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CONSTITUTIONAL REVISION— THE EXECUTIVE BRANCH— LONG OR SHORT BALLOT?

It is the opinion of the Constitutional Revision Commission of the State of New Mexico that under the present New Mexico system of government the governor of the state does not have adequate control over the executive department.¹ The purpose of this Comment is to describe and analyze the Commission's proposed revisions of the executive branch provisions which would increase the powers of the governor's office. The suggestions made by the Commission include changing from a long to a short ballot which will reduce the number of state officials who are elected,² increasing the governor's and lieutenant governor's terms from two to four years, and restricting the number of executive and administrative principal departments to twenty.³ This comment deals with the advantages and disadvantages of the change from the long to the short ballot because, while other proposed revisions are important, the short ballot provision will most radically alter the power of the governor's office.⁴

Under the present New Mexico Constitution, article V, section 1 declares that the executive department shall consist of a governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and commissioner of public lands.⁵ Other articles provide for a three-member corporation commission and a superintendent of public instruction.⁶ All of these eleven positions are currently elective. The Commission has taken the position that the multiple elective system on the state level acts to displace executive responsibility and to dilute executive programs and policies.⁷ To counteract the detrimental effects of the multiple elective system the Commission has suggested that the elective offices of the state be reduced to two—governor and lieutenant governor.⁸ Under this proposal the governor and lieutenant governor would run jointly.

1. Report of New Mexico Constitutional Revision Commission 55 (1967) [hereinafter cited as Commission Report].

2. A short ballot is a ballot for voting in public elections on which the number of elective offices is reduced to a minimum. Only a few offices are filled by election, and minor positions are filled by appointment.

3. Commission Report 55, 56, 59.

4. *Id.* at 55.

5. N.M. Const. art. V, § 1.

6. *Id.*, art. XI, § 1, art. XII, § 6.

7. Commission Report 55.

8. *Id.* at 54.

Votes cast for the governor would also be considered cast for the lieutenant governor, and the names of the joint candidates would appear together on the ballot.⁹ This revision, then, would constitute a change from eleven elected state officials to two such elected officials, and would enable the governor to appoint all positions, that are now elected, except that of lieutenant governor.¹⁰ In order to understand why the Commission chose to recommend the change from long to short ballot, we must examine how the executive branch operates under the present constitution.

The eleven elective positions provided for by the present New Mexico Constitution create serious problems that thwart efficient administration of state government. One of the most serious problems is that a multiple elective system leads to irresponsibility. In such a system the holder of a minor elective office is not responsible to the governor because it was not the governor who placed him in office. There is no requirement that the holder of a minor office be of the same political party as the governor, and it is conceivable that the minor officer may have run on a platform directly opposed to that of the governor.¹¹ If the holders of these lesser offices are not responsible to the governor, are they responsible to the voters? The answer to this question should be "yes," but this is not the case. When election time arrives the voters may see traces of inefficient administration. However, with elected officials shouting charges and countercharges, and blaming the legislature for insufficient appropriations and blaming red tape generally, whom can the public reasonably hold responsible?¹² When the voters do not know whom to believe or where to fix the blame they generally look to the governor, and hold him responsible for failure to control an administrative structure over which he had little power.¹³ Thus "the governor has the responsibility, but not the authority; his is the Kingdom and the Glory but not the Power."¹⁴

Another problem of the multiple elective system is that it promotes duplication. The administration of revenues, for example, is partly a function of several executive departments. In the multiple elective system where responsibility is difficult to fix, damaging conflicts can often arise.¹⁵ This type of duplication can lead to a third

9. *Id.*

10. *Id.*

11. L. Lipsn, *The American Governor* 47 (1939).

12. A. MacDonald, *American State Government and Administration* 225 (4th ed. 1950).

13. Lipsn, *supra* note 11.

14. MacDonald, *supra* note 12.

15. Lipsn, *supra* note 11, at 41-42.

problem—waste of time and resources. For example, the cost of establishing a new agency in one executive department could possibly be saved by making use of existing subdivisions of other departments. This cannot be done, however, with elected officials who will not and cannot be required to co-operate with each other. Thus the multiple elective system is as uneconomical as it is inefficient.¹⁶ These, then, are some of the more serious problems in New Mexico's current administrative structure. The Commission's proposed revisions have effectively met them.

By granting the governor the power to appoint those officers now elected, responsibilities within the executive branch should become more clearly delineated.¹⁷ Since the governor will place the people in office and have power to remove them, the direct exercise of authority becomes feasible as a result of the line of authority from top to bottom and the return line of responsibility and accountability from bottom to top. Generally, the governor will appoint people who support his policies. When this is combined with the governor's removal power, a more cohesive and efficient administration should result.

Concentration of appointive power in the governor also has consequences in the area of duplication. For example, under the current system, if a jurisdictional dispute arises between state departments, the heads of the departments often have to negotiate a time-consuming compromise if the dispute is to be resolved. Under the short ballot system compromises are more easily reached because co-operation is encouraged under the governor's leadership. While disputes may still occur, reorganization along the lines suggested by the Commission allows the governor to act as chief co-ordinator to a much greater degree than is now possible.¹⁸

There are also other advantages to the short ballot. With the new-found executive leadership in the governor, the administrative work of the state government should be better planned. The governor can, through simplified executive structure, see administrative activities as a whole. This will enable the executive branch to engage in long-range planning, and will aid in the preparation of the executive budget.¹⁹ Thus, a change to the short ballot can solve some of the serious problems facing state government today.

There is, however, criticism of the short ballot system. The principal criticism stems from a fear of having too much power concentrated in the hands of the governor. This criticism boils down to the

16. *Id.* at 45.

17. *Id.* at 243.

18. *Id.* at 245.

19. *Id.* at 246.

problem of how to make the governor accountable under the short ballot system.²⁰ If the governor is to have increased power over the executive branch, what checks on that power are available, and to what extent are they effective?

The first and probably the most effective check on the governor under the short ballot system is the legislature. The power of the legislature to control the purse strings can curb the activities of the executive branch.²¹ Under the proposed revision of article V, section 7, the governor is required to submit his budget to the legislature.²² While the executive budget would serve the governor as a means of internal control over the administrative departments, it would also serve the legislature as an equally effective means of control over the governor.²³ The possibility that the legislature could make cuts in the budget serves to keep the executive branch responsive.²⁴ The legislature also has the power of overriding the governor's veto and the power to impeach.²⁵ These powers are an effective check on any governor's attempt to over-exert his power.

The courts can also provide an effective check on the executive. Administrative agencies can be subjected to grand jury investigation. Prosecution of department heads who are responsible to the governor is a powerful check on the executive branch.²⁶

Voters can exercise a check on the executive. A governor who has offended a large segment of the voting public is not likely to be re-elected. The governor is also subject to close scrutiny by members of the opposition party. There is, of course, some problem with using the voters as a fast-reacting check because of voter apathy, ignorance and the slowness of public action through a party system. But the voters do constitute an effective long term check.

Political factions and special interest groups, as well as all dissenters, can also be very effective checks on executive power. Political factions of the party in power can be effective in persuading the governor to adopt certain policies and to reject others because of the public esteem to be gained by the minority faction if errors of judgment are discovered.²⁷ Dissenters, too, can appeal to public opinion through mass media. If evidence of indiscretion or wrongdoing is discovered, demands for public investigation will arise.²⁸ Special in-

20. C. Ransone, *The Office of Governor in the United States* 365 (1956).

21. W. Graves, *State Constitutional Revision* 198 (1960).

22. Commission Report 62.

23. Ransone, *supra* note 20, at 379.

24. Graves, *supra* note 21.

25. N.M. Const. art. IV, §§ 22, 35.

26. Graves, *supra* note 21.

27. *Id.* at 197.

28. *Id.*

terest groups will react intensely if their interests are threatened, and may be able to enlist the help of other interest groups. There seem, then, adequate checks within the political system to thwart an attempt by a governor to use the powers of his office against the public interest.

It appears that the Constitutional Revision Commission has adequately dealt with one of the most crucial problems facing our state government—the decentralized, inefficient executive branch. The Commission has recognized that the complexity of state government demands a streamlined, efficient administration that can react quickly and responsibly to the needs of the state. The Commission has suggested that the short ballot, which gives the governor the power he needs to control the executive branch, be adopted in New Mexico. The system has built-in checks on gubernatorial power that make the success of an attempted abuse of the power very unlikely and politically impractical. These checks, when combined with the personal honesty and integrity of those men usually elected to the office of Governor of New Mexico, and the administrative advantages offered by the short ballot system, make it desirable to support the recommendations of the Commission and to predict a much more efficient executive branch if the revisions are adopted.

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