
    - School Library Service
    - Institutional Library Service

DEPARTMENT OF EDUCATION (continued)

- State Board of Registration for Architects and Professional Engineers
- State Board of Barber Examiners
- State Board of Chiropody
- State Board of Chiropractic Examiners
- State Board of Cosmetology
- Missouri Dental Board
- State Board of Embalming
- State Board of Nurse Examiners
- State Board of Optometry
- State Board of Osteopathic Registration and Examination
- Board of Pharmacy
- Missouri Real Estate Commission
- Veterinary Examining Board
- State Board of Medical Examiners

STATE HIGHWAY DEPARTMENT (State Highway Commission)

DEPARTMENT OF PUBLIC HEALTH AND WELFARE (Director)

- Division of Health (Director)
  - Section of Local Health and Hospital Administration
- Division of Mental Diseases (Director)
  - State Hospital No. 1 (Fulton)
- Division of Welfare (Director)
  - Programs: Old Age Assistance; Aid to Dependent Children; General Relief; Child Welfare Services; Blind Services; Services to the Blind
- Section of Statistics
  - General Births, Deaths, Marriages and Divorces
- Section of Environmental Sanitation
  - Public Water Supplies; Waste Disposal and Stream Pollution; Community Sanitation; Malaria Control; Industrial Hygiene; Food and Drug
- Section of Preventive Medicine
  - Maternal and Child Health; Tuberculosis; Dentistry; Venereal Disease; Nutrition; Cancer Control; Mental Hygiene
- Section of Laboratories
  - Bacteriology; Chemistry; Pathology; Serology; Venereology
- State Sanitarium (Mt. Vernon); Cancer Hospital and Cancer Commission; Trachoma Hospital (Rolla); General Hospital (Nevada); Personnel; Nursing; Business Administration; Public Health Education; Epidemiology; Hospital Survey and Construction; City, County and District Health Services
- State Hospital No. 3 (St. Joseph); State Hospital No. 3 (Nevada); State Hospital No. 4 (Farmington); Missouri State School No. 1 (Marshall); Missouri State School No. 2 (Carrollton); St. Louis State Hospital; St. Louis State Training School
- Confederate Soldiers' Home (Higginsville); Board of Trustees Federal Soldiers' Home

DEPARTMENT OF AGRICULTURE

- Commissioner
  - State Veterinarian
  - State Entomologist
- Missouri State Fair
- Weights and Measures
- Seed Division; Feed Division; Dairy Division; Marketing Division; Egg Inspection; Farm Statistics; Commission Merchants Law; Apple Merchandising Law; Frozen Food Locker Plant Law; Ice Cream Law
- Grain Warehouse Department (Commissioner)

DEPARTMENT OF BUSINESS AND ADMINISTRATION (Director)

- Public Service Commission
- Division of Insurance
- Division of Finance
- Division of Savings and Loan Supervision
- Division of Athletics
- Division of Resources and Development
- Division of Geological Survey and Water Resources
- Division of Personnel (Personnel Director)

New Jersey is a great research laboratory. It is continually engaged in basic investigations seeking new methods for improved public service in the best interest of its citizens.--Alfred E. Driscoll, Governor of New Jersey

CHAPTER VIII

CONSTITUTION OF NEW JERSEY

New Jersey's new constitution was accepted by the voters on November 4, 1947, and went into effect January 1, 1948. Constitutional revision of the old (1844) constitution had been an issue for some time in New Jersey. One of the stumbling blocks was the fear of legislative reapportionment in the small, sparsely populated counties.

The New Jersey Senate is composed of twenty-one members--one from each county regardless of the population of that county. Consequently, a voter in the smallest county has twenty-nine times the weight of a voter in the largest county.[1] It is possible for the Senate to be controlled by eleven small counties whose total population is less than that of the one largest (Essex) county.[2] A constitutional convention might disturb this situation so all previous proposals for a convention were killed in the Senate. Between 1881 and 1913, the Assembly passed five constitutional convention bills only to see them defeated or tabled in the Senate.[3] The last of these bills, incidentally, was sponsored by Governor Woodrow Wilson.

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[1]John E. Bebout, "New Task for a Legislature," National Municipal Review, January, 1944, p. 17.

[2]Ibid., p. 17.

[3]Ibid., p. 18.

Pressure for a new constitution continued however, and finally, the legislature passed a bill to enable the people at the 1943 general election to authorize the 1944 legislature to act as a convention to revise the constitution. This bill carried senate amendments forbidding any change in the system of legislative representation. The bill was referred to the people and approved. However, the revised constitution was rejected, when brought to a vote, primarily because of the opposition of the Hague machine in Jersey City.[1]

Advocates of revision did not give up. They continued to work for a new constitution with the result that the 1947 legislature passed a bill again enabling the people to authorize a constitutional convention. Again the bill carried a prohibition against changing legislative apportionment. It provided

> . . . the convention shall in no event agree upon, propose or submit to vote of the people, either separately or included among other provisions, any provision for change in the present territorial limits of the respective counties, or any provision for legislative representation other than provision for a Senate composed of one Senator from each county and a General Assembly composed of not more than sixty members apportioned among the counties according to population so that each county shall at all times be entitled to at least one member. . . .[2]

The bill also provided the ballot statement: "for or against such a constitutional convention, instructed to retain the present territorial limits of the respective counties and the present basis of representation

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[1]Cosnell and Holland, op. cit., p. 156-157.

[2]Laws of New Jersey 1947, p. 25.

in the legislature."[1]

The bill also provided for a separate convention rather than the previous system of using the legislature as the convention. The bill was referred to the people in June, 1947, and was accepted. The question was submitted on a separate ballot but on this same ballot the voters were asked to elect delegates to the convention. This technique speeded up the revision process and effected some economies in that both the question and the election of delegates was resolved in one election rather than two. It also is likely that the opportunity to vote for delegates may have acted as a psychological lever to cause voters to approve the question of calling the convention.

The delegates were elected on a county basis. Each county was allowed the same number of delegates as it had senators and representatives in the legislature.[2] Convention membership was therefore in the same ratio as legislative membership so the smaller counties, who enjoyed disproportionate strength in the legislature, carried over this same advantage into the convention. The convention was a unicameral body, however, so the proportionate power of the small counties was somewhat weakened. Thus another method of satisfying rural minorities was worked out.

It should be noted that such rural minorities do not necessarily stand in the way of constitutional revision because of malice,

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[1]Senate Bill No. 100, State of New Jersey, quoted in Bennett M. Rich, "A New Constitution for New Jersey," American Political Science Review, December, 1947, p. 1126.

[2]Laws of New Jersey 1947, p. 26.

obstinacy, or backward political philosophies. These minorities have a very real problem because their needs may be different from those of the urban majority. This is particularly true in such states as Oregon, Washington, and Montana where one section of the state is primarily interested in industry and commerce and the other section in farming and stock raising.

The convention met from June 12 to September 10, 1947. Dr. Robert C. Clothier, President of Rutgers University, and a delegate to the convention, was elected president. The membership was divided into nine committees. Extensive public hearings were held before the committees. Each delegate was presented with research material prepared by the Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention at the opening day of the session.[1] The new constitution drafted by this convention was adopted by a vote of 653,096 to 184,632.[2]

> New Jersey's original constitution, dating to the year 1776, was conceived in the fear of executive power and dedicated to the proposition that legislatures may be safely trusted.[3]

By 1844, the state decided this trust may have been misplaced. In the new constitution of that year it deprived the legislature of some of its powers but it did not transfer much of that power to other departments. It did not achieve a balance of power but rather a balance of

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[1]Bennet M. Rich, "A New Constitution for New Jersey," American Political Science Review, December, 1947, p. 1126-1127.

[2]Ibid., p. 1126.

[3]Lipson, op. cit., p. 12.

weakness. As was stated at that time, "The constitution of 1844 departs therefore from the principle of legislative responsibility for the general conduct of the government, which was implicit in the constitution of 1776, without making provision for any other system of responsibility."[1]

If this was true in 1844 it became a more obvious truth as the state government was called upon for more and additional services.

Under the 1844 constitution the governor was elected triennially and could not serve a second term. Senators were also elected for three-year terms while members of the assembly (House of Representatives) were elected annually. The short term and the prohibition against re-election, plus other impediments to centralized authority, made the governor's post almost an honorary office. His veto power could be overridden by a majority of the elected legislators of both houses. This meant he had no veto power at all except in instances where the vote was close enough so he might have an opportunity to persuade enough legislators to change their minds and prevent a second majority vote. So this veto provision was of little value to the governor except as a "stalling" device to gain time for logrolling or other persuasive tactics.

The new constitution lengthens the governor's term to four years. He may serve an indefinite number of terms but not more than two in succession.[2] This provision is designed to give the governor time to

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[1] Proceedings of New Jersey Constitutional Convention of 1844, quoted in Lipson, Ibid., from Abram S. Freedman, The Governor--Constitutional Power of Investigation and Removal of Officers, a report to the Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention of 1947.

[2] New Jersey Constitution of 1947, Article V, Section 1.

acquaint himself with his duties, to formulate policies and carry them out, and to receive the approval, or otherwise, of the voters when he runs for re-election. It also gives the voters the opportunity to retain a superior governor for more than one term. The limit of two consecutive terms is an effort to prevent the formation of a political machine that might continue indefinitely. New Jersey has had considerable experience with political machines so this limitation is not surprising.

The governor is the only official elected statewide. Gubernatorial elections are held at the presidential mid-term. By this provision the convention hoped to divorce presidential personalities and issues from gubernatorial elections.

Under the new constitution a two-thirds vote of both houses is necessary to override the governor's veto.[1] This provision gives the governor considerably more legislative power than existed under the old majority vote of the 1844 constitution.

The governor may veto specific items in the appropriation bill.[2] This provision was carried over from the old constitution.

The 1947 constitution eliminates the pocket veto. If the legislature is still in session the governor must either sign or veto a bill within ten days. If the legislature has adjourned, he has forty-five days in which to consider bills. During that time he must either sign or veto each bill which is thus pending. But if he vetoes one or more

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[1] Ibid., Article V, Section 1.

[2] Ibid.

bills he must re-convene the legislature in special session to reconsider the vetoed bill.[1] This procedure forces the governor to make a public stand for or against each bill. This is an example of pin-pointing responsibility. The governor can no longer simply disregard bills for political or other reasons.

Under the 1844 constitution the treasurer and comptroller were elected by the legislature for three-year terms. They are now appointed by the governor, with senate confirmation, to serve at his pleasure.[2] Although these officials are concerned with state finances and accounts, theirs is a purely administrative function and rightfully belongs under the governor's authority

The 1947 constitution provides that the governor shall appoint the chief justice and associate justices of the Supreme Court, judges of the Superior Court, judges of the County Courts and judges of the inferior courts with jurisdiction extending to more than one municipality. These appointments are made with the consent of the senate. Judges are appointed for seven-year terms. If reappointed they hold office for good behavior.[3] A consideration of the merits and deficiencies of judicial appointment and life tenure is outside the scope of this discussion. But certainly it should be pointed out that this provision gives the governor and the twenty-one members of the Senate an

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[1]Bureau of Government Research, Handbook of New Jersey State Government (New Brunswick, New Jersey: Rutgers University Press, 1952), p. 4-5.

[2]Ibid., p. 83.

[3]New Jersey Constitution of 1947, Article VI, Section 6.

opportunity for horse trading on very vital, important, and long lasting appointments. This same condition exists with regard to all other appointments but in many administrative posts the stakes are not as high nor is lifetime tenure involved.

Since the governor is the only official elected state-wide his appointing power is tremendous. In addition to the specific appointive powers granted the governor in the new constitution it further specifies, "The governor shall appoint, with the advice and consent of the senate, all officers for whose election or appointment provision is not made in this constitution."[1] This would appear to cover all eventualities. More detailed examination in succeeding pages will indicate, however, that this appointive power is not as strong as it appears at first glance.

New Jersey's constitution makes no provision for a lieutenant governor. It does, however, definitely outline succession to the governor's office in the event it is vacated. It also provides that, after a two-thirds vote of each house, the Supreme Court may declare the office vacant if, because of illness, disability, or other reasons, the governor does not perform his duties.[2]

Offhand, this would appear to be a sensible and necessary precautionary measure. There have been several instances in the history of the states when the governor has been obviously incapable of adequately performing his duties because of physical disabilities but has refused to relinquish his post. The governor's position is too important to be

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[1] Ibid., Article V, Section 1.

[2] Ibid., Article V, Section 1.

jeopardized by an ailing or disabled governor who refuses to abdicate. This may be particularly true in New Jersey where so much responsibility is concentrated in the governor.

As is customary, the new constitution makes provisions for impeachment of the governor and other state officials.[1]

The principle of an auditor, independent of the administration, whose duties are confined to post-audit is carried out in the new constitution. The auditor is appointed by the senate and the general assembly, in joint meeting, for a term of five years. His duties are confined to post-audits of the transactions and accounts of all state departments and agencies.[2] His audit also extends to accounts of state monies handled by county officials. He is required to report to the legislature and to the governor the findings of any special condition disclosed by his investigations.

New Jersey had in 1947 the common multi-headed, overlapping, decentralized form of state administration. Many of its ninety-six agencies were virtually autonomous. "More than half were headed by boards, the terms of whose members generally overlapped and lasted longer than the term of the governor. Coordination of policies could not be enforced by the threat of removal since removal had to be based upon statute which frequently neglected to provide it."[3] Governor Driscoll declared, "the

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[1] Ibid., Article VII, Section 3.

[2] Ibid., Article VII, Section 1.

[3] Leslie Lipson, "The Executive Branch in New State Constitutions," Public Administration Review, Winter, 1949, p. 16.

Governor of this state is not the sole Chief Executive of the State. He is just one of the chief executives of the State, because there are many heads of departments, appointed by boards, councils and former Governors, who exercise authority during the Governor's term, and frequently exercise it entirely apart from the authority exercised by the Governor."[1]

The new constitution attempted drastic changes in this situation. Because of its lucidity and comprehensiveness the administrative article of the New Jersey Constitution is considered to be worthy of inclusion:

CONSTITUTION OF THE STATE OF NEW JERSEY

ARTICLE V. SECTION 4

1. All executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualifications of their successors, except as herein otherwise provided with respect to the Secretary of State and the Attorney General.

3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.

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[1]Address of Governor Alfred E. Driscoll to Newark Kiwanis, May 15, 1947; quoted in Lipson, Ibid., p. 16.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officers or employees to submit to him a written statement or statements, under oath, of such information as he may call for relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearings the Governor may remove any such officer or employee for cause. Such officer or employee shall have the right of judicial review, on both the law and the facts, in such manner as shall be provided by law.

6. No rule or regulation made by any department, officer, agency or authority of this State, except such as relates to the organization of internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

The framers of this section plainly intended to concentrate authority and responsibility in the governor and to provide clear and direct lines of authority running from the governor to individual departments. They plainly intended that state administration should be integrated by function into a few departments headed by single executives. But they included in paragraph two the words, "unless otherwise provided by law," with regard to single executives. The implementation of this phrase acted to weaken the intent and purpose of the whole reorganization plan. In addition to the above loophole, the constitution specifically

delegated the reorganization task to the legislature.[1] In accomplishing this reorganization the legislature created five departments which are plural headed. It also created, or continued in office, numerous boards and commissions supposedly subordinate to major department heads. The objection to this legislative elaboration is not simply an objection to multiple-headed administration. These boards are usually composed of members appointed for long staggered terms. They thus become independent. If they become independent the principles of concentration of authority and responsibility, clear lines of authority, functional integration, and short span of control are lost.

Article V, Section 4, paragraph 4, of the 1947 constitution specifies that in those instances where a department is headed by a board, the board may appoint an administrative executive subject to the governor's approval. The efficacy of this arrangement is open to question. In the departments which are presently headed by boards or commissions, terms of office are longer than is the governor's. Unless the governor serves two successive terms he will ordinarily appoint only a minority of the membership of these boards. Also, since all appointments are subject to senate confirmation, these boards become virtually independent of the governor. In the event of a disagreement between the board and the governor--to whom does the appointed executive owe his loyalty? To whom is he responsible? The governor may remove him but only after notice and a hearing. Is it not likely that a politically discreet governor, when faced with such an arrangement, might be inclined to appoint the board

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[1] New Jersey Constitution of 1947, Article XI, Section 3.

members selected by the most influential senators, approve without question the operating executive selected by the board, and generally wash his hands of the whole department?

In his remarks to the opening session of the 1948 legislature, which was charged with reorganizing the state's administrative machinery, Governor Driscoll said, "No mere pro forma reshuffling or regrouping of state agencies will satisfy this constitutional command." Apparently the legislature was not as keenly sensitive to this "constitutional command" as was Governor Driscoll. Nevertheless, C. Wesley Armstrong, Chairman of the Joint Legislative Committee on State Government Reorganization, states that the committee attempted to follow these principles of state organization:

1. To integrate all administrative activities of the state along functional lines within a few well balanced principal departments;

2. To fix direct lines of responsibility for administration of these functions and activities, from the governor through the department heads to the subordinate officers of each department;

3. To provide the governor with executive authority commensurate with his responsibilities to the people; and

4. To require the coordination of administrative activities, elimination of overlapping and duplicating functions, and full utilization of all staff facilities within each principal department.[1]

The following is a resume of the composition and functions of the fourteen departments created by the legislature:

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[1]C. Wesley Armstrong, Jr., "Administrative Reorganization in New Jersey," State Government, December, 1948, p. 243.

(1) Department of Law and Public Safety

All major law enforcement agencies of the state are consolidated in this department under the supervision of the attorney general who is appointed by the governor for a four-year term. Under the 1844 constitution the attorney general was appointed by the governor (who served a three-year term) for a term of five years. The purpose of these overlapping terms was supposedly to hobble the governor. This provision was probably an outgrowth of the old concept that the best government is the least government. Even in the intent to force each governor to serve part of his term with an attorney-general appointed by a previous governor, the old constitution was not altogether successful. Every fifteen years a new governor-elect would be able to appoint an attorney-general who would remain in office all of his term. This provision of the new constitution is more realistic because it allows the governor to choose his own counsel. Objection may be taken to the term appointment. Since the attorney-general is appointed for a definite term--he does not remain in office at the governor's pleasure. The governor's dismissal powers are therefore considerably weakened.

The agencies included in this department are: Division of Law, Division of State Police, Board of Tenement House Supervision, Division of Motor Vehicles, Division of Weights and Measures, Division of Alcoholic Beverage Control, and the following professional boards: Public Accountants, Architects, Dentistry, Embalmers and Funeral Directors, Professional Engineers and Land Surveyors, Medical Examiners, Nursing, Optometrists, Pharmacy, Veterinary Medical Examiners and Shorthand

Reporting.[1]

The Division of Law handles those functions concerned with state legal matters, lawsuits, legal advice, etc.--the traditional duties of the attorney-general. The attorney-general also exercises general supervisory powers over each of the twenty-one county prosecutors.

The Division of Law is under the direct supervision of the attorney-general. The heads of the divisions of State Police, Motor Vehicles, Weights and Measures, and Alcoholic Beverage Control are appointed by the governor with the consent of the senate.

The professional boards consolidated into this department continue their regulatory and quasi-judicial functions. Boards are appointed by the governor usually from lists submitted by professional organizations. These boards enjoy a high degree of autonomy. It should be noted that in this department as well as in most of the other departments the department head is responsible for his department, but in many instances his staff or the heads of subordinate divisions or bureaus are not appointed by the department head--but by the governor. This practice weakens the department head's authority and tends to defeat the purposes of functional departmentalization.

(2) Department of Labor and Industry

Within this department are consolidated the major state agencies dealing with labor. It includes the Division of Labor, Division of Employment Security, and Division of Workmen's Compensation.[2]

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[1]Bureau of Government Research, Handbook of New Jersey State Government, op. cit., p. 72-77.

[2]Ibid., p. 66-71.

Division of Labor

The Division of Labor is comprised of bureaus dealing with factory inspections, women's and children's labor laws, minimum wage laws, private employment agencies, migrant labor, and vocational rehabilitation.

The Bureau of Migrant Labor functions under the supervision of a board consisting of the Commissioner of Education, Commissioner of Labor and Industry, Secretary of Agriculture, Commissioner of Institutions and Agencies, Commissioner of Conservation and Economic Development, Superintendent of State Police, Commissioner of Health, all ex officio, and five additional members appointed by the governor with the consent of the senate for five-year terms.[1] Only the king of the hoboes has been omitted from this magnificant array of talent. The organization of this bureau is hardly consistent with the principles expressed in the constitution.

State Board of Mediation

A State Board of Mediation consisting of seven members is included within the Division of Labor. Board members are appointed by the governor for three-year terms.[2] The board acts to mediate labor disputes.

Division of Workmen's Compensation

The Division of Workmen's Compensation reviews claims for compensation resulting from industrial accidents or occupational diseases. The Commissioner of Labor acts as the chairman.

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[1] Ibid., p. 67.

[2] Ibid., p. 68.

Division of Employment Security

The Division of Employment Security administers state unemployment insurance and disability insurance and the state employment service. The unemployment insurance section includes an advisory council. Members of the council are appointed by the governor with senate confirmation. The disability insurance section also has an advisory board consisting of the Commissioner of Labor and Industry, the Director of the Division of Employment Security, the Commissioner of Banking and Insurance, and ten additional members appointed by the governor with the consent of the senate.[1]

The department is headed by a commissioner appointed by the governor to serve at his pleasure.

(3) Department of Institutions and Agencies

This is the largest agency in the state government both in scope of operations and expenditures. This department is headed by a State Board of Control consisting of the governor and nine members appointed by him for eight-year terms.[2] This board is the legislative or policy making section of the department. It also selects the commissioner, with the approval of the governor, for an indefinite term. Executive and administrative functions are the responsibility of the commissioner.

The efficacy of the constitutional provision which specified gubernatorial approval of appointments made by boards has been previously questioned. In this instance it seems certain, at some time, to produce

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[1] Ibid., p. 69-70.

[2] Ibid., p. 59.

dissension and divided loyalties because of the long terms of the members of the State Board of Control. An incoming governor will inherit both a Board of Control and a Commissioner. The organization of this department is hardly consistent with Wesley Armstrong's principles of direct line of authority and gubernatorial authority commensurate with responsibility.

The department is further broken down into four sub-departments each headed by a deputy commissioner. These are: Deputy Commissioners of Welfare, Mental Hygiene and Hospitals, Correction and Parole, Administration and Accounts. In addition to the above a State Parole Board, appointed by the governor, is included within the department.[1]

The Welfare Division administers the usual public assistance and welfare programs plus a Commission for the Blind, Soldiers' Home, and a section which inspects and licenses private nursing homes. The Mental Hygiene and Hospital Division operates state hospitals, sanatoriums, and clinics. The Division of Corrections and Parole operates the state's penal institutions and the parole system. The Division of Administration is simply the business and personnel office for the other three divisions.

There appears to be little similarity of function between welfare, hospitals, and prisons. It would appear that these agencies have been brought under one roof for better management of state property and to effect economies in operation. From a purely dollars and cents point of view this would seem to be a sensible and efficient arrangement. But the efficiency of a hospital or a tuberculosis sanatorium cannot be judged by cost per patient. The real intent in this "consolidation"

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[1] Ibid., p. 60-64.

appears to be to group those agencies which use much the same type of equipment for more business-like operation. No real integration has been accomplished. Most students of administration would probably agree that, in this instance, integration beyond the division level may not be desired. But disintegration below the division level has been permitted. Separate boards of managers are appointed for the Commission for the Blind; the soldiers' home; state hospitals, sanatoriums and clinics; prisons and reformatories. Boards of managers are appointed by the Board of Control. The boards of managers, in turn select the operating heads. This arrangement may have its merits but it certainly does not conform to Mr. Armstrong's "direct lines of responsibility."

(4) Department of Highways

The Highway Department existed before revision was constituted one of the major departments. It is administered by a commissioner appointed by the governor to serve at his pleasure.

The Highway Department is composed of the Division of Planning, Research, Soils and Tests; Division of Roads, Design and Construction; Division of Maintenance and Operation; Division of State Aid and Federal Aid Secondary Roads, Division of Administrative Services, and Division of Bridges.[1]

A State Highway Engineer and Assistant Highway Engineer are appointed by the commissioner. Division heads are directly responsible to the Highway Engineer, or in his absence, the assistant. In this department

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[1] Ibid., p. 54-58.

clear and direct lines of authority do exist. The organization of this department is also exceptional in that operating heads are chosen by the department head. He thus has both the responsibility and the necessary authority for running his department.

(5) Department of Banking and Insurance

The existing Department of Banking and Insurance was constituted another of the fourteen major departments. The Real Estate Commission, which regulates and licenses real estate brokers and salesmen, was consolidated within it. The department as presently organized consists of the Bureau of Banking, Bureau of Building and Loan Associations, and Bureau of Insurance--each administered by a deputy commissioner, the Actuarial Bureau headed by the Chief Actuary, and the Real Estate Commission of five members appointed by the governor. Over-all supervision is exercised by the Commissioner of Banking and Insurance. The commissioner is appointed by the governor. The divisional units are headed by deputy commissioners appointed by the commissioner.[1]

The old Banking Advisory Board of eight members, appointed by the governor, was retained. The commissioner acts as the chairman of this board. It formulates banking regulations and advises the governor on banking legislation.

(6) Department of Agriculture

The existing Department of Agriculture was also constituted a principal department. The policy making functions of this department are vested in a State Board of Agriculture consisting of eight members elected

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[1] Ibid., p. 23-25.

by delegates to annual agricultural conventions and recommended to the governor for appointment. The governor makes the appointments, subject to senate confirmation, for four-year staggered terms. The board then appoints the administrative head, called the Secretary of Agriculture, with the governor's approval.[1] It would be difficult to devise a more irresponsible system. The governor does not make his own appointments--the farmers' conventions make them in the governor's name. No governor who would save his political life could ignore the convention's recommendations. If board members' terms were concurrent with his it might be to his advantage to try to influence the recommendations the agricultural convention made to him. But with members serving staggered terms, these "behind the scenes" tactics would be of little value. When the appointments are confirmed by the senate, the board appoints a secretary --with the governor's approval. Again the governor will find it politically expedient to approve the board's choice.

Certainly the governor must be absolved from all responsibility for the operation of this department. It would appear that this department is simply a legally institutionalized pressure group. Such a conclusion is somewhat disconcerting but the institutionalization of an agricultural pressure group may be no worse than the institutionalization of medical or barber pressure groups. After all, the department is primarily concerned with efforts to improve agricultural production--but it is also responsible for tuberculin testing in cattle and the enforcement of laws relating to egg grading. These are matters that directly affect the

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[1] Ibid., p. 19.

whole public.

The department is divided into six divisions. Five of these divisions--Animal Industry, Markets, Plant Industry, Information, and Administration are headed by directors appointed by the board in conjunction with the secretary of agriculture. The sixth division is the Office of Milk Industry administered by a director directly appointed by the governor.[1] The old Milk Control Board was abolished. Provision is made for judicial review before the Appellate Division of the Superior Court on determinations made by the director of the Office of Milk Industry. In providing for direct appointment by the governor of the director of the Office of Milk Control the statutes have deliberately created a separate department to prevent dairy interests from completely controlling milk prices.

(7) Department of the Treasury

All state agencies concerned with administering the fiscal affairs of the state are consolidated within this new department headed by the state treasurer who is appointed by the governor to serve at his pleasure. Departmental functions are vested in eight divisions: Budget and Accounting, Taxation, Tax Appeals, Local Government, Purchase and Property, Investment, New Jersey Racing Commission, and the Executive-Administrative Division. The State Office Building Authority is also included in this department.[2]

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[1] Ibid., p. 19-22.

[2] Ibid., p. 83-88.

Division of Budget and Accounting

The Division of Budget and Accounting is headed by a director appointed by the governor. This division includes a budget bureau which formulates financial statements and prepares the executive budget in accordance with the governor's policies. This bureau, acting on instructions from the governor, also controls the expenditure of the appropriation through the allotment system.[1] The Accounting Bureau is the state's accounting records section.

Division of Taxation

This division comprises the bureaus which administer the various state taxes. The division director is appointed by the governor.[2]

Division of Tax Appeals

This division is composed of a board appointed by the governor for five-year terms. The board acts in a quasi-judicial capacity in receiving appeals concerning the assessment, collection, apportionment or equalization of taxes.[3]

Division of Local Government

Local financial procedures are examined by this agency. A Local Government Board of three members is included within the division. This board acts in both a quasi-legislative and quasi-judicial manner

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[1] Ibid., p. 83.

[2] Ibid., p. 84-85.

[3] Ibid., p. 85.

in regard to the regulation of local government finances.[1]

Division of Purchase and Property

The division includes the Purchase Bureau, Property Bureau, Insurance Bureau, and Architecture Bureau. The Purchase Bureau is a centralized state purchasing agency. The Property Bureau is responsible for maintenance and repair of state buildings.[2]

Division of Investment

This division is responsible for the investment of state funds. It is headed by a director appointed by the treasurer from recommendations of the State Investment Council. This council is composed of four members designated by state employee's pension systems and five members appointed by the governor.[3]

Division of New Jersey Racing Commission

This commission supervises parimutual tracks. Four members are appointed by the governor.[4]

It is possible that the Treasury Department may include too many agencies for effective supervision although all of them are related activities. Certainly this department is an outstanding example of departmentalization by function.

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[1] Ibid., p. 85-86.

[2] Ibid., p. 86.

[3] Ibid., p. 87.

[4] Ibid.

(8) State Department of Health

The old State Department of Health was constituted a principal department. The Commissioner of Health (appointed by the governor) is the principal executive and administrative officer. This department also has a Public Health Council of seven members appointed by the governor. The council formulates a State Sanitary Code, prescribes qualifications for health officers, sanitary, food and drug, and plumbing inspectors, and serves as an advisory board for the commissioner. The department is divided into six divisions each supervised by a director appointed by the commissioner. Consolidated into the Division of Vital Statistics and Administration are four examining boards. These boards examine applicants for licenses as Barbers, Beauty Operators, Operators of Public Water and Sewerage Systems, Health Officers, Sanitary Inspectors, Plumbing Inspectors, and Laboratory Technicians.[1]

It will be noted that none of the three states studied place examining boards in the same department. In Georgia they come under the wing of the secretary of state. In Missouri they are attached to the Department of Education. In New Jersey most of these examining boards are attached to the Department of Law and Public Safety. One is included within the Department of Banking and Insurance and the remaining boards are attached to the Department of Health.

(9) Department of Civil Service

The legislative and policy making body for this department is a commission of five members appointed by the governor for five-year terms. From the members of the commission the governor appoints a president who

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[1] Ibid., p. 46-53.

serves as the executive officer of the department.[1]

(10) Department of Education

The legislative body in this department is the State Board of Education consisting of twelve members appointed by the governor for six-year terms (longer terms than the governor's). This board is not only policy making and advisory in function. It (1) approves certain acts of the commissioner; (2) confirms appointments of departmental officers and county superintendents; (3) decides appeals from decisions in controversies and disputes; and (4) prescribes rules for the granting of teachers' licenses and for executing school laws.[2]

The executive head of the department is the Commissioner of Education, appointed by the governor for a five-year term--also longer than the governor's. In addition to his other duties the commissioner appoints the county superintendent of schools. The department is broken down into fourteen divisions all of which are headed by directors appointed by the Commissioner with the consent of the Board of Education except one, the Division against Discrimination. In this instance he also appoints the director but with the approval of the Commission on Civil Rights and the governor.[3]

(11) Department of Defense

Military affairs of the state are consolidated into this single department. They consist of the Army National Guard, the Air National

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[1] Ibid., p. 26.

[2] Ibid., p. 39-40.

[3] Ibid., p. 40.

Guard and the New Jersey Naval Militia. The department's organization, in general, is patterned after the staff structure of the Armed Forces of the United States. The executive head is the Chief of Staff and his deputy, both appointed by the governor.[1]

(12) Department of Public Utilities

The Board of Public Utility Commissioners is designated as the head of this department. Members are appointed for six-year terms by the governor. He also designates which member is to serve as President of the Board and chief administrative officer of the department.[2]

(13) Department of State

This department is responsible for the authentication and deposit of the acts, records, and election returns of the state and the certification of corporate units. The constitution provides that the Secretary of State be appointed by the governor for a four-year term. This appointment for a definite term prevents the governor from dismissing him except for cause.

For some reason, the office of the State Athletic Commissioner has been placed in this department. This activity is the regulatory body for boxing and wrestling exhibitions. The commissioner is appointed by the governor.[3] Just what functional relationship exists between boxing and wrestling and the rest of the Secretary of State's responsibilities is unknown.

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[1] Ibid., p. 35-38.

[2] Ibid., p. 78-79.

[3] Ibid., p. 81-82.

(14) Department of Conservation and Economic Development

"Integrated" within this department are those agencies concerned with the conservation, protection, and development of natural resources; with physical and economic planning and development; and those agencies dealing with veterans affairs. It also encompasses the Board of Pilot Commissioners, Bureau of Aviation, and a Public Housing Authority.

This department seems to have been the catch-all for those agencies which did not fit in other departments. As such, it can be expected that a high degree of decentralization exists.

In addition to the commissioner, division heads and bureau heads, this department contains the following boards and commissions: Planning and Development Council, Board of New Jersey Pilot Commissioners, State Housing Council, State Soil Conservation Committee, Veterans' Services Council, Water Policy and Supply Council, Shell Fisheries Council, Fish and Game Council, and the Sandy Hook Reservation Authority.[1]

The department is really not a department at all. It is merely a collection of separate and independent agencies. Independence is assured by the presence of boards which head each division. Board members are long-term appointees. Major divisions are, in some instances, further disintegrated by board-headed bureaus. The organization of this department appears to be an exemplification of the thing Governor Driscoll warned against, "mere pro forma reshuffling and regrouping of state agencies."

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[1] Ibid., p. 29-34.

In addition to the foregoing fourteen major departments there exists the following independent commissions: Atlantic States Marine Fisheries Commission, Beach Erosion Commission, Interstate Commission on the Delaware River Basin, Delaware River Joint Toll Bridge Commission, Delaware River Port Authority, Gloucester County Tunnel Commission, Commission on Interstate Cooperation, Interstate Sanitation Commission, Palisades Interstate Park Commission, Port of New York Authority, Commission on Post-War Economic Welfare, South Jersey Port Commission, Commission on State Tax Policy, and Commission for the Promotion of Uniform Legislation.[1]

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A casual reading of the new constitution's administrative article and a glance at the organizational chart might indicate that most of the principles of state administrative organization as set out in this thesis are exemplified in the State of New Jersey. More detailed examination is somewhat disillusioning.

Departmentalization by function has not been accomplished in a realistic or logical manner throughout all agencies. The Department of Conservation and Economic Development is purely a "paper" consolidation. The placement of the Athletic Commissioner in the Department of State serves no useful purpose except possible sharing of office space. The consolidation of welfare, mental hygiene, and penal institutions in the Department of Institutions and Agencies is a questionable amalgamation. Undoubtedly, this consolidation serves to save the taxpayers some money

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[1] Ibid., p. 89-93.

but better service might be rendered if they were separated into three separate departments with a central coordinating staff. This may be the way the department actually functions despite the formal organization arrangement.

An admirable job of functional departmentalization with direct and clear lines of authority has been accomplished in the departments of Banking and Insurance, Highways, and Treasury.

In other departments the act of grouping agencies into a department may have been satisfactorily accomplished but the grouping has been weakened by the practice of gubernatorial appointment of division and even bureau heads and by the interposition of operating boards at division and bureau levels.

According to the organizational chart, the governor supervises the heads of fourteen departments. This is a manageable number but it is difficult to determine how far down into the various departments the governor exerts direct supervision. He appoints many division and bureau heads. Does he personally supervise these divisions and bureaus? Very likely the extent of his supervision is a matter of his own choice. When the governor does not exercise supervision over these subordinate units they achieve a measure of independence.

The governor does not divide authority with other elected officials. The short ballot has been carried to its ultimate. The governor is the only official elected state wide. He may serve an indefinite number of four-year terms but not more than two in succession.

Since there are no other officials elected state wide, the governor's numerical appointive power is huge. His freedom in appointments has

been severely limited by the requirement of senate confirmation of all appointments; by the requirement that some appointments be made from lists submitted to him by various organizations as is the case in the Department of Agriculture and in some of the professional licensing boards; by the considerable number of appointments that are made for staggered terms and for longer terms than his; and by the large number of appointments which he is called upon to make. A cursory examination of the Handbook of New Jersey State Government indicates that the governor's appointive power extends to approximately ninety-one administrative boards, commissions, and single executives. He appoints also most of the judiciary. In a single term the governor could conceivably appoint two or three hundred officials.

The governor's dismissal powers are also somewhat limited. Some appointees serve at his pleasure while others, such as the Secretary of State and Attorney-General, serve for specified terms and may not be removed except for cause. Members of boards may be dismissed by the governor but only after notice and a hearing.

In general, we may conclude that, while the governor's powers are considerable, he has not been granted authority commensurate with his responsibilities.

The auxiliary functions of budget, personnel, and purchasing seem to have been adequately organized. The budget is prepared by a permanent staff in the Treasury Department which also carries out the governor's policies by means of a budget allotment system. Item veto of the appropriation bill is permitted. By these arrangements the governor appears to have adequate fiscal control over state administration.

The personnel function has been constituted a major department headed by a commission appointed by the governor.

A centralized purchasing section has been placed in the Treasury Department with the division head appointed by the governor.

The principle of single administrators set forth in the administrative article of the constitution has not been followed out. Five of the fourteen major departments created by the legislature are plural headed. In addition, a considerable number of operating boards, or quasi-operational boards, exist at division and bureau levels.

The auditor is selected by the legislature and his duties are confined to post-audit of transactions and accounts.

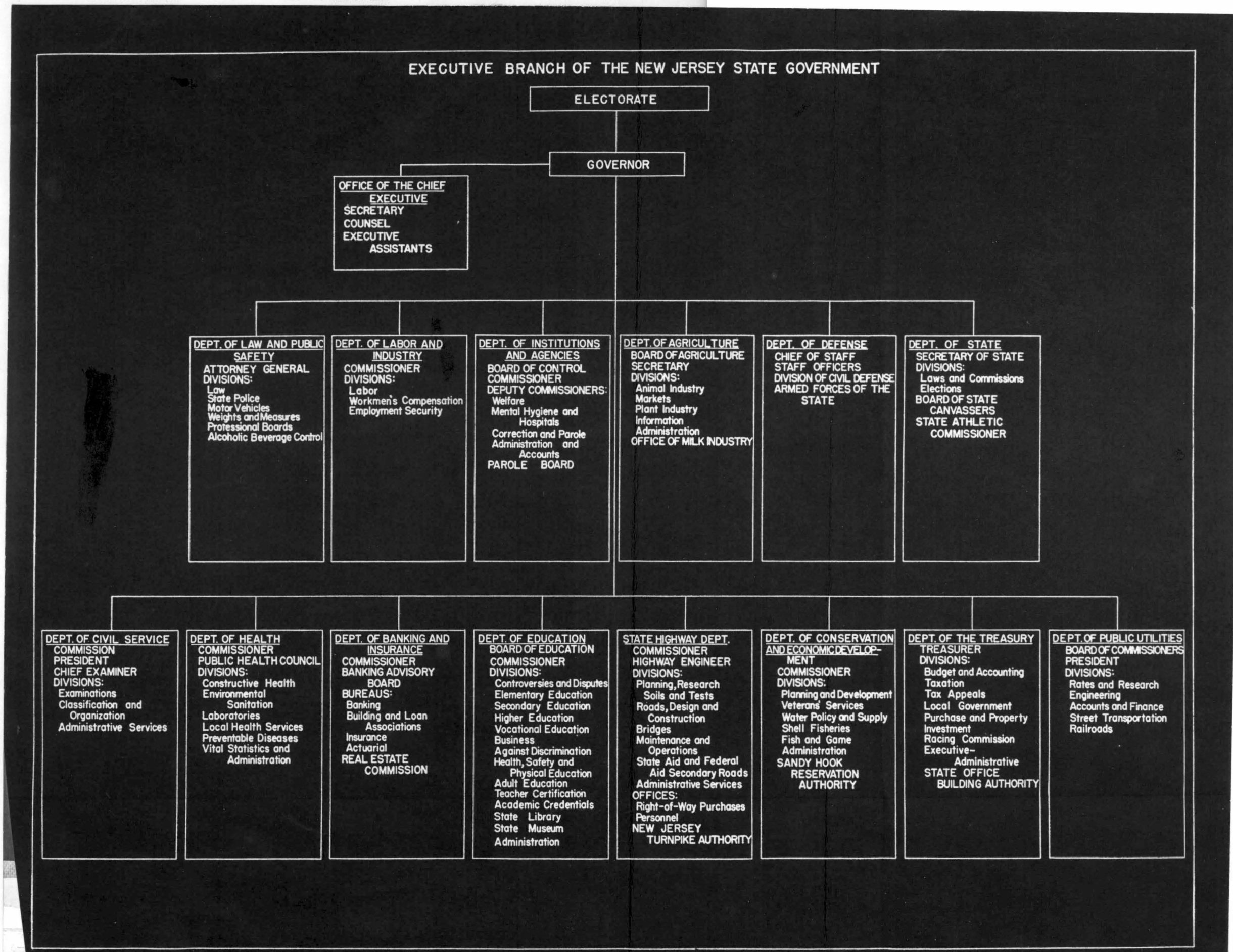
Even with the discrepancies and inconsistencies which have been pointed out it is probable that New Jersey now has the most effective, efficient, and responsible administrative organization among the states. Certainly it is a great improvement over the old "New Jersey system" of independent and irresponsible board-headed administration.

It could be further improved by the elimination of senate confirmation of governor's appointments, by strengthening the governor's dismissal powers, and by eliminating some boards and commissions. It could also be improved by allowing department heads to select their own division and bureau heads or to provide for the selection of these executives through civil service. Some reallignment of agencies into other departments or the creation of new departments seems necessary.

It may be that the principle of the short ballot has been carried too far. In the event of the governor's death or disability no statewide elected official is available to take his place. The writer

suggests that, not only in New Jersey but in all states, it might be sensible to elect the president of the senate and the speaker of the house in state-wide elections. In case the governor's post became vacant they would succeed him in that order.

Plate 2. Diagram of New Jersey's Government Under the New Constitution



Nothing goes by itself: that is one of the errors of administration.--Napoleon

CHAPTER IX

SUMMARY AND CONCLUSIONS

The first obstacle to constitutional revision in any state is the common feeling of a sort of reverence for the old constitution. It develops an aura of sanctity and timelessness which is difficult to eradicate. For some reason this feeling of reverence does not extend to constitutional amendments. It may be that the trivial or transitory nature of some proposed amendments has cheapened the electorate's regard for all amendments. This lessened respect for amendments has not been carried over to the main body of the constitution itself. In the minds of many people it still remains a sacrosanct document. But as political philosophers from Jefferson on down have pointed out--there is nothing sacred about a constitution.

The argument is also advanced that if a constitution can be amended--why is wholesale revision necessary? The answer is that the amending process usually does not produce a well-balanced and coherent structure. It becomes rather a patchwork of unrelated, and sometimes discordant, provisions.

The details of a state's administrative organization are provided by statute. Why then, it is asked, cannot administrative reorganization, at least, be accomplished by statute? Ordinarily any fundamental revision cannot be thus accomplished because the basic framework of organization is usually stereotyped in the old constitution.

There are other arguments to be overcome depending on the particular state. One, of course, is the old standby, "it has worked for a hundred years so it must be all right," or the variation, "if it was good enough for grandpa, it's good enough for me."

In the three states which have been studied one of the principal roadblocks to constitutional revision was the opposition of rural minorities. These sectional differences were reconciled or compromised in different ways. Georgia evaded the convention issue altogether by the appointment of a commission whose end product was revised, amended, and ratified by a rural dominated legislature before it was submitted to the people. Missouri elected a convention on the basis of senatorial districts which had not been re-apportioned since 1901. Consequently rural interests enjoyed disproportionate power. This situation was remedied somewhat by the election of fifteen delegates-at-large. Whatever system is used, the state-wide election of a part of the delegation would seem to be a desirable arrangement. New Jersey solved the rural-urban conflict by prohibiting any consideration of legislative reapportionment in the convention and by electing delegates on the same basis as representation in the legislature. This legislature was also disproportionately unbalanced in favor of rural areas. Thus sectional differences were resolved or compromised--in favor of rural minorities!

The question logically arises--what can be expected from such an unbalanced convention? This question is of particular interest in Oregon because, if a constitutional convention is held, it may also be heavily weighted in favor of rural areas.

In attempting to answer this question it may be well to consider more specific questions such as: What kinds of changes were accomplished? What arrangements remained unchanged or were changed only superficially? What were some errors that could have been avoided? Did the administrative organization resulting from the constitutional revision possess a higher degree of efficiency, effectiveness, responsiveness, and responsibility than existed under the old constitution?

All three states now utilize a centralized purchasing system, an executive budget, and a personnel merit system. All three states now have an auditor independent of the administration. These are non-sectional issues.

In Missouri and New Jersey considerable consolidation of agencies has been accomplished. The governor has been given more administrative authority. Lines of authority have been somewhat clarified. The use of operating boards has been reduced. These are the common sense sort of changes that rural constituents would generally approve as well as urban voters.

Some departmentalization was ill-advised or existed on paper only. Some boards and commissions remained. Licensing boards remain independent and irresponsible. Senate confirmation of the governor's appointees remains in most instances.

It would appear that in those instances where needed reform was not accomplished it was not usually because of the opposition of sectional interests but because of the opposition of special interests. In some instances such a special interest may have been concentrated in a particular section but, more often than not, this was not the case. A

dispersed, disorganized, and generally chaotic administration is not ordinarily the result of sectional machinations. Aside from the traditional reverence for old and existing forms and the prevalent fear of tyranny through consolidation, such a disordered administration is the result of non-sectional pressures. This does not mean that each such group desires a disorganized administration. Probably each one is in favor of an orderly and efficient government in general but not in its particular case. But the composite of all these "exceptions" results in a government of "exceptions" and makes for an irresponsible and inefficient administration. We may conclude that sectional unbalance need not prevent a convention from producing an improved and acceptable constitution. The sectionally unbalanced Missouri and New Jersey conventions produced administrative organizations which are probably superior to most other state constitutions--certainly they are vast improvements over what these states had.

A common error in all three constitutions was the tendency to be overly specific. Missouri, for instance, may find that it has limited itself to too few executive departments. Specifics sooner become outdated and require revision. Such revision is slow, difficult, and costly. Consequently it is usually late in coming. As a result, government becomes rigid, incompetent, and wasteful.

A constitution in itself is no more than a basis or a framework. This basis is all-important but legislative acts and administrative decisions fill in the details and put that constitution into practice. This is both necessary and desirable. But it is also possible for legislatures to circumvent, weaken, nullify, or even disregard constitutional

mandates. Organizational and procedural changes by themselves do not work lasting changes. Unless a new constitution is looked upon favorably by the legislature and the governor it will lose much of its effectiveness.

The administrative article of the New Jersey constitution plainly sets forth the intent of the framers. It is evident they intended an administrative organization composed of a few well balanced, functionally integrated, departments. They clearly intended that these departments should be mainly single headed with clear and direct lines of authority running from the governor through the whole organization. But they delegated the task of detailed organization to the legislature. In implementing the constitutional provisions the legislature at times weakened or rendered ineffective these constitutional mandates. Notwithstanding some deficiencies in application, the administrative organization resulting from legislation under the new constitution was a tremendous improvement over the old system.

We can observe somewhat the same situation in Missouri. There too, the constitution attempted to establish an administration departmentalized by function with clear lines of authority so that efficiency could be heightened and responsibility fixed. Here again, the legislature acted in such a manner as to render ineffective and inoperative many of the intended reforms. Again, however, the legislative "reluctant dragon" did not completely stymie intended reforms. Real and substantial progress was made toward the goals of effective and responsible administration.

Revision of the Georgia constitution was accomplished by a commission rather than by a convention. No real improvement in Georgia's

administration was achieved by the new constitution. The failure of this constitutional revision cannot be attributed to contrary statutory elaboration. No really improved plan of administrative organization appeared in the constitution. No valid conclusions can be drawn regarding the merits of commission revision from the experience of Georgia. It is likely that any convention authorized by the legislature would have produced a similar document.

In framing a new constitution, proposed measures cannot be considered on their ideological or theoretical merits alone. Consideration must also be given to the chances of securing ratification. A constitution which attempts changes of a highly controversial nature will be defeated by the voters. Individuals or associations who violently object to a single provision will reject the whole constitution because of one objectionable provision. The inclusion of several such highly controversial sections will thus insure its defeat at the polls.

Finally, a sound organization plan does not insure good government. Policy is made and executed by people and upon them depends the effectiveness of whatever plan of organization is created. Sound administrative organization will make possible a more efficient, more economical, more representative, and more responsible government but it will not automatically confer these benefits. At best it will enable competent personnel to do a better job and may prevent incompetent personnel from doing a poor job.

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APPENDIX A

Forty-Seventh Legislative Assembly--Regular Session

SENATE BILL NO. 1

Introduced by Senators NEUBERGER and HOLMES and read first time January 13, 1953

A BILL

For an Act relating to a revision of the Oregon State Constitution by an assembly of delegates elected for that purpose; appropriating money therefor; providing that this Act shall be referred to the people for their approval or rejection; and providing that the revised Constitution be referred to the people for their approval or rejection.

Be It Enacted by the People of the State of Oregon:

Section 1. During the month of July 1956, upon a day and at an hour to be determined by the Governor, of which he shall give the delegates not less than 15 days' notice, the delegates elected under the provisions of this Act shall assemble at the State Capitol for the following purposes:

(1) to review and study the provisions of the organic laws of this state with a view to the correction and clarification of the Oregon Constitution.

(2) To revise or draft anew the Oregon Constitution for submission to a vote of the electors of the state at the general election to be held in November 1956.

Section 2. The assembly shall consist of delegates elected at a

non-partisan election to be held at the time of the general primary election in May 1956. The delegates shall be elected on the following basis:

(1) In each county there shall be elected one delegate; and

(2) In each congressional district there shall be elected one delegate at large for each 20,000 population or major fraction thereof as ascertained by the regular decennial census of the United States for the year of 1950.

Section 3. Any qualified elector of this state may become a candidate for delegate to the assembly in the same manner and, pursuant and subject to the election laws governing nonpartisan candidacy for nomination for the Supreme Court in so far as applicable.

Section 4. In such election the candidates receiving the highest number of votes, as shown by the abstract of votes returned by the several county clerks to the Secretary of State as required by law, are elected and their election shall be certified and proclaimed in the manner provided for the certification and proclamation of the election of candidates to the office of Justice of the Supreme Court. When, for any cause, a vacancy occurs in the convention and the same is made to appear to the satisfaction of the Secretary of State, the candidate receiving the next highest number of votes shall fill such vacancy and the Secretary of State is authorized and directed to issue to such candidate a certificate of election.

Section 5. Upon the convening of the assembly, the delegates immediately shall proceed to organize and elect a chairman, recording secretary and such other officers and committees as they may deem advisable. All deliberations of the assembly shall be subject to Robert's Rules of Order,

revised, except in the case of special rules adopted by a majority vote of the delegates.

Section 6. Upon having revised or drafted anew the Constitution and having prepared a Constitution in a form to be submitted to the voters for their approval or rejection, the assembly, acting through the presiding officer and recording secretary, shall certify the proposed constitution to the Secretary of State not later than August 31, 1956. The Secretary of State forthwith shall certify the same under the seal of the state and shall file the proposed constitution in his office. Thereafter the proposed constitution shall be submitted to the people for their approval or rejection at the general election to be held in November 1956. The Secretary of State shall set aside three pages in the voters' pamphlet containing measures referred to the people to be voted upon at such general election, in which may be printed arguments in support of the proposed constitution, prepared and filed with the Secretary of State by a committee of three delegates appointed by the chairman of the assembly, and three pages in which arguments against the proposed constitution may be printed, which arguments may be furnished by anyone interested; provided that in case more material is offered than can be printed on three pages each for the affirmative and negative arguments, the Secretary of State shall select the part of such material to be printed. The proposed constitution shall be set forth in full in the Voters' Pamphlet in accordance with the provisions of section 81-2109, O.C.L.A.

Section 7. Each delegate shall be paid compensation at the rate of $25 per day for not more than 35 days' attendance at meetings of the assembly and, in addition, shall be reimbursed for actual traveling

expenses incurred in one trip to and from his residence and Salem.

Section 8. There hereby is appropriated to the assembly of delegates provided for in this Act, out of the moneys in the General Fund in the State Treasury not otherwise appropriated, the sum of $350,000 for the purpose of carrying out the provisions of this Act.

Section 9. This Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout the state. The Secretary of State shall set aside two pages in the Voters' Pamphlet containing measures referred to the people to be voted upon at such next regular general election, in which may be printed arguments in support of this Act, prepared and filed with the Secretary of State by a joint committee consisting of one senator appointed by the President of the Senate and two representatives appointed by the Speaker of the House, and two pages on which arguments against this Act may be printed, which arguments may be furnished by anyone interested; provided that in case more material is offered than can be printed on two pages each for the affirmative and negative arguments, the Secretary of State shall select the part of such material to be printed.

APPENDIX B

Forty-Seventh Legislative Assembly--Regular Session

HOUSE BILL NO. 10

Introduced by Representatives HATFIELD, WELLS, SEMON, HILL, EATON, DYER, CHADWICK, HUDSON, MOORE, LOCEY, BRADEEN, STEINER, ANDERSON, CARDWELL, JACKSON, MANN, SAVAGE, AMACHER, OVERHULSE, DAMASCH, CHINDGREN, TOM, GEARY, BAUM, WALLACE, STEWART, FRANCIS, WEATHERFORD, HUSBAND, DOOLEY, GOODRICH, STEWARD, OHMART, HARVEY, MISKO, ROOT, DEICH, ELFSTROM AND FARMER, and read first time January 14, 1953.

A BILL

For an Act relating to a revision of the Oregon Constitution; and providing that this Act shall be referred to the people for their approval or rejection.

Be It Enacted by the People of the State of Oregon:

Section 1. As used in this Act:

(1) "Assembly" means the assembly called pursuant to section 2 of this Act.

(2) "Delegate" means a delegate elected to the assembly as provided in sections 4 to 9 of this Act.

Section 2. During the month of July 1956, the delegates elected as provided in sections 4 to 9 of this Act shall assemble at the State Capitol for the purposes specified in section 3 of this Act. The Governor shall determine the day and hour of the assembly and shall give not less than 15 days' notice thereof to the elected delegates.

Section 3. The purpose of the assembly shall be:

(1) To study and review the provisions of the organic laws of this

state with a view to the correction and clarification of the Oregon Constitution.

(2) To draft a new constitution for the State of Oregon or revise the Oregon Constitution.

Section 4. (1) The assembly shall consist of 90 delegates elected on a nonpartisan basis.

(2) The qualified electors of each of the senatorial districts set out in paragraph (a), subsection (4), section 6, Article IV, Oregon Constitution as adopted by the people at the election held November 4, 1952, shall elect the same number of delegates to the assembly as the number of senators to which the district is entitled by such paragraph.

(3) The qualified electors of each of the representative districts set out in paragraph (b), subsection (4), section 6, Article IV, Oregon Constitution, as adopted by the people at the election held November 4, 1952, shall elect the same number of delegates to the assembly as the number of representatives to which the district is entitled by such paragraph.

Section 5. (1) Any qualified elector of this state may become a candidate for delegate to the assembly from either the district provided for in subsection (2) of section 4 of this Act or the district provided for in subsection (3) of section 4 of this Act. The candidate shall reside in the district he seeks to represent.

(2) To become a candidate, the person shall file with the Secretary of State a declaration of candidacy not later than the seventieth day prior to the election referred to in section 7 of this Act. The declaration of candidacy shall be in substantially the following form:

To the Secretary of State and to the electors of the _____ (insert number of senatorial or representative district, as the case may be) _____ (insert senatorial or representative, as the case may be) district, comprising _____ County (or Counties, as the case may be), in the State of Oregon, I _____ (name of candidate), reside at _____ and my postoffice address is _____. I hereby file as a candidate to the assembly of delegates to draft a new constitution for the State of Oregon or revise the Oregon Constitution. If I am elected I will qualify as a delegate.

(Statement not exceeding 10 words of qualifications and experience of candidate, if desired.)

I enclose _____ (check, draft, money order or cash, as the case may be) in the sum of $15 to cover the filing fee required by law.

_____

(Signature of candidate)

---

(3) There shall not be attached to or contained in the declaration of candidacy any reference to any party or to the party affiliation of the candidate. There shall not be attached to or contained in any declaration of candidacy any statement other than the information required by the form set out in subsection (2) of this section and a statement not exceeding 10 words of the qualifications and experience of the candidate.

Section 6. The Secretary of State shall supply the necessary information to the county clerks to enable the county clerks to comply with this Act.

Section 7. At the general primary election to be held in 1956, there shall be prepared and furnished by the several county clerks separate ballots entitled "Delegates to Constitutional Convention Ballot," which ballot shall contain no other designation. Upon the ballots shall be placed the names of the candidates for delegate. There shall be placed after the name of each candidate the name of the county in which he resides and a statement not exceeding 10 words of his qualifications and experience, if such a statement is included in his declaration of candidacy. There shall be no party designation in connection with the name or names of any candidate on the ballot. The ballot may be printed upon the same sheet as the judiciary ballot used at the election.

Section 8. The ballot referred to in section 7, of this Act shall be in substantially the following form:

DELEGATES TO CONSTITUTIONAL CONVENTION BALLOT

Vote for ___ (indicate number to be voted for)

Place an "X" in the square in front of the name (or names, as the case may be) of the candidate (or candidates) voted for.

(The names of the candidates shall follow)

Section 9. The county clerk shall immediately after the election make an abstract of votes for delegate and transmit it by mail to the Secretary of State. The Secretary of State shall, in the presence of the Governor, proceed within 30 days after the election, and sooner if the returns are all received, to canvass the votes for all candidates for delegate. The Governor shall grant a certificate of election to the persons who receive

the highest number of votes and shall also issue a proclamation declaring the election of such persons. If, for any cause, a vacancy occurs in the convention, the Secretary of State shall issue a certificate of election to the candidate receiving the next highest number of votes and such candidate shall fill the vacancy.

Section 10. Upon the convening of the assembly, the delegates immediately shall proceed to organize and elect a chairman, recording secretary and such other officers and committees as they may deem advisable. All deliberations of the assembly shall be subject to Robert's Rules of Order, revised, except in the case of special rules adopted by a majority vote of the delegates.

Section 11. Upon having revised or drafted a new constitution and having prepared a constitution in a form to be submitted to the voters for their approval or rejection, the assembly, acting through the presiding officer and recording secretary, shall certify the proposed constitution to the Secretary of State not later than August 31, 1956. The Secretary of State forthwith shall certify the same under the seal of the state and shall file the proposed constitution in his office. Thereafter the proposed constitution shall be submitted to the people for their approval or rejection at the general election to be held in November 1956. The Secretary of State shall set aside three pages in the voters' pamphlet containing measures referred to the people to be voted upon at such general election, in which may be printed arguments in support of the proposed constitution, prepared and filed with the Secretary of State by a committee of three delegates appointed by the chairman of the assembly, and three pages in which arguments against the proposed constitution may be printed,

which arguments may be furnished by anyone interested; provided that in case more material is offered than can be printed on three pages each for the affirmative and negative arguments, the Secretary of State shall select the part of such material to be printed. The proposed constitution shall be set forth in full in the voters' pamphlet in accordance with the provisions of section 81-2109, O.C.L.A.

Section 12. This Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout the state. The Secretary of State shall set aside two pages in the voters' pamphlet containing measures referred to the people to be voted upon at such next regular general election, in which may be printed arguments in support of this Act, prepared and filed with the Secretary of State by a joint committee consisting of one senator appointed by the Speaker of the House, and two pages on which arguments against this Act may be printed, which arguments may be furnished by anyone interested; provided that in case more material is offered than can be printed on two pages each for the affirmative and negative arguments, the Secretary of State shall select the part of such material to be printed.

APPENDIX C

Forty-Seventh Legislative Assembly--Regular Session

PROPOSED AMENDMENTS TO HOUSE BILL NO. 10

By COMMITTEE ON STATE AND FEDERAL AFFAIRS
February 27, 1953

On page 1 of the printed bill, line 18, after the word "Oregon" insert a period and delete the remainder of the line.

On page 1 of the printed bill, line 19, delete the entire line.

On page 2 of the printed bill, line 1, after the period following the numeral "4", delete the remainder of the line and all of lines 2 to 12 inclusive and substitute the following in lieu thereof:

"The assembly shall consist of delegates elected on a nonpartisan basis as follows:

(1) In each county there shall be elected one delegate; and

(2) Additional delegates elected in each county for each 30,000 population or major fraction thereof as determined by the regular decennial census of the United States for the year 1950."

On page 5 of the printed bill, following section 12, insert the following new section:

"Section 13. (1) If this Act is approved by the people when submitted to them as provided in section 12 of this Act, the Forty-Eighth Legislative Assembly shall appropriate the moneys required to pay the necessary costs and expenses of the constitutional convention including compensation and traveling expenses for delegates. The costs and expenses

of the constitutional convention shall not exceed the amount so appropriated. The Forty-eighth Legislative Assembly may prescribe and limit the amount of compensation and travel expense to be paid to delegates.

"(2) If this Act is approved by the people when submitted to them as provided in section 12 of this Act, the Forty-eighth Legislative Assembly may provide for the establishment of a constitutional commission or other group to study and review the organic laws of this state with a view to the correction and clarification of the Oregon Constitution and to make recommendations to the constitutional convention for its consideration. The Forty-eighth Legislative Assembly may impose other duties and powers on such constitutional commission or other group and may appropriate money for payment of the costs and expenses of such constitutional commission or other group.

"(3) This section is not intended to limit the powers of the Forty-eighth Legislative Assembly to enact any legislation necessary or proper to carry out the purposes of this Act."

Typed by

Betty Wagner Crosley