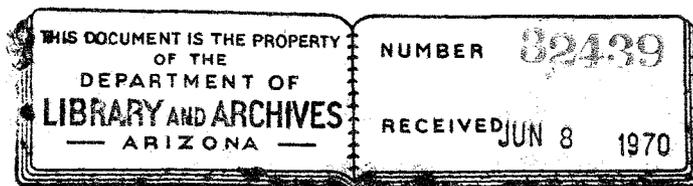


REORGANIZATION OF THE EXECUTIVE BRANCH OF THE
GOVERNMENT OF ARIZONA

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Introduction: The Changing Roles of State Government

When Governor George W. P. Hunt led an informal parade from the Phoenix telegraph office to the state capitol after receiving confirmation from Washington of Arizona's statehood, he could hardly have anticipated what the government of Arizona would be like in the year 1968. Even today, few citizens of Arizona, even with the benefit of hindsight, are fully aware of the almost total transformation in the social, economic, and political roles of the state government.

Comparing the government of Arizona in 1912 with that of 1967 is like comparing the contemporary governments of Lichtenstein and the United States, in the sense that we are attempting to compare an almost quaintly simple governmental organization with a massive and highly convoluted political and administrative structure.

The best illustration we can give of the transformation of Arizona government is the fact that in 1968, the government of Arizona will spend more money than was spent by all forty-eight state governments in 1913, our first full year of statehood.¹ Indeed, Arizona's current budget is well over half that spent by the government of the United States in 1913. Lest these comparisons be used to argue that Arizona has been guilty of unequalled profligacy in the spending of public monies, we must add that the staggering increase in state government spending is very much a national phenomenon, and comparisons similar to the one just mentioned could be made for almost any state.

¹In 1913, all forty-eight states spent a total of \$378 million. (Source: Reorganizing State Government [Chicago: Council of State Governments, 1950], p.1.) In 1966, Arizona state expenditures reached \$353,214,690, and will clearly surpass the total 1913 figure in 1967.

To give just one more example, our neighboring state of California is now spending more every year than was raised by taxation by the federal government of the United States during the palmy days of the New Deal, when President Franklin D. Roosevelt was being accused of merciless and unjustified assaults on the taxpayer's pocketbook.

State government in Arizona has today responsibilities and programs that could not even have been conceived of in 1912 or 1913. In that day, the few young men who aspired to become physicians expected and got their clinical training by helping to deliver a few babies and possibly by helping to treat an occasional gunshot wound. Today, the state of Arizona must spend five million dollars to erect one building to provide clinical training for the students of the new medical college of the University of Arizona. Too, in that more innocent age, it made sense for the first legislature to establish a three member Tax Commission, equip it with a total staff of one secretary, one clerk, and "such other persons" as could be hired for not more than a total of \$3,000 per annum, and then expect the Commission to carry out its legislative mandate to exercise "general supervision of the system of taxation...to the end that all assessments of property of every class, kind and character..be made relatively just and uniform, and at its full cash value...so that equality of taxation shall be secured according to the provisions of law."¹ The achievement of tax equity is a somewhat more complicated (and much more expensive)

¹Session Laws, First Legislature.

today, as the recent struggles for tax reform in Arizona indicate.

A good recent summary statement of the present role of state governments is found in the report of the Committee for Economic Development entitled Modernizing State Government:

Many vital matters are within state jurisdiction. States have broad regulatory powers over persons and property. They charter corporations, control the terms of business contracts, license trades and professions, grant land titles, protect private and civil rights, regulate utilities, and set the legal framework of family organization through marriage, divorce, support, and adoption legislation....In the daily exercise of their sweeping authority, state and local governments manage the bulk of civil government operations in the United States. Universal public education is mandated, regulated, and largely financed by them. Higher education is also heavily state supported. Highways are constructed mostly by the states. Vast hospitals and institutional networks, including those for mental health and corrections, are under state management. The administration of criminal justice depends primarily on state courts and in increasing measure on state police. About half the states manage public welfare programs directly, the other half through their local units. These and other functions illustrate the importance of competent, imaginative, and vigorous state administration.

It must be one of the most curious facts about American government that despite the overwhelming evidence of the great and increasing importance of state government in the lives of our citizens, there is a powerful myth to the effect that state government is really not very important anymore, that the decisions that count are all taken in Washington, and that we can safely ignore the problems that are besetting the states. This ignorance of state government is a national phenomenon, and it is exacerbated in a state like Arizona by the fact that a high percentage of our citizens have only recently arrived in the state and know next to nothing about the governmental problems of the state.

Modernizing State Government (New York: Committee for Economic Development, 1967), p. 12.

Our difficulties are further complicated by the fact that these hundreds of thousands of new residents are themselves part of the problem of Arizona state government. All state governments have had to expand their taxing and spending programs very rapidly in recent years, but the growth in Arizona has been explosive. Accretions of governmental responsibilities that in other states took half a century or longer have been compressed into less than a decade in Arizona.

If the administrative structure of American state government was already becoming obsolescent by the year 1900, as suggested by one authority¹, and has gotten progressively more so since that time, it would be surprising if Arizona did not have a problem of obsolescence in its state administrative structure.

Governmental Reorganization: What is It?

State administrative organization tended to grow in a planless and uncoordinated way. Legislatures would from time to time set up a new agency, bureau, office or department in order to meet some new or changing problem of state government. The relationship of the new administrative unit to older operations and the effect on the total administrative structure and the Governor's potential for managing it were often given little consideration. On other occasions, legislatures which were hostile to a Governor for one reason or the other would deliberately establish a new administrative operation in such a way that the Governor would have small chance of supervising its operations.

¹ Claudius C. Johnson and others, American State and Local Government (Fourth Ed.) (New York: Thomas Y. Crowell Co., 1955), p. 138.

But whether the action was by oversights or design, the effect was that in time the executive branch of many state governments became a tangled mass of overlapping, uncoordinated, uncontrolled and uncontrollable units. The cost to the state in the waste of tax funds and in the loss of efficiency was difficult to calculate, but was obviously serious.

Over fifty years ago, the first major attempt by a state to put its administrative house in order took place in Illinois, which adopted a comprehensive reorganization plan in 1917.¹

The effort to secure better state administrative organization assumed the characteristics of a national movement, with similar goals and similar techniques used throughout the country. The basic approach owed much to a parallel attempt to secure administrative reorganization of the administration of the national government. In 1911, President Taft appointed a Commission on Economy and Efficiency to survey the operations of the executive branch and recommend changes. By the time the United States entered World War I, in 1917, some fifteen states had emulated the federal government by setting up reorganization commissions or committees.²

¹Ibid.

²Reorganizing State Government (Chicago: Council of State Governments, 1950), p. 2.

Reorganization: A Mixed Record

On the basis of the experience of other states, how could Arizona go about achieving executive reorganization? There have been more failures than successes in the long history of reorganization efforts. Arizona itself has seen the failure of the Griffenhagen report.

To begin with, we should avoid confusing a reorganization system with a specific reorganization plan or proposal. Arizona now lacks any constitutional system to provide for reorganization, other than the normal channels of constitutional and statutory change applicable to all conceivable aspects of state government. The question which must be considered by the legislature and the people of the state is whether or not the state needs a new and permanent system whereby the Governor, as chief executive, can take the initiative and accept the primary responsibility for the efficient organization of the state administration.

It is that question which should be answered first, not the subsidiary question of precisely what administrative changes should be made. If a reorganization system and a reorganization plan are presented for public debate simultaneously, it is almost inevitable that the details of the proposed plan will get most of the attention. The proposed system will stand or fall, not on its own merits but on those of the initial reorganization plan.

An even more futile (and incidentally, expensive and time-consuming) approach would be to propose a comprehensive and detailed

reorganization plan without any provision for the method of effectuating the plan. To do this would be to recapitulate the unfortunate experience Arizona had with the Griffenhagen report. This is not to denigrate the Griffenhagen report. It was a competent and professional piece of work, and should the state government today commission a similar reorganization study by an outside consulting firm or team of experts it is very likely that its report would resemble the Griffenhagen report rather closely. The conclusions and specific recommendations of the Griffenhagen report emerge quite clearly from the body of administrative doctrine that has been developed over the years by public administration and management experts. But no two states are alike, and administrative reorganization does not take place in a political vacuum. The pristine recommendations of the experts must be modified and perhaps compromised to fit the political and historical setting of a given state government.

Perhaps the central question involved in the reorganization controversy is whether the Governor should have the power to initiate administrative reorganizations which will take effect unless vetoed by the legislature.

This principle is certainly nothing new. It has long been embodied in the Model State Constitution, and has been incorporated into the newest state constitutions. If the Governor is to be held accountable as the chief executive he should have the opportunity to make those changes in the allocation of functions as he may find necessary or expedient. It is certain that no conceivable administrative organization can be permanently effective.

Obsolescence is inevitable, and it has not been well handled in our state governments. The alternative to Gubernatorial authority is to expect the legislature to deal with administrative organization. This has never worked, and there is no reason to believe it will start to do so now. If the ordinary processes of legislation were suitable to keep state administrative organization up to date, state government would not today be so widely criticized for inefficient operation.

Assuming that some form of executive initiation is desired, what should be the scope of it? The minimum answer to this question is to provide by statute for a procedure whereby the Governor with or without the advice and assistance of a special board or commission, can place reorganization plans before the legislature, which then must accept the proposed reorganization before it can go into effect.

This approach has been attempted by several states with very poor success. South Carolina adopted a plan in 1948 whereby a State Reorganization Commission of ten legislators and three members appointed by the Governor could submit reorganization plans to the legislature through the Governor. The role of the Governor in this plan was particularly weak since he could only recommend reorganization plans to the Commission which may or may not accept them and on the other hand the Governor was required to submit to the legislature all plans approved by the Commission. Any plans submitted to the legislature had to be approved by joint resolution of both houses of the legislature.¹

¹Lynn W. Eley, The Executive Reorganization Plan: A Survey of State Experience (Berkeley: Institute of Governmental Studies, University of California, 1967), p. 35.

In 1952, nine proposals were submitted by the South Carolina Commission. Despite legislative domination of the Commission, six of the nine were rejected. One of the remaining three was put into operation by ordinary statute, and in only two cases did the legislature adopt the required concurrent resolution authorizing an executive order to effectuate the proposals. This rather dismal experience seems to have killed the system for all practical purposes.

No further proposals were submitted.¹

In Pennsylvania, the legislature adopted a similarly weak plan in 1955. The Governor was at least given authority to make proposals directly to the legislature, but very serious limitations were imposed on what he could recommend. He could propose reorganization only of bureaus and agencies below the level of "executive or administrative departments", and three designated departments were exempted altogether as were all independent administrative boards and commissions. Subject to these rather debilitating ground rules, the Governor could propose reorganization measures to the legislature. Unless approved by concurrent resolution within thirty legislative days, the proposals would be defeated. In the first year of operation, five proposals were approved and three defeated. Since then, the legislature has indicated its preference for ordinary legislative procedure in considering reorganization, and the 1955 system seems moribund.

In 1960 Kentucky adopted a system which seems to have the sole purpose of generating reorganization proposals which must then go through ordinary legislative procedure. Certain agency and

¹ Ibid. pp. 20-21

department heads are authorized to suggest reorganizations to the Governor, through the Commissioner of Finance. The 1960 legislation was temporary, and did not produce any proposals. The system was made permanent in 1962. No proposals were approved until 1966, when six relatively minor ones received statutory enactment.¹ The essentially legislative character of the Kentucky system was accentuated in 1964 when the legislature established a Commission on Economy and Efficiency presumably to generate further proposals.² The Kentucky system is neither extinct nor moribund, but the results in seven years of operation were rather sparse.

In 1960, Georgia adopted a permanent system under which the Governor is to submit reorganization proposals which become law unless disapproved by concurrent resolution of the legislature, but this applies only to relatively minor changes transferring state institutions from one department or agency to another. In any case, no such plans were proposed through 1966.³ But in 1963, the legislature adopted a temporary system under which a Governor's Commission for Efficiency and Economy was established to recommend reorganization plans which would then be adopted by resolution in the 1967 session, after which the system would expire automatically. Thus, a "one-shot" legislative plan essentially replaced a moribund and so far unused system of executive proposal.

Experience in these four states seems to indicate that plans requiring normal statutory enactment or something close to it add very little to the existing potential for administrative reform.

¹Ibid. pp. 21-22.

²Ibid. p. 36.

³Ibid. p. 22.

After all, any legislature can at any time adopt a statute embodying some sort of administrative reorganization. Plans which simply generate proposals which can be placed in the legislative hopper are of little help. There is not and never has been any lack of ideas about reorganization. The problem is how to get them into action.

Reversing Executive and Legislative Roles by Statute

If the limited time available to state legislators plus the normal effects of inertia tend to prevent timely affirmative action on reorganization proposals, the obvious alternative is to allow gubernatorial proposals to stand unless vetoed by the legislature. This is the basic approach to administrative reorganization that has been described as an "attempt to put inertia and indecision on the side of change."¹

The two major problems associated with this approach are whether such a system should have a statutory or constitutional basis, and what should be the nature of the legislative veto. Disagreement and doubt about these questions has greatly retarded the adoption of such systems.

The tendency to use statutory authority was unquestionably influenced by the experience of the federal government. As far back as 1932, President Hoover was given temporary reorganization authority in an appropriations bill, and subsequent Presidents have all been extended statutory reorganization authority by the Congress. The national interest in reorganization produced by the first Hoover Commission report in 1949 was directly responsible for a number of

¹Karl A. Bosworth, "The Politics of Management Improvement in the States" American Political Science Review, vol. XLVII, No. 1 (1953), p. 97 (quoted in Eley, op. cit. p. 1).

"little Hoover Commissions" in various states. In fact, by the end of 1951, no less than thirty-three states and two territories had spawned such commissions.¹

Another factor favoring statutory rather than constitutional authority was the reluctance of legislators to be bound by a constitutional amendment. A statute can always be repealed. Again, the statutory route was appealing to those legislatures contemplating a temporary grant of authority to the Governor. Finally, it is, of course, easier to enact a statute than to amend a constitution.

Unfortunately for the statutory approach, its use at the state level presents questions of constitutional law not raised by federal reorganization statutes. The United States constitution unequivocally vests the executive power in the President, and the President's cabinet does not enjoy constitutional status. Obviously, the same situation does not prevail where the state constitution creates a plural executive, with power distributed among a long list of elected department heads. To be sure, another constitutional question, that of delegation of legislative authority, has been raised at the federal level as an objection to executive reorganization statutes, but without success. The same argument has sometimes been more persuasive to state supreme courts, and oddly enough also to state legislatures, who sometimes have had doubts about the constitutionality of procedures which they themselves have enacted into law.

The statutory plan adopted by Michigan in 1958 suffered the

¹ Albert I. Sturm, State Administrative Organization in West Virginia (Morgantown: Bureau of Government Research, West Virginia University, 1952), p. 116.

latter fate. Governors Williams and Swainson submitted a number of proposals to the legislature, most of which were substantively unobjectionable to the lawmakers, but with one minor exception, the legislators decided to veto the proposals and then enact them by regular statutory procedure, on the grounds of the doubtful constitutionality of the procedure provided in the reorganization statute. The legislative veto allowed was that either house could veto the Governor's proposals by resolution within sixty legislative days after submission. There was no court test of the constitutional questions raised in Michigan. In New Hampshire, however, a statutory system for gubernatorial initiative and legislative veto did come to grief in the state courts. Gubernatorial proposals could be vetoed by the 1949 reorganization statute. However, the state supreme court held the procedure unconstitutional in an advisory opinion.¹

In general, the statutory plans embodying gubernatorial initiative and legislative veto have not had a more impressive record of success than the statutory plans requiring normal legislative enactment. As Professor Eley points out, "it may be questioned whether in a majority of the states which have had the statutory plan, the cause of executive reorganization has been helped or hindered....it appears that states without the plan have done as well as those that have it."²

Executive Reorganization by Constitutional Authority

The fifth edition of the Model State Constitution, published in 1948, contained in its executive article a provision granting

¹96 N.H. 517 March 16, 1950; cited in Eley, op. cit., p. 33.

²Eley, op. cit., p. 26.

the Governor to issue executive orders to

....make from time to time such changes in the administrative structure or in the assignment of functions as may, in his judgment, be necessary for efficient administration. Such changes shall be set forth in executive orders which shall become effective at the close of the next quarterly session of the legislature unless specifically modified or disapproved by a resolution concurred in by a majority of all the members.

This reorganization system was accompanied by other provisions which made the Governor the only elected executive officer, and limited the number of executive departments to twenty, the head of each to be appointed by the Governor.

When Alaska wrote its first state constitution in 1956, it adopted substantially the reorganization provisions of the Model State Constitution. The Alaska document did not provide for modification of the Governor's proposals--they would presumably be accepted or rejected in toto.² However, the legislature in the exercise of its constitutional authority could, of course, reject any proposal by the Governor and then enact it by statute with such amendments as it might choose.

Alaska had the great advantage of not having to consider the vested interests which might exist in an old constitution and in the institutional arrangements which it would have contained. Consequently, the experience of Michigan, which was the second

state to adopt a constitutional plan, is perhaps more significant
¹Model State Constitution (Fifth Edition) New York: (National Municipal League 1950), pp. 9-10 [Art. 506]. It should be noted that the Model State Constitution at that time contemplated a unicameral legislature, which accounts for the language referring to a "majority of all the members". The Sixth Edition contains a "bicameral alternative" which specifies a "majority of all the members of each house". Model State Constitution (Sixth Edition) (New York: National Municipal League, 1963), p. 71 [Sec. 5.06].

²Alaska Constitution, Art. III, Sec. 22.

state to adopt a constitutional plan, is perhaps more significant from the point of view of Arizona. As we have seen, Michigan had had the experience of a statutory plan which was not notably effective. The delegates to the constitutional convention of 1961-62 wanted to establish a system that would avoid the problems that had caused the 1958 statutory plan to founder. But the convention was sharply divided on the elimination of elective state offices, and in the end had to compromise on retaining as elected officers the Secretary of State, the Attorney General, and a Lieutenant Governor (although the latter was required to run in tandem with the Governor). Moreover, the convention, which was dominated by Republicans, had some doubts about turning over to the Governor, who had been a Democrat ever since 1948, complete authority to reorganize the executive branch.

The compromise effected here was to provide for a reorganization into not more than twenty departments, with the initial reorganization to be accomplished by the legislature within two years of the effective date of the new constitution. Should the legislature fail to act within the prescribed period, the "Schedule and Temporary Provisions" of the new constitution provided that the authority to conduct the initial allocation of functions would devolve upon the Governor. ¹ In any case, once the initial allocation had been made, the Governor would have the power to make changes by executive order, subject to veto by a joint resolution concurred in by a majority of the members-elect of each house.²

The supposition was that the legislature, confronted by the

¹Michigan Constitution of 1962, Schedule and Temporary Provisions, Sec. 12.

²Ibid., Art. V, Sec. 2.

two-year deadline, would certainly act to reorganize the state administration. This proved to be correct. The legislature reorganized 128 agencies into nineteen departments, one less than the constitutional maximum.¹

¹George A. Bell, "State Administrative Organization and Management," 1964-65, in *The Book of the States*, Vol. XVI, 1966-67 (Chicago: The Council of State Governments, 1966), p. 127.

Administrative Reorganization for Arizona?

1. Do We Really Want it?

It is clear that in considering the question of executive reorganization, Arizona is hardly venturing into uncharted waters. Great amounts of time and money, floods of ink and torrents of oratory have been expended across the country in debating the future of state administration. It must be admitted at once that the result of all this effort has been modest in the extreme. State administration is probably more convoluted and more decentralized today than it was when the first "Little Hoover Commission" was appointed. It has become fashionable to favor "streamlining" of state government. It is easy enough to appoint a commission to study the problem. It is almost as easy to enact a statute that will allow minor changes to be made, and then to reject gravely such trifling proposals as may be timidly made, all in the interests of preserving our ancient liberties. It is to be hoped that Arizona will be spared such hypocritical charades.

The first question before the people of Arizona is whether they really want a strong Governorship which will truly control the administration. Do they want a Governor who will be the Chief Executive in fact, or are they content with a Governor who indeed partakes of the honors reserved for the kings of old--artillery salutes, flowery forms of address (His Excellency, Our Governor), but who might find it impossible to cope with an incompetent State Egg Inspector, or a recalcitrant Sheep Sanitary Commission.

It is by no means certain that the people of Arizona want centralized authority over the state administration. Those who do not have a long and honorable tradition behind them. The American state governorship is not a degenerated version of the Presidency, as some citizens ignorantly think. The Governorship is older than the Presidency, and from the start was a much weaker office. The revolutionary legislators who first created the Governorship were still smarting under the usurpations and posturings of the royal governors, and the last thing they wanted was a strong Governor. Having gotten off to such a feeble start, the Governorship was further weakened by the attentions of the Jacksonians, with their belief in the magical powers of popular election of public officers from dog catcher to fence viewer.

The State of Arizona recapitulated the national experience with the office of the Chief Magistrate. For most of its history, the Territory of Arizona had been widely regarded as a wild and savage place, probably incapable of self government. The state paid dearly for the precipitate action of the residents of Tucson in raising the rebel flag over the Old Pueblo at the outbreak of the Civil War. After the war, a succession of defeated Republican politicians was sent forth into the desert to govern the truculent Democrats of Arizona. It is not at all surprising that when the constitutional convention met in Phoenix in October of 1910, there was a predisposition toward more broadly diffused executive powers. This tendency was reinforced by the Progressivist philosophy which was dominant in the convention. The delegates promptly established

a plural executive, which persists to this day. They were not the least abashed by the criticisms of Richard E. Sloan, the last Territorial Governor, who said:

Contrary to the more advanced political thought in this country, [the Arizona Constitution] took a step backward in decentralizing the state government by withholding from the governor those powers of control essential to democratic government, for by depriving the chief executive of these and by placing them in the hands of boards, commissions, and many quite independent officials, responsibility became so diffused as to make it impossible for the people really to rule.

Today, though the painful memory of the Republican carpetbag Governors has faded from the minds of all but the oldest settlers, and a Republican Governor sits in the capitol by vote of the people, the tradition of executive weakness has deep roots. More important today than Arizona's colorful early history are those national pressures for administrative separatism that run directly counter to the prescriptions of the experts for a concentration of authority and responsibility in the office of Governor. In a perceptive essay on administrative organization, Professor York Willbern has outlined some of these pressures. Perhaps the long and somewhat pitiful tradition of executive weakness is the most important, but it is not the only one. The inevitable drive for agency autonomy is powerful everywhere, and is sure to be encountered in any reorganization attempt in Arizona. Agency heads and their friends are likely to say that reorganization and gubernatorial control is a good thing in principle--but not for my agency. Willbern quotes the comment of a Mississippi agency head on the report of the Mississippi legislative Fact-Finding Committee on Reorganization of State Government: ¹Richard E. Sloan, Memories of an Arizona Judge, (Stanford: Stanford University Press, 1932) pp. 238-239 (quoted in Bruce S. Mason and Heinz R. Hink, Constitutional Government in Arizona Tempe: Bureau of Government Research, Arizona State University, 1953), p. 115.

I think this is one of the very best things that has ever been done in the State of Mississippi and I have long been of the opinion that this work should have been accomplished in the past. However, my department is of a type, character and kind that cannot be consolidated with any other agency, as its duties and functions are unique, and a reduction of personnel or a transfer of any duties of this department would work a hardship and prevent certain citizens from receiving benefits to which they are entitled.¹

One may be sure that such an agency head will not stand alone in his battle for autonomy. He will have friends among those who fear that they may indeed be deprived of "benefits to which they are entitled".

Another pressure from separatism is closely related to this one. Many agency heads see themselves and are seen as the representatives of clientele and interest groups. As Willbern points out:

The Farm Bureau wants the Extension Service subject to its control, not subject to general control by the governor and legislature. The Parent-Teachers Association feels that the Education Department should be sacrosanct and untouchable by "political" hands. If a reorganization commission tries to tamper with a fish and game bureau, the organized sportsmen are likely to raise enough furore to make the commission wonder what happened to it.

Defenders of states rights might (although they seldom do) point out that the multifarious federal grant-in-aid programs are often a hindrance to state executive reorganization. As Willbern says:

The conditions accompanying the grants tend to destroy central political control at the state level. The program area itself is specified; sometimes the specification is rather narrow, leaving no room for political choice at the state level...In some instances, the terms of the national grant specify particular types of administrative arrangements or agencies...In all instances, the procedures and manner of administration of the grant programs are subject to some degree of control from Washington.³

¹Quoted in York Willbern, "Administrative Reorganization" in Charles Press and Cliver P. Williams (eds.), Democracy in the Fifty States (Chicago: Rand McNally & Co., 1966), p. 417.

²Ibid., p. 425.

³Ibid., p. 427.

Finally, and very importantly, any effort to centralize administrative authority runs up against the widespread feeling that those running the state government are no more honest than they ought to be and rather less competent than they should be. Any state legislator who doubts the existence of this feeling should reflect on the inevitable response to any proposal to raise the salaries of legislators up to the level of that received by garbage men, or to provide His Excellency with an official residence. The next day after the public advocacy of any such change is likely to see letters to the editor centering around the theme that "those bums are already getting more than they deserve."

-However uncharitable such sentiments may be, they cannot be ignored. Added to the feelings about incompetence we have inevitably the charge that executive reorganization will pander to the lust for power that presumably resides in the breast of every Governor. It may be grotesque to believe that consolidation of executive agencies will turn a previously mild-mannered Governor into a jack-booted caudillo but the word "dictatorship" has been bandied about in other states where reorganization proposals were under consideration. There is no constitutional requirement that political attitudes be realistic or even rational, and politicians who overlook this fact may become ex-officeholders.

It might be suggested that those desiring reorganization might take advantage of modern methods of opinion research to learn what is the actual and present distribution of attitudes

toward state government and administration in Arizona today. The knowledge gained thereby would be helpful in what would likely be a difficult campaign to sell a reorganization system in the face of the separatist tendencies we have examined. In any event, the question "Do we want it?" is pre-eminently a political question. It cannot be answered by the experts.

2. Do We Need A Constitutional Amendment?

Assuming we want executive reorganization, the experience of other states seems to indicate quite clearly that any reorganization system should have the backing of constitutional status. If this is lacking, litigation over the constitutionality of the system will be a constant threat. Even if the system is not killed outright by court decree, the constant doubt about constitutionality will be sedulously cultivated by the opponents of reorganization, if there is only a statute behind the system. In addition, a constitutional amendment will give the voters a chance to say definitely whether or not they favor reorganization. Unless there is such a vote, opponents can always say that reorganization has been imposed by legislative and executive fiat, contrary to the will of the sovereign people.

3. What Should Be the Reorganization Powers of the Governor?

The best way to answer this question is to say that unless we are prepared to give the Governor the power, subject to legislative

veto, to formulate and order into effect reorganization plans, we really do not want a reorganization system. If the Governor can do no more than to propose legislation, he will have no power that he does not already possess. Governors in all states have always had the power to recommend legislation. This power has not produced executive reorganization in the past, and is not likely to do so in the future. Consequently, a grant of authority similar to that contained in the Model State Constitution or in the constitutions of Alaska and Michigan is clearly indicated.

4. What Should be the Nature of the Legislative Veto?

There will perhaps be little disagreement that there must be a reasonable time limit within which the legislature must act, if it wishes to disallow a gubernatorial proposal. The Alaska provision of "sixty days of a regular session, or a full session if of shorter duration"¹ seems quite reasonable, and is used also in the Michigan constitution.²

A more difficult question is whether a legislative veto should require concurrence of both houses of the state legislature or only one. Granting the veto power to each house separately is equivalent to saying that the Governor must have the affirmative support of both houses for his proposals, just as he would for any statutes that he might propose. This seems contrary to the idea of enlarging the Governor's power in the limited area of reorganization. As we noted before, the movement for executive reorganization is an "attempt to put inertia and indecision on the side of change."

¹Alaska Constitution, Art. III, Sec. 23.

²Michigan Constitution, Art. V, Sec. 2. The Model State Constitution also uses the sixty day rule. [Sec. 5.06]

From that point of view, unless both houses are opposed to the Governor's proposals, they should be allowed to stand, and this is the position taken in the Model State Constitution and the Michigan Constitution. The Alaska Constitution requires concurrence of a majority of all members in a joint session of the legislature in order to nullify the Governor's proposals.

5. Should the Number of Executive Agencies Be Limited?

It is one of the articles of faith of the reorganization movement that there are too many administrative agencies, and that as long as this continues to be true, effective gubernatorial control of the administration will be impossible. How many are too many? It may be agreed that the one hundred plus common to most states is too many, but how far should the reduction go? The Model State Constitution in 1948 adopted a provision of the New York constitution limiting the number of state agencies to twenty. This figure was subsequently adopted by Alaska and Michigan, as well as some other states lacking a reorganization system.¹ On the other hand, the Missouri Constitution of 1945 allows only fourteen agencies. The embarrassing fact is that there is no magic number. At least one authority on executive reorganization doubts the wisdom of these limitations. Ferrel Heady says that "The problem of choice of the 'magic number' and the rigidity of specifying any given number...make a provision of this character of questionable validity."²

On the other hand, the ceiling on the number of agencies has

¹Hawaii, Massachusetts and New Jersey.

²Ferrel Heady, State Constitutions: The Structure of Administration (New York: National Municipal League, 1951), p. 49.

the advantage (if incorporated into the constitution) of giving the Governor a target at which to shoot, and the necessity of making the administrative structure conform to the ceiling is more likely to produce a thorough going reorganization. Without such a ceiling, there is always the possibility that a reorganization amendment might result only in minor and insignificant proposals.

If a ceiling is imposed, one consideration that might be taken into account is that if the number of constitutionally elected officers is not simultaneously reduced, it might not be as easy for Arizona to pare its agencies down to twenty as it was for Alaska or Michigan.

6. Who Should Make the Initial Allocation?

As noted above, the new Michigan Constitution gave the legislature two years in which to effect an initial reorganization, after which the Governor would have the power to do so by executive order. In effect, the Alaska Constitution did the same thing by specifying that the departments and agencies should be allocated by law,¹ and confining the Governor to making changes in the organization thus provided by the legislature. No time limit was imposed on the legislature, but obviously Alaska had no pre-existing state administration, so the action of the Alaska legislature could not really be termed reorganization.

Allowing the legislature first chance at reorganization seems a desirable approach. It might reduce legislative fears associated

¹Alaska Constitution, Art. III, Sec. 22.

with the grant of additional powers to the Governor. Of course, once the legislature has acted, the Governor would be free to submit his first reorganization plan at any time. It is unlikely that a Governor would find himself in such profound disagreement with the legislature that he would wish to junk altogether the initial reorganization plan of the legislature, but he would be in a position to correct any deficiencies which might appear soon after the initial reorganization was accomplished.

7. Should the Reorganization Amendment Be Coupled with a Reduction in the Number of Elected Administrators?

A case can certainly be made that the potential of a reorganization plan could be increased greatly if it were accompanied by a simultaneous reduction in the number of elected administrators. If the aim is to strengthen the hand of the Governor and make him the Chief Executive in fact as well as in name, perhaps the issue of reorganization should be joined to the issue of the short ballot. But if this is done, it is certain that the reorganization system will be attacked vigorously by those who do not favor the proposed elimination of elective offices. Assuming that there are too many elected state administrators in Arizona, it seems unlikely that we will in the near future be able to reduce the number of elective officers to a Governor and his running mate, as was done in Alaska and Hawaii. If those states had started with several additional state elective officers, it would today be very difficult to get rid of any of them. As we have seen, Michigan was unable to

eliminate an elective Attorney General and an elective Secretary of State even in a constitutional convention.

In any case, it would be foolish to argue that reorganization without ballot shortening is useless. Significant and far-reaching changes in Arizona administration could be effected without eliminating a single elected official. That is not to say that all of them should be retained forever. It is only to say that this is a question of political strategy, not of administrative theory.

8. Are There Any Other Constitutional Changes Which Should Accompany Reorganization?

Although it may seem inconsistent to argue for caution in coupling other constitutional change with a reorganization amendment, and then to suggest an amendment which might be so coupled, the question of state civil service reform must be raised. Arizona is one of the some eighteen states which do not have a general merit system for its employees. Exclusive of the employees of educational institutions, who are effectively on a merit basis, only about a fourth or less of Arizona's state employees are under the jurisdiction of the Merit System Board (grant-in-aid employees or the Merit System Council [Highway Patrol]).¹

The arguments in favor of a state merit system are so well known that there is no need to repeat them here. One may hope

¹As of August, 1965, 2372 Arizona employees were under one of the two merit system agencies. As of October, 1964, Arizona had a full-time equivalent of 9,400 state government employees, exclusive of education. Book of the States, Vol. XVI (1965-67) (Chicago: Council of State Governments: 1956), pp. 158 and 168.

that Arizona will not be the last state to hire and fire its employees on the basis of an impersonal and fair merit system. But our concern here is only with the effect of the state personnel system on any reorganization efforts which may be undertaken.

If broad executive reorganization authority is granted, and no provision is made for a merit system, it is probable that some citizens and many state employees will view the entire reorganization scheme as a giant patronage grab. If a state employee's job depends on the favor of his agency chief, and his job is transferred to another agency, he might well be concerned. Consequently, the question of a merit system amendment must be raised. Such an amendment should be brief, and should certainly not attempt to establish all the details of a merit system. Any attempt to do so would impose an undesirable rigidity on the state personnel system, and, as in the case of the reorganization amendment, excessive detail would arouse opposition to specifics of policy rather than to the general principle involved.

The Civil Service article of the Model State Constitution illustrates very well the type of article which might be proposed. It reads as follows:

Section 10.01. Merit System. The legislature shall provide for the establishment and administration of a system of personnel administration in the civil service of the state and its civil divisions. Appointments and promotions shall be based on merit and fitness, demonstrated by examination or by other evidence of competence.

¹Similar provisions are found in the constitutions of Alaska, California, Hawaii, New Jersey, New York, and Ohio. Model State Constitution (Sixth Edition), op. cit., p. 101. Michigan has a quite different article that reflects a long history of experience in that state with the issue of civil service reform.

Conclusions

This report has reviewed the problem of executive reorganization in Arizona in the light of previous experience in other states, as well as the peculiar historical and constitutional problems encountered in Arizona. The following conclusions seem to emerge:

1. Whether consolidation of administrative authority in the hands of the Governor is desirable or not is a profoundly political question, which must be answered by the people and their representatives, and not by experts on administrative theory. Assuming efficiency would be promoted by reorganization, the fact remains that efficiency has clearly not been the supreme value involved in our system of government. If the people feel that values which they regard more highly are threatened by reorganization, they will reject reorganization.
2. Although the reorganization movement has a long history in this country, its accomplishments have been modest indeed. In fact, most of the systems adopted have been abortive, ineffective, or inconsequential. The Hoover Commission made it fashionable to pay lip service to reorganization, but in few states has there been a willingness to accept the real shift in political power embodied in the kind of reorganization favored by the experts.
3. Statutory plans have a generally very dismal record, and this is especially true of those plans which require

positive approval of reorganization proposals by concurrent legislative majorities. It is very doubtful that the adoption of such plans is worth the effort.

4. The relatively recent systems of Alaska and Michigan offer the best examples of the constitutional authority which seems to be required for any serious effort at administrative reorganization.
5. In Arizona, the non-existence of a general merit system for state employees seems to present a special problem which must be considered along with any proposals for a reorganization amendment.

APPENDIX I: Executive Reorganization in
the Model State Constitution

SECTION 5.06 (Bicameral Alternative). Administrative Departments. All executive and administrative offices, agencies and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments so as to group them as far as practicable according to major purposes. Regularory; quasi-judicial and temporary agencies established by law may, but need not, be allocated within a principal department. The legislature shall by law prescribe the functions, powers and duties of the principal departments and of all other agencies of the state and may from time to time re-allocate offices, agencies and instrumentalities among the principal departments, may increase, modify, diminish or change their functions, powers and duties and may assign new functions, powers and duties to them; but the governor may make such changes in the allocation of offices, agencies and instrumentalities and in the allocation of such functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the legislature while it is in session, and shall become effective, and shall have the force of law, sixty days after submission, or at the close of the session, whichever is sooner, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members of each house.

APPENDIX II: Executive Reorganization in the Alaska Constitution

(Art. III)

SECTION 22. All executive and administrative offices, departments and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

SECTION 23. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

APPENDIX III: Executive Reorganization in the
Michigan Constitution

(Art. V)

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have sixty calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.