

Revised Constitution Provides For Election Of Strong 'Watchdog' As Controller

"A NEW CONSTITUTION FOR OREGON" (This is the fifth in a series of articles about the revised Constitution proposed by the Oregon Constitutional Revision Commission. The articles were written by Hans A. Linde, professor of constitutional law at the University of Oregon and a member of the Commission.)

The revised Constitution, as has been explained in the last preceding column, strengthens the executive branch, headed by a governor responsible for all executive officers, and establishes a strong "watchdog" in the new office of a Controller wholly independent of the executive.

Reports that the governor is to be the sole elective state official erroneously overlook that the Controller may also be elected. The Controller takes over the "watchdog" functions of auditing and giving independent legal opinions, which are now said to justify the separate election of the Secretary of State and Attorney General. But why did the Commission not recommend a second elected official within the executive branch itself?

THE LINE OF SUCCESSION

A second elected executive officer seemed justified only if he could take over for the governor in case of the governor's death, resignation, disability, or prolonged absence from the state. The present constitution provides no such officer within the state administration. Rather, by the individual, partisan election of administrative officers for overlapping terms, it makes such a transfer of authority within the executive branch impossible.

The present system almost assures that the elected state officials will be political competitors. A secretary of state is commonly regarded as the most prominent candidate to replace the very governor in whose administration he is serving.

In 1950, Secretary of State Mark O. Hatfield and State Treasurer Sig Unander campaigned against each other in the primary of one party for the right to run against Gov. Robert D. Holmes, the candidate for reelection in the other party primary. Again in 1962, Governor Hatfield and Attorney General Robert Y. Thornton spent much of the year campaigning against each other. The present constitutional system makes such situations common and unavoidable. Yet together these several officers are supposed to constitute the administration of the state of Oregon.

The Constitutional Revision Commission concluded that the elimination of such internal division and political competition within the administration must be a key reform in the revised Constitution.

The present line of succession in Oregon runs to the President of the Senate and the Speaker of the House. This may lead to the replacement of a governor by a new governor of the opposite party, who may in fact have been chosen by a narrow majority of his fellow senators. The Commission considered continuing the Secretary of State as an officer to be elected on a single ticket with the governor, like the U.S. President and Vice President. This system, used in the modern Alaska constitution, would provide a mid-term successor to the governor when needed, who would be of the same party as the governor.

and have been elected by all the people of the state. However, a majority of the Commission decided that there was not sufficient cause for dissatisfaction with the succession of Presidents of the Senate, as at present, to require changing that system. This made the creation of a second elective executive officer pointless.

The so-called "Alaska" plan is, however, before the legislative committees considering the revised Constitution as an available alternative that would constitute an elected Secretary of State.

ADMINISTRATIVE ORGANIZATION

For how many separate agencies can a chief executive be actually responsible? In 1960, Governor Hatfield's Advisory Committee on Reorganization reported that Oregon then had "at least 89 boards, committees, authorities and commissions in rule-making, advisory, or managerial roles." Fifty-two agency administrators report directly to the governor. Such numbers make executive responsibility a fiction rather than a practical fact.

The Constitutional Revision Commission did not prescribe a form of organization for the executive branch. It left this to be determined by statutory law, as it is today. However, following a precedent which is universal in the modern state constitutions, it imposed a constitutional limit of 20 on the number of top administrative departments that could be placed directly under the governor. Smaller agencies need not lose their separate identities. But some of them would be grouped together by major categories so as to stay within the ceiling of 20.

There is no magic in the number 20. It is the maximum recommended in the Model State Constitution and recently enacted in New York, New Jersey, Alaska, and Hawaii. A smaller number may suffice. The 1960 Oregon reorganization plan proposed no more than 12 departments. But more leeway and flexibility is desirable in a constitution.

Likewise, the Constitutional Revision Commission did not recommend a "cabinet" form of state government. Whether the major department should be headed by single directors, as recommended in Governor Hatfield's 1960 reorganization plan, or by boards or commissions, as many of them are now, will continue to be determined by statute. The revised Constitution, like the present one, remains silent on this choice of organization. Contrary to some early reports, the present Oregon system of major boards and commissions to manage highways, education and higher education, fish and game, liquor sales, workmen's compensation, etc., is not precluded under the revised Constitution.

The Commission saw no reason for a new constitution to force an end to a system of citizen participation in state government that has given satisfactory service in many areas of administration. Administrative organization is left for future legislatures to consider and reconsider in the light of changing experience. The revised Constitution should not be confused with specific recommendations that have been made by other studies of administrative reorganization.

(Next: The Judiciary.)

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TFX Probe Pact Sought

WASHINGTON (UPI)—Defense Secretary Robert S. McNamara and Atty. Gen. Robert F. Kennedy conferred privately today with Sen. John L. McClellan, D-Ark., apparently to try to ease tension between Congress and the Pentagon over the TFX warplane inquiry.

McClellan, chairman of the Senate investigations subcommittee, said the unannounced conference in his office was "very friendly... cordial."

McClellan told reporters he discussed with the two cabinet officials various aspects of the TFX contract inquiry and so-called ground rules for questioning witnesses. A controversial Air Force memo has charged that some witnesses have been subjected to severe abuse by subcommittee staff members.

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