

**HAWAII STATE  
GOVERNMENT  
ORGANIZATION**

**SELECTED  
MEMORANDA**

*VOLUME I*

**LEGISLATIVE REFERENCE BUREAU**

*UNIVERSITY OF HAWAII*

**STATE OF HAWAII**

HAWAII STATE GOVERNMENT ORGANIZATION

Selected Memoranda

Volume I

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September 10, 1959

TO: The Members of the First Legislature of the State of Hawaii

Subject: Hawaii State Government Organization: Selected Memoranda,  
Two Volumes

The constitution of the State of Hawaii is a flexible document which provides the essential framework for a state government but leaves its specific organization to subsequent legislative and executive action. Great discretion and authority are given to the legislature; in fact, legislative action is needed in a number of areas before some of the constitutional provisions can be put into effect. Of frequent occurrence in the constitution are such phrases as "the legislature shall by law provide," "as may be prescribed by law," and "unless otherwise provided by law." These legislative powers run the whole gamut of governmental matters, including areas of organization, personnel, compensation, finances, and functions and duties of officials and agencies.

Recognizing the need for preparation for a smooth transition to state government, the Thirtieth and last Legislature of the Territory of Hawaii created a Joint Legislative Interim Committee to consider the problems of reorganizing the territorial government in accordance with the provisions of the state constitution and to report its findings to the first state legislature.

At the request of this committee, the Legislative Reference Bureau prepared a number of background reports and memoranda of varying length and scope. With the thought that some of these papers may be of interest to the entire membership of the First Legislature of the State of Hawaii as it meets to undertake the important task of reorganizing the territorial government into a modern and effective state government, these two volumes of selected memoranda have been published.

Kenneth K. Lau  
Acting Director

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## BACKGROUND OF DEPARTMENTAL REORGANIZATION IN HAWAII

### Summary

During the past ten years, a number of attempts have been made to reorganize the departmental structure of the executive branch of the government of Hawaii.

The 1949 session of the territorial legislature created a hold-over committee to consider, among many problems, how the territorial government might be reorganized along more efficient lines. It made a number of recommendations such as the creation of a legislative auditor, as later provided in the state constitution, and the abolition of most special funds, enacted in 1959.

Two major reorganizational measures recommended by the committee, one to create a department of finance and another to establish a department of treasury and commerce, were passed by the 1951 legislature and pocket-vetoed by Governor Long, again passed by the 1953 legislature and again vetoed by Governor King.

In 1954 Governor King appointed an advisory committee on government organization which, after a year of study, recommended that the territorial government be organized into 16 principal departments.

Since then, a number of reports and surveys have been made on various aspects of governmental reorganization, some by research agencies or personnel arranged for by the government and some by public spirited community organizations interested in certain areas of governmental activities, such as health and welfare.

The task confronting the first legislature of the State of Hawaii is how best to allocate the functions, powers and duties now exercised by some 100 departments and agencies among and within not more than 20 principal departments in such manner as to group them according to major purposes so far as practicable.

BACKGROUND OF DEPARTMENTAL  
REORGANIZATION IN HAWAII

1. Recent attempts at reorganization in Hawaii.

HOLDOVER  
COMMITTEE  
OF 1949

This is the tenth anniversary of a rather sustained effort by the government of Hawaii to reorganize its departmental structure. The history of this effort begins with the 1949 regular session of the territorial legislature, which created a holdover committee of eight Senators and 12 Representatives, and authorized the committee to consider, among many problems, how the government of the Territory might be reorganized so as to eliminate "unnecessary expenditures consistent with the most efficient performance of government services" and to remove "duplication and overlapping of services".

A subcommittee on Governmental Efficiency was created to study means of accomplishing these two broad objectives. The subcommittee recommended, and the full committee approved for consideration by the next legislature, six measures relating to governmental reorganization, particularly of financial administration. Over the course of the next several years, some of these recommendations were enacted into law, including the establishment of a legislative auditor (provided in the state constitution) and the abolition of most special funds (a 1959 enactment).

REORGANIZATION  
BILLS VETOED

The two major reorganizational steps proposed by the holdover committee, however, were successfully opposed. One measure would have created a Department of Finance, to include budgeting, auditing and related managerial functions; another would have established a Department of Treasury and Commerce. Both bills were passed by the legislature in 1951, but were then pocket-vetoed by Governor Long. The same thing happened in 1953 under Governor King.

Minor steps towards reorganization were legislated. The bureau of conveyances was transferred from the Treasury Department to the Department of Public Lands (1951); administration of territorial tax laws was centralized in the Department of the Tax Commissioner (1953) when collection of the fuel, death and insurance taxes was made a function of that department, instead of the Treasurer's. However, the number of departments was expanded as new agencies were created -- for example, as the Survey Department was split off from the Department of Public Lands in 1949, the Commission on Children and Youth established in 1949, the Industrial Research Advisory Council (now Economic Planning and Coordination Authority) in 1949, the Commission on Historical Sites and the Civil Defense Agency in 1951, the Hawaii Water Authority in 1953 and the Territorial Planning Office in 1957.

CONSTITUTIONAL  
PROVISION

The Hawaii state constitution, drafted in 1950, gave a new direction to departmental reorganization. Borrowing an idea from the New Jersey constitution of 1947, the Hawaii convention included in the proposed state constitution a provision (Article IV, Section 6) limiting to 20 the number of "principal departments" of the state and requiring all non-temporary executive and administrative offices to be allocated within those 20 departments. The constitution places responsibility for carrying out this provision on the legislature. However, if the legislature does not act within three years of statehood, the Governor is directed to.

In February 1954, Governor King appointed an Advisory Committee on Government Organization. For approximately one year the committee and its several subcommittees and advisory groups considered means of reorganizing the territorial government in accordance with the constitutional requirement. The report of the committee, which was transmitted to the legislature on April 20, 1955, recommended that all territorial agencies be placed in or under the following 16 departments:

Attorney General	Education
Finance	University
Personnel	Libraries
Natural Resources	Labor & Industrial Relations
Trade and Commerce	Public Works
Health	Defense
Institutions	Hawaiian Homes Commission
Public Welfare	Motor Vehicles

Four public corporations -- the Housing Authority, Harbor Commissioners, Aeronautics Commission and Irrigation (now Water) Authority -- were to be separately established and administered, as was the office of the Secretary of Hawaii.

PROPOSED  
LEGISLATION  
IN 1957

No legislation was introduced in 1955 to effectuate these recommendations, since the legislative session was then almost concluded, but measures were prepared by the administration for introduction at the 1957 session. These included the twice-vetoed bills to establish departments of finance and commerce (HB 304 and 306), and new proposals for an industrial development authority (SB 295) and a natural resources department (SB 370). None of the reorganization measures were adopted, but Act 150 created the Territorial Planning Office and gave it authority to nurture cooperation among the several territorial agencies concerned with planning and economic development.

SURVEYS  
AND  
STUDIES

During the past few years several groups have given detailed consideration to the organization and functions of certain departments, the impetus for the examination sometimes coming from the department itself, sometimes from the Governor's office, and in one instance from outside the government. In 1957 there was issued a study of the Organization and Administration of the Public Schools in Hawaii (sometimes called the "Odell report" after the Stanford University professor who directed the survey staff). The six parts of the study discussed curriculum, special services, personnel program, finances and physical plant of the public schools, as well as the organization of the Department of Public In-

struction. Legislation to implement the major recommendations of the survey has not yet been offered.

On January 22, 1959 two reports were made to the Governor. One, from Fritchard Associates (Honolulu management consultants), recommended the creation of a department of administration, encompassing bureaus of the budget, supply, general services, accounting and treasury. Reorganization of the planning function (into a department of planning) and of personnel administration (department of personnel) and of the Governor's office was also recommended.

The second report, prepared by Public Administration Service of Chicago, concerned Organization for the Administration of Natural Resources and Economic Development. It proposed the formation of a department of public lands and resources (including water resources, forestry, parks and wild life, as well as public lands) and of a department of economic development (including functions of the Territorial Planning Office, Economic Planning and Coordination Authority and Farm Loan Board, certain activities of the Department of Agriculture and Forestry, plus a tourism division and an information and promotion service).

Shortly after the adjournment of the legislature in May 1959, there was issued a Report on Organization of Health and Welfare Services in Hawaii. The report, prepared by a committee jointly created by the Honolulu Council of Social Agencies and the Oahu Health Council, after more than three years of work, recommended reorganization of health and welfare functions within these departments: department of mental health (including present division of mental health, Territorial Mental Hospital and Waimano Home for feeble-minded persons); department of welfare, corrections and rehabilitation (combining functions of the Departments of Public Welfare and of Institutions— if further study confirms "the indicated overlapping of clients in the two

programs -- plus the Council on Veterans' Affairs and, with some autonomy in administration, the Board of Pardons and Paroles. The Board of Health would be continued as a separate department and its relations with various licensing boards (medical examiners, nursing, embalmers, veterinarians, etc.) "systemized".

PROPOSED                    On behalf of the Governor's office, bills to effectuate some of the  
LEGISLATION                    recommendations of the Pritchard and P.A.S. reports were introduced  
IN 1959                        before the 1959 territorial legislature. These measures would have established  
departments of administration, personnel and planning (SB 616 and HB 583); depart-  
ments of economic development administration and of public lands and resources  
(SB 606 and HB 601). Other bills, not originating with the executive branch, pro-  
posed the creation of departments of finance (SB 963), supply and services (SB 639),  
trade and commerce (SB 143, 299, 965) and of libraries (SB 239 and HB 647).

None of these bills were enacted. However, the legislature did approve SB 7, which would establish a Land Development Authority. At this writing the bill is on the Governor's desk for approval or vetoing. Also approved as Act 127 was HB 1011, which created the legislative interim committee on governmental reorganization, comprised of eight Senators and eight Representatives.

## 2. Recent reorganization studies and actions in other states.

Over the past two decades a large number of states, probably more than one-third, undertook to reorganize their departmental structures and of the remaining states many have conducted investigations seeking means of streamlining or otherwise improving their machinery of government. A report to the Western Governors' Conference, held in Honolulu in November 1958, summarizes reorganization studies made during the biennium ending June 1957 in Georgia, Iowa, Maine, Minnesota and North Carolina. Since that time other states have completed similar investigations, of

which reports from Michigan and Oregon are on hand.

Some of these reorganization studies, and ensuing legislation, have been conducted on the initiative of the legislature (as in Oregon), some reorganizations have been initiated by the executive (as in Michigan). Techniques used in the several states vary: investigation by the governor's office or by legislative committees, utilizing their own staff resources for fact-finding and drafting proposals for reorganization; contracting with non-governmental agencies for assistance in carrying out these tasks. Minnesota, in considering the reorganization of its state government during 1955-56, relied primarily on self-surveys of the various state agencies, using teams formed of staff members of the department under consideration and "outsiders", including one legislator.

The common elements of the plans resulting from these studies are two-fold: an effort to reduce the number of state agencies reporting to the governor; an attempt to strengthen the staff services assisting the executive and, frequently, of those serving the legislature.

ALASKA  
REORGANIZATION

One of the most thoroughgoing recent reorganization of a state government is that currently underway in Alaska. The first session of the Alaska state legislature, following most of the recommendations of a Public Administration Service study, vested all administrative powers of the state within the office of the governor and 12 departments: administration, law, revenue, education, health and welfare, labor, commerce, military affairs, natural resources, fish and game, public safety, and public works.

This State Organization Act of 1959, in establishing the foregoing governmental structure, abolished more than 100 agencies and offices. The Governor is authorized, however, to postpone the actual transfer of functions among agencies required by the Act, but for no longer than six months.

NEW JERSEY  
EXPERIENCE

In setting this time limit, the Alaska legislature may have avoided the frictional resistance to reorganization experienced by the state of New Jersey, among others. The 1947 revision of the New Jersey constitution required a restructuring of the state government, to include no more than 20 principal departments -- the precedent for the same provision in the Hawaii constitution. In 1948, the legislature enacted a series of reorganization acts which merged the various state agencies into 14 principal departments. On September 14, 1955, Governor Meyner, addressing the Governmental Research Association, evaluated New Jersey's reorganization effort in these words:

.... We must draw the distinction between state reorganization as an alteration of form and structure and state reorganization as a meaningful process of revitalizing a weak administrative system. A new form and structure does not necessarily abolish obsolete practices. It does not eliminate duplication and waste. It does not convert the operation of government into a carefully integrated effort.

When we draw this distinction we find that reorganization in New Jersey is only skin deep. The fourteen new departments that absorbed the scores of separate boards and commissions of the past look neat and impressive on paper. Yet when we probe beneath the surface, we find that many of the agencies have survived in the forms of bureaus or divisions in the new departments and the tenor of their way is little changed. They still honor the same antiquated methods and are highly jealous of their traditional independence.

3. Present governmental structure in Hawaii.

ORGANIZATION  
CHART

An organization chart of the territorial government, essentially as it exists in 1959, is included in this volume.<sup>1</sup> Staff agencies are drawn in a semi-circle under the office of the Governor; line agencies are grouped below. At the bottom of the chart are the various regulatory boards. The Motor Vehicle Dealers' Licensing Boards (lower lefthand) actually operate in each county, but under detailed territorial statutes and with board members appointed by the Governor.

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<sup>1</sup>Agencies created by the 1959 territorial Legislature are not shown.

104  
PUBLIC  
AGENCIES

Appendix I lists these agencies; like any such grouping it is necessarily arbitrary. Understanding this arbitrariness in classification, there are in the administrative branch of government 28 major agencies and 35 minor agencies, commissions and advisory boards, etc., 23 regulatory boards, plus 18 agencies functioning at the county level, but with members appointed by the Governor and confirmed by the Senate. The grand total, 104 is almost identical with the number which existed in the Territory of Alaska as it became a state. The Hawaii constitution, it will be recalled, requires that all "executive and administrative offices, departments and instrumentalities of the state government" be allocated among no more than 20 principal departments. The legislative deadline for this reorganization is August 1962; the deadline for the Governor is one year later.

APPENDIX I.

LIST OF DEPARTMENTS, AGENCIES AND OFFICERS  
OF THE TERRITORIAL GOVERNMENT

<u>A. Major Departments and Agencies</u>	<u>Related Boards and Commissions</u>
1. Agriculture and Forestry, Board of	Fishery Advisory Committee Hawaii Soil Conservation Committee
2. Attorney General	-----
3. Budget, Bureau of	Board of Disposal
4. Civil Defense Agency	-----
5. Civil Service, Department of	-----
6. Comptroller	-----
7. Economic Planning and Coordination Authority	-----
8. Employees' Retirement System	-----
9. Harbor Commissioners, Board of	-----
10. Hawaii Aeronautics Commission	Airport Zoning Board
11. Hawaii Housing Authority	-----
12. Hawaii Statehood Commission	-----
13. Hawaii Water Authority	-----
14. Hawaiian Homes Commission	-----
15. Health, Department of	-----
16. High Sheriff	-----
17. Institutions, Department of	Board of Pardons and Pardons Board of Prison Inspectors Territorial Hospital and Waimano Home Appeals Commission
18. Labor and Industrial Relations, Department of	Apprenticeship Council Hawaii Employment Relations Board Industrial Accident Boards Labor and Industrial Relations Appeal Board

APPENDIX I (continued)

<u>A. Major Departments and Agencies</u>	<u>Related Boards and Commissions</u>
19. Library of Hawaii	-----
20. Public Instruction, Department of	-----
21. Public Lands, Department of	Board of Appraisers Bureau of Conveyances
22. Public Welfare, Department of	-----
23. Public Works, Department of	-----
24. Secretary of Hawaii	Voting Machine Board
25. Tax Commissioner, Department of	Boards of Review Tax Appeal Court
26. Territorial Planning Office	Hawaii Development Council
27. Treasury Department	-----
28. University of Hawaii	-----

Revisor of Statutes (created by 1959 territorial legislature)

Land Development Authority (proposed by 1959 territorial legislature)

B. Other Boards and Commissions

1. Children and Youth, Commission on
2. Fair Commission of Hawaii
3. Farm Loan Board
4. Hawaii Visitors Bureau
5. Historical Sites, Commission on
6. International Cooperation Center  
of Hawaii
7. Kamehameha Day Celebration  
Commission
8. Loyalty Board, Territorial

APPENDIX I (continued)

B. Other Boards and Commissions

9. Military Department: Hawaii National Guard
10. Pacific War Memorial Commission
11. Public Archives, Commissioners of
12. Public Utilities Commission
13. Sight Conservation, Bureau of, and Work with the Blind
14. Subversive Activities, Commission on
15. Survey Department
16. Uniform Legislation, Commission to Promote
17. Veterans Affairs, Council on
18. Vocational Rehabilitation, Division of

C. Regulatory Boards

1. Abstract Makers, Board of Examiners of
2. Accountants, Board of
3. Barbers, Board of
4. Beauty Culture Board
5. Boxing Commission
6. Chiropractic Examiners, Board of
7. Collection Agency Advisory Board
8. Contractors License Board
9. Dental Examiners, Board of
10. Embalming Examiners, Board of
11. Engineers, Architects and Land Surveyors, Board of Registration for

APPENDIX I (continued)

C. Regulatory Boards

12. Massage, Board of
13. Medical Examiners, Board of
14. Naturopathy, Board of Examiners in
15. Nurses, Board for the Licensing of
16. Opticians, Board of Dispensing
17. Optometry, Board of Examiners in
18. Osteopathic Examiners, Board of
19. Pharmacy, Board of
20. Photography, Board of
21. Private Detectives and Investigators,  
Board of
22. Real Estate Commission
23. Veterinary Examiners, Board of

D. County Boards and Commissions Appointed  
by Governor

1. Library Boards
  - Hawaii County Library Managing Board
  - Maui County Libraries Managing Board
2. Liquor Commissions (4)
3. Motor Vehicle Dealers', Salesmen's  
Brokers' and Brokers' Agents'  
Licensing Boards (4)
4. Police Commissions (4)
5. Registration, Boards of (4)

## PRINCIPAL DEPARTMENTS OF GOVERNMENT

### Summary

The State Constitution provides that all executive and administrative offices, departments and instrumentalities and their respective functions, powers and duties shall be allocated by law among and within not more than 20 principal departments. The purpose of this provision is to permit the organization of a state government endowed with flexibility and to enable the chief executive to exercise effective supervision over the principal departments by limiting the span of control.

No exceptions are enumerated in the Constitution whereby an executive or administrative agency may be organized outside of the 20 principal departments. Under the traditional American division of governmental functions into executive, legislative and judicial branches, any functions not falling within the legislative or judicial branches would fall within the executive, and hence under the constitutional mandate.

MEMORANDUM TO: Mr. Hideto Kono, Clerk-Counsel  
Joint Legislative Interim Committee

Date: August 12, 1959

Subject: Principal Departments of Government

This brief memorandum is submitted in response to your request for an informal review of some of the problems related to the organization of the executive branch of the state government into not more than 20 principal departments. It is not a legal opinion nor is it the result of exhaustive research. Rather it is a capsuled view of the schematic design projected by the provisions of the Constitution.

The key provisions dealing with the organization of the executive branch of the state government are found in the first three paragraphs of section 6 of Article IV. They read as follows:

Section 6. All executive and administrative offices, departments 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 in such manner as to group the same according to major purposes so far as practicable. Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department.

Each principal department shall be under the supervision of the governor and, unless otherwise provided in this constitution or by law, shall be headed by a single executive. Such single executive shall be nominated and, by and with the advice and consent of the senate, appointed by the governor and he shall hold office for a term to expire at the end of the term for which the governor was elected. The governor may, by and with the advice and consent of the senate, remove such single executive.

Whenever a board, commission or other body shall be the head of a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. The term of office and removal of such members shall be as prescribed by law. Such board, commission or other body may appoint a principal executive officer, who, when authorized by law, may be ex officio a voting member thereof, and who may be removed by a majority vote of the members appointed by the governor.

The foregoing language is all inclusive. Its purpose is to provide the state government with an organizational structure having the following characteristics: direct supervision by the chief executive, flexibility, and effective span of control.

The following questions have been raised in the discussions of the committee, and we express our view as to how they fit into the constitutional scheme.

1. Are the departments or agencies that are specifically named in the Constitution, such as the University of Hawaii and the Board of Education, to be counted as being within the 20 principal departments?

Yes. We believe that the Constitution, when viewed as a whole, points to the inclusion of the agencies established by the Constitution itself within the 20 principal departments (either as one of the principal departments or as a part of a principal department).

While no clear-cut definition is made of a principal department, the Constitution sets forth the outline of its establishment. There are two alternative methods of organizing a department. One is to create a department headed by a single executive; this type of department appears to be preferred by the Constitution. (See second cited paragraph above.) However, the Constitution also allows for legislative establishment of a principal department to be headed by a board or commission. (See third cited paragraph above.) The Constitution itself provides for multi-headed departments in the Board of Regents of the University of Hawaii and the Board of Education (Article IX). It also provides that the management of natural resources shall be vested in one or more executive boards or commissions (Article X).

Another constitutional characteristic of a principal department is the manner of appointing its head. In the case of a single-headed department, the single executive is to be appointed by the Governor and confirmed by the Senate, while in the

case where a board or commission is the head of a principal department, the members thereof are appointed by the Governor and confirmed by the Senate, and the board or commission in turn selects the principal executive officer.

Specific provision for the two bodies of education in the Constitution itself is not inconsistent with the basic constitutional scheme, and unless these bodies can be characterized as either judicial or legislative they would fall within the limitation of section 6 of Article IV and be included within the 20 principal departments.

A further question has been raised as to whether the specific provisions for the University of Hawaii and the Board of Education require that they be regarded as separate, principal departments. The words of the Constitution do not expressly prohibit their being placed as components within a larger department. However, the scheme of their organization fits the pattern of one of the two methods outlined for the establishment of a principal department, and gives each the characteristics of a principal department. Even if they were to be incorporated within a larger department, the constitutional method for selecting their members cannot be changed, nor can a superior departmental executive exercise the constitutionally granted powers and duties of the respective boards.

2. Are public corporations to be included within the 20 principal departments?

Yes. The discussion above applies with equal force to public corporations, whether they are established by the state Constitution or by legislation. A public corporation may be designated as one of the principal departments, or may be brought within the span of supervision of another principal department, grouped "according to major purposes so far as practicable." In the latter case, due regard would need to be given to existing obligations, degree of autonomy and accumulated experience of the agency concerned.

3. Are the central staff agencies to be counted among and within the 20 principal departments?

Yes. We believe that the language of the Constitution, that "all executive and administrative offices, departments 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," encompasses all functions not normally regarded as legislative or judicial. The American system of government makes the three major divisions of executive, legislative and judicial functions. Therefore any agencies, whether they be called staff agencies or line agencies, would be encompassed within the broad and all inclusive language of the Constitution as long as they do not fall within the legislative and judicial branches.

The purpose of this constitutional provision is fairly clear. It aims to limit the number of departments over which the Governor needs to exercise direct supervision. It is part of the constitutional scheme to provide a strong chief executive and to enable him to exercise effective executive control. While it may be argued that 20 is not the most efficient number for this purpose and that good administration calls for a substantially smaller number, the constitutional 20 is a maximum and not a minimum. In that sense, the fewer the number of principal departments created, the more nearly would the constitutional purpose be achieved.

4. Is the Governor's Office to be counted as one of the 20 principal departments?

No. We believe that the wording of the Constitution when taken as a whole indicates that the Governor and his immediate staff, which for convenience is referred to as the "Governor's Office" or "Office of the Governor," would not constitute one of the 20 principal departments.

The Governor is the chief executive of the state:

- a. "The executive power of the State shall be vested in a governor." (Article IV, section 1)

b. "The governor shall be responsible for the faithful execution of the laws." (Article IV, section 5)

c. "Each principal department shall be under the supervision of the governor and, unless otherwise provided in this constitution or by law, shall be headed by a single executive." (Article IV, section 6)

The foregoing provisions indicate that the Governor as chief executive of the state is charged with the supervision of all of the executive and administrative departments of government. The Office of the Governor, being made up of such personnel as are required to give direct assistance and service to the Governor in his executive and supervisory functions, would be regarded as a necessary extension of the Governor's official personality, and would not be regarded as constituting a department.

The Constitution provides that where a principal department is to be headed by a single executive, such executive shall be appointed by the Governor and hold office for a term to expire at the end of the term for which the Governor was elected. The Governor as the head of his own office is not appointed by himself nor is he under his own supervision. In other words, certain characteristics apply to the principal departments which do not apply to the Governor's Office.

Conclusion: No exceptions are enumerated in the Constitution and, except for the Governor, there is no basis for making an exception. Any agency which is executive or administrative "shall be allocated by law among and within not more than twenty principal departments."

Kenneth K. Lau  
Acting Director

## EXECUTIVE-INITIATED ADMINISTRATIVE REORGANIZATION

### Summary

In this memorandum various procedures are examined whereby the President of the United States or a governor has been empowered to reorganize his own executive department subject to the veto power of the legislative branch of the government. The basic feature of this approach is that the chief executive submits to the legislative body reorganization plans which take effect unless the legislature expresses its disapproval within a given time.

## EXECUTIVE-INITIATED ADMINISTRATIVE REORGANIZATION

With the realization of the need for administrative reorganization in American jurisdictions have come two additional problems--the recurrence of the need and the complex nature of any such reorganization. This complexity and the influence of varying special interests urging retention of the status quo in the organization of the federal government prompted Congress in 1930, 1933, 1939, 1945 and again in 1949 to grant to the President, instead of retaining for itself, the authority to effect an administrative reorganization by executive order, subject, however, to a "Congressional Veto." Congress, as a statement of purpose in the Reorganization Act of 1945,<sup>1</sup> stated that administrative reorganizations "may be accomplished in greater measure under the provisions of this [Reorganization] Act, and can be accomplished more speedily thereby than by the enactment of specific legislation."

Stating that its intention was to reduce expenditures, duplication, overlapping and the actual number of agencies, and to increase efficiency by promoting consolidation, coordination and groupings of agencies with similar functions, Congress granted to the President the power to study and prepare reorganization plans to be issued in the form of executive orders. Congress did not express any specific ideas on what form a reorganization administrative department should take and, therefore, gave the chief executive much discretion in formulating his plan. The guide lines were few but the anticipated plan was limited in two respects.

First, the statute enumerated things the chief executive could not do. He could not completely abolish or transfer the duties of any executive department,

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<sup>1</sup>59 U. S. Statutes-at-Large 613.

nor could he create any new "Department" or "Secretary." A number of agencies, such as the Federal Communications Commission, the National Labor Relations Board, the Interstate Commerce Commission, etc., were taken out of the purview of any possible executive reorganization. Another statutory requirement was that transitional schedules were to be included in any proposed plan.

Secondly, this executive order was subject to a "Congressional Veto." The plan was to be submitted to both Houses on the same day and was to take effect:

Upon the expiration of sixty calendar days after the date on which the plan is transmitted to the Congress, but only if during such sixty-day period there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the reorganization plan.

This authority to initiate a reorganization was not permanent: a time limit of about two and one-half years during which an administrative plan could be considered was provided for in each of the reorganization acts. Since 1949 Congress, instead of re-enacting the series of reorganization acts, has regularly extended final date for the submission of executive reorganization plans so that the deadline contained in the 1949 Act has been successively extended from 1953 to 1955, 1957, and then to 1959 by the amendment of 1957.<sup>2</sup>

#### State and Territorial Reorganizations

Puerto Rico in April 1949 adopted an act almost identical to the federal reorganizations acts. Under the Puerto Rico statute, however, the proposed plan required delivery to both Houses within the first five days of any regular session (the regular session ran from the second Monday in February to April 15) or prior to 15 days before any special session (special sessions were limited

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<sup>2</sup>5 U. S. C. A. 133z-3.

to 14 calendar days). The plan became effective a day after adjournment sine die, if not disapproved of by a concurrent resolution during the session. This gave the legislature about 100 calendar days during which it could express its disapproval during a regular session. In special sessions the legislature had about 29 days to consider the plan, during the last 15 of which it could have expressed its disapproval.

Most recent state government reorganizations have been enacted or proposed by the usual legislative bill--Alaska, 1959; Illinois, 1959; New Hampshire, 1950. However, the State of Michigan in 1958 adopted the theory of executive-initiated governmental reorganization as a permanent reorganizing procedure. Public Act 125 of 1958 session of the Legislature of the State of Michigan (appended) provides that a reorganization plan prepared by its governor shall become effective no sooner than 90 days after final adjournment of the legislature if the plan is submitted to both Houses within the first 30 days of the session and unless it is disapproved by either House by a resolution of the House or Senate within 60 days after its submission. As seen in Section 4 of the Michigan Statute, the act puts few limitations on any proposed reorganization plan and represents an interesting departure in administrative reorganization. The act is reproduced in the following pages.

PUBLIC ACT NO. 125

Regular Session, 1958

AN ACT to establish a method for legislative approval or disapproval of executive plans for the reorganization of executive agencies of state government; to provide for executive implementation of such reorganization plans as are not disapproved by the legislature; and to reserve to the people their constitutional power of referendum respecting executive reorganization plans when such are not disapproved by prior legislative action.

The People of the State of Michigan enact:

Sec. 1. Within the first 30 days of any regular legislative session, the governor may submit to both houses of the legislature at the same time, 1 or more formal and specific plans for the reorganization of executive agencies of state government.

Sec. 2. A reorganization plan so submitted shall become effective by executive order not sooner than 90 days after the final adjournment of the session of the legislature to which it is submitted, unless it is disapproved within 60 legislative days of its submission by a senate or house resolution adopted by a majority vote of the respective members-elect thereof.

Sec. 3. The presiding officer of the house in which a resolution disapproving a reorganization plan has been introduced, unless the resolution has been previously accepted or rejected by that house, shall submit it to a vote of the membership not later than 60 legislative days after the submission by the governor to that house of the reorganization plan to which the resolution pertains.

Sec. 4. A reorganization plan not disapproved by one or the other house of the legislature in the manner set forth in section 2 of this act shall be considered for all purposes as the equivalent in force, effect and intent of a public act of the state upon its taking effect by executive order as set forth in section 2, and it shall be given an identifying number and published in the same manner as required by law for the publication of the public acts of the state. A reorganization plan not disapproved by one or the other house of the legislature shall be subject to the provisions of the state constitution respecting the exercise of the referendum power reserved to the people in the same manner and by the same procedure as therein prescribed for the approval or rejection at the polls of any act passed by the legislature and which is subject to the exercise of the referendum power as therein set forth.

Sec. 5. Reorganization plans shall relate only to abolishing or combining agencies in the executive branch of the state government or to changing the organization thereof or the assignment of functions thereto, and each such plan shall contain, where appropriate, the provisions necessary to effect:

(1) The transfer of records, files and other property, including property held in trust, from one to another executive agency;

(2) The continuance of statutory identity and authority as between executive agencies and officers proposed to be created and abolished;

(3) The transfer and continuance of the conduct and determination of pending hearings or other proceedings without abatement thereof;

(4) The transfer of appropriations where such is necessary to carry out the original purposes of the appropriation; but any unexpended appropriations or portions thereof not required by reason of the operation of the reorganization plan shall revert to the fund from which the original appropriation was made;

(5) Such other arrangements as are necessary to provide for the uninterrupted conduct of the services and functions of government affected by the proposed reorganization plan.

Sec. 6. No reorganization plan shall seek to alter any existing provisions of the Michigan constitution.

Approved April 17, 1958.

## THE OFFICE OF LIEUTENANT GOVERNOR IN HAWAII

### Summary

The Constitution of the State of Hawaii provides for the election of a governor and a lieutenant governor to head the executive branch of the state government. As well as being designated successor to the governor should that office become vacant, the lieutenant governor is assigned the duties and powers formerly exercised by the secretary of the Territory, "unless otherwise provided by law". (Article XVI, sec. 6). Problems for legislative consideration are to what extent this transitional provision of the constitution should be continued and in what ways it might be modified by adding to or subtracting from the duties of the lieutenant governor.

In this paper experiences of other states with the offices of lieutenant governor and secretary of state are discussed. Such factors as the political nature of the office, the governor's need for assistance in executive affairs, and the thinking of the delegates to the Constitutional Convention, 1950 are among other areas developed as background for the definition of an appropriate role for the lieutenant governor of Hawaii.

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## THE OFFICE OF LIEUTENANT GOVERNOR IN HAWAII

### PART I. INTRODUCTION

Hawaii's state constitution provides for only two elected state officers—a governor, in whom is vested the executive power, and a lieutenant governor who is designated to succeed to a vacancy in the governor's office. In addition, the transitional provisions of the state constitution require that the lieutenant governor assume the responsibilities of the secretary of Hawaii until the legislature provides otherwise.

For nearly 60 years, the Territory of Hawaii has had a government structure similar in most respects to that of American states. An important difference, of course, has been that the executive officers, the governor and the secretary of Hawaii, have been appointed by the President of the United States.

Under territorial status, Hawaii's governor, like his mainland counterparts, has had the three principal functions of policy formation, public relations and management; or it might be said that any governor has political, ceremonial and administrative responsibilities.<sup>1</sup> It is to be expected that Hawaii's elected governor will also function in these areas.

The Territory of Hawaii has not had a lieutenant governor, but the duties of the secretary of Hawaii have been such that he has functioned as both a lieutenant governor and a secretary of state. He has assumed the duties of the governor whenever the chief executive has been absent, an essential role of all lieutenant governors. His other duties have been in areas generally allocated to a secretary of

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<sup>1</sup>See Coleman B. Ransone, Jr., The Office of Governor in the United States, University of Alabama, University of Alabama Press, 1956, 477 pp.

state, such as supervision of elections and custody of public records.<sup>2</sup>

The role of the lieutenant governor in the executive branch of the government of the state of Hawaii is the central problem explored in this paper. Some experiences of other states with the offices of lieutenant governor and secretary of state are discussed in Part II which follows this introduction. A third and final section develops at some length considerations for defining an appropriate role for the lieutenant governor of Hawaii. Such factors as the political nature of the office, the thinking of the delegates of the constitutional convention, allocation of the duties of the secretary of Hawaii, and the governor's staffing needs are considered. Alternative proposals for organizing the office of the lieutenant governor are also presented.

## PART II. EXPERIENCE OF OTHER STATES

### The Office of Lieutenant Governor in the United States

The basic reason for the existence of the office of lieutenant governor in American state government is to provide a successor to the governor should that office become vacant. Thirty-nine out of 50 states have a lieutenant governor; usually, he is an elected constitutional officer. In those states lacking the office, other provisions are made for succession to a vacancy in the governor's chair.<sup>3</sup>

In all states where the office exists, except in Hawaii and Massachusetts,<sup>4</sup> the lieutenant governor's principal duty is to preside over the state senate. Twenty-eight of these states hold regular sessions of the legislature only biennially; hence

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<sup>2</sup>For constitutional duties of lieutenant governor see Appendix I. Citations to the duties of the secretary of Hawaii are found in Appendix II.

<sup>3</sup>States not having the office of lieutenant governor are Alaska, Arizona, Florida, Maine, Maryland, New Hampshire, New Jersey, Oregon, Utah, West Virginia, Wyoming. Council of State Governments, Book of the States, Supplement II, July, 1959, p. 2.

<sup>4</sup>In Massachusetts the lieutenant governor is a member of the Governor's Council.

the lieutenant governor's legislative duties could hardly be considered excessive.

Although the lieutenant governor is classified as an executive officer by state constitutions, he is utilized as such in only a limited way in most states. In over half the states, he is assigned membership on one or more boards and commissions; but Indiana is the only state which has made the lieutenant governor a functioning member of the state administration by statute.<sup>5</sup> Frequently, the lieutenant governor serves as a "stand-in" for the governor by meeting delegations, making speeches and participating in other ceremonial and social functions on the governor's behalf.<sup>6</sup>

Effective utilization of the lieutenant governor in the affairs of state government is clearly desirable for at least two reasons:

1. In the event that he succeeds to the governorship, even in the case of temporary absence of the governor, he should be well acquainted with state affairs.

2. There is general recognition that the governor of any state has great need of assistance in carrying out his many responsibilities as state chief executive. The lieutenant governor can have a meaningful role in assisting the governor.

A well-known writer in the field of government, W. Brooke Graves, states that the lieutenant governorship should either be abolished or developed into an important and responsible position. He suggests that the lieutenant governor might be developed "into a kind of assistant governor who could handle many routine duties and thereby ease the strain upon the time and strength of the governor."<sup>7</sup>

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<sup>5</sup>Indiana's experience is discussed below, pp. 6-9.

<sup>6</sup>Benjamin Nispel, Reform of the Office of Lieutenant Governor, Washington, D.C., Public Affairs Press, 1958, pp. 15-19.

<sup>7</sup>American State Government, 4th ed., Boston, D. C. Heath, 1953, p. 368. See also Warren Rex Isom, "The Office of Lieutenant-Governor in the States," American Political Science Review, XXXIII (October, 1938) 925.

Salaries paid to the lieutenant governors reflect to some extent the often limited nature of the office and also suggest that in many states it might be difficult to attract competent people to serve on a full-time basis. In some states the lieutenant governor is paid a low basic salary and an additional per diem for the days when he presides over the senate. Only in New York, California and Pennsylvania does the lieutenant governor receive a higher salary than that paid to the secretary of state, and only these three states pay their lieutenant governor more than the salary set for Hawaii's lieutenant governor. An examination of Appendix III will indicate that in many states the gubernatorial successor is compensated at so low a rate that it is easy to understand why the position has tended to lack prestige. One writer suggests that capable men usually would be unwilling to neglect their personal careers for the small salaries and minor duties generally assigned to the lieutenant governor and that no state should want as its potential chief executive the type of person who would normally be willing to take such inadequate salaries and minor responsibilities.<sup>8</sup>

The salary for Hawaii's lieutenant governor has been set at \$19,000 a year, an amount attractive enough to overcome the financial barrier to securing competent candidates for office.<sup>9</sup>

In some states the office of lieutenant governor has frequently been used to balance factional or geographical representation in parties or to serve as a

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<sup>8</sup>Carson Brewer, "The Office of Lieutenant Governor," in Papers on Constitutional Revision, Knoxville, Tenn., University of Tennessee, Bureau of Public Administration, 1947, vol. 2, p. 102. (University of Tennessee Record, Extension Series, vol. XXXIII, no. 3).

<sup>9</sup>Act 273, 1959 Regular Session of the territorial legislature.

"consolation prize" to disappointed seekers of the governorship.<sup>10</sup> In the New England states especially there has been a pattern of elevating the lieutenant governor to the governorship. Recently there has been some indication that the prestige and potential of the office are increasing, since a larger number of younger men appear to be using it as a stepping stone to higher office.<sup>11</sup>

In agreeing that the lieutenant governor should keep in close touch with state affairs, authorities have listed various ways in which the governor can effectively utilize the lieutenant governor as part of the executive team. The following means have been used or considered in one or more states: membership in the governor's cabinet, service on special committees as the governor's representative, visits to every state department or activity on a regular basis, review of paroles and pardons, membership on a legislative council or service as legislative liaison.<sup>12</sup>

The lieutenant governor's role as ceremonial and social assistant to the governor is well recognized. As a former governor of New Jersey pointed out, the chief executive cannot possibly fill even a small portion of the appearances requested by community groups or required by protocol, yet each one is worthy of consideration. It was this former governor's feeling that "They feel let down if a 'Secretary' or an 'Executive Assistant' is offered as a substitute, but they would gladly accept the Lieutenant Governor."<sup>13</sup>

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<sup>10</sup>R. F. Patterson, "The Office of Lieutenant Governor in the United States," Vermillion, S.D., University of South Dakota, Governmental Research Bureau, 1944, p. 4.

<sup>11</sup>Nispel, op. cit., pp. 18-19.

<sup>12</sup>Ibid., pp. 9-13.

<sup>13</sup>Memorandum of former Governor Charles Edison, in New Jersey Constitutional Convention of 1947 [Proceedings], vol. V, 460.

## The Vice Presidency of the United States

The parallels between the office of a lieutenant governor and that of the Vice-President of the United States are immediately obvious. As a constitutional officer, the Vice-President's principal reason for being is to be available to succeed to the Presidency. He also presides over the Senate, but his statutory assignment seems to be limited to membership on the National Security Council. In recent years, events have led to a re-examination of the importance of the office, particularly in relation to transition between administrations and the problem of presidential disability. There has been considerable effort to involve the Vice-President in government to the extent that if he were to take over the Presidency he would be informed through having been actively involved in decision making. Presiding over the National Security Council and over the cabinet in the absence of the President, making good will trips, assuming important speaking responsibilities and participating in ceremonial functions have added to the prestige of the office as well as serving to keep the incumbent abreast of national affairs.<sup>14</sup>

It is important to observe, however, that these duties have to date been delegated by the President to the Vice-President, rather than having been assigned by statute or by the constitution.

## Indiana's Experience

Indiana's attempt to utilize the lieutenant governor as an administrative department head was hailed as a great forward step at the time of the adoption of its Reorganization Act of 1933.<sup>15</sup> At that time the lieutenant governor was designated

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<sup>14</sup>Edward S. Corwin, The President, Office and Powers, 1787-1957. 4th Rev. Ed., New York, New York University Press, 1957, pp. 62, 67-68.

<sup>15</sup>Indiana Statutes 1933, Chs. 4 and 257.

by statute as a member of the administrative boards of the departments of state, commerce and industries, public works, and education. The governor was also given discretionary authority to designate the lieutenant governor to serve as the chief administrative officer of the department of commerce and industries and of the department of public works, or to assist or represent the chief executive before any department or board for any length of time or for any specific purpose.<sup>16</sup>

Commenting on the Indiana plan, a writer said:

Although no state has yet made use of the services of the lieutenant governor primarily to relieve the governor of some of the pressing demands upon his time, the reorganization of the executive-administrative branch of the government of Indiana seems to point to a possible solution for the problem. So far, the Indiana set-up, as noted above, has worked in such a manner as to induce the belief that an arrangement could be made along similar lines by which the governor could be released from the performance of many lesser and routine duties of his office.<sup>17</sup>

There would be no disagreement on the desirability of relieving the governor of many routine duties, but the same writer prophesied the downfall of Indiana's solution when he remarked "Whether the Indiana innovation will operate so smoothly when the governor and lieutenant governor are strange political bedfellows, time alone can tell but such a situation was anticipated when the governor's use of the lieutenant governor's services was made discretionary."<sup>18</sup> What was not perhaps anticipated was what actually took place--that the governor would be in a minority position in the state government.

During the initial years of the plan, both governor and lieutenant governor were of the same party (Democratic) and the lieutenant governor was appointed head of the department of commerce and industries. In the election of 1940 a Democratic governor

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<sup>16</sup>Ison, op. cit., p. 925

<sup>17</sup>Ibid., p. 926

<sup>18</sup>Loc. cit.

was again chosen, but the lieutenant governor and the legislative majority came from the Republican party. It is doubtful that the governor would have appointed the lieutenant governor to head the department of commerce and industries, but the Republican legislature did not await his decision. In order to limit the authority of the Democratic governor and to enlarge the authority of the Republican lieutenant governor, the legislature repealed the Reorganization Act of 1933 over the governor's veto. Over another veto, the legislature passed the State Administrative Act of 1941.

The new legislation, which stripped the governor of direction of administration, and, among other matters, named the lieutenant governor as chief administrative officer of the department of public works and commerce, was promptly challenged in the Indiana Supreme Court and found unconstitutional.<sup>19</sup> Speaking for the court, Chief Justice Fansler held that

. . . the acts here in question seek to absorb and usurp functions which are normally and generally understood to be the functions of a Governor, and vest them in minor administrative offices.<sup>20</sup>

The court also announced a restrictive interpretation of the function of the lieutenant governor:

But it may reasonably be concluded that the principal reason for creating the office of Lieutenant-Governor was to provide an available substitute to fill the Governor's office in the case of the Governor's death, resignation or inability to discharge the duties of his office, and it is expressly provided in Section 10 of Article 5 (Indiana Constitution) that in such case the duties of the office of Governor shall devolve upon the Lieutenant-Governor. We must conclude from this that it was not intended that he should exercise any of the functions of the Governor's office except in such contingency. No executive powers are otherwise conferred upon him. He is not the Governor, and clearly was not intended to have power equal to the powers of the Governor, and there is nothing in the Constitution to indicate that he was to exercise any executive powers or functions whatever except in the contingency provided for in Section 10 of Article 5.<sup>21</sup>

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<sup>19</sup>Patterson, op. cit., pp. 11-12.

<sup>20</sup>Tucker, Secretary of State et al v. State et al. 35 NE 2d 270 (1941) at p. 293; in Patterson, op. cit. p. 12.

<sup>21</sup>Loc. cit.

A dissenting justice asserted that it was for the legislature to determine the offices, the qualifications of the officers and to specify who should appoint them, although he made no specific reference to the lieutenant governor in his dissent.<sup>22</sup>

At present, the lieutenant governor of Indiana still functions as secretary of agriculture and sits on a few other boards, but the 1933 experiment in giving administrative responsibility to the lieutenant governor must be considered as unsuccessful. It will be observed that the failure of the plan resulted from a conflict between political parties, a situation which could as well arise in Hawaii as elsewhere.

#### The Secretary of State

Every state except Hawaii has a secretary of state, usually a constitutional officer and most frequently an elected one. Most secretaries of state have some responsibility for state elections and also serve as custodian of the great seal and the records of the state. The secretary of state is generally assigned duties which are ministerial rather than discretionary in nature; he executes state policy rather than makes it. There has been a tendency to assign routine work connected with new state activities to the office of the secretary of state with the result that his duties frequently bear little logical relation to one another.<sup>23</sup> Graves notes that "the powers of the office have come to be of such a miscellaneous nature that it might almost be described as a sort of scrap basket of governmental authority."<sup>24</sup>

The framers of Hawaii's constitution did not provide for a secretary of state because they felt that "the office of Secretary of State although it exists in all

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<sup>22</sup>Tucker, Secretary of State et al v. State et al. 35 NE 2d, p. 305, in Patterson, op. cit., p. 13.

<sup>23</sup>Austin F. MacDonald, State and Local Government in the United States, New York, Thomas Y. Crowell, 1955, p. 117.

<sup>24</sup>Graves, op. cit., p. 424.

states is no longer an important office."<sup>25</sup> Rather, as will be discussed below, it was recommended that the lieutenant governor carry out the duties of the secretary of Hawaii, and the constitution so directs "unless otherwise provided by law."<sup>26</sup>

### Alaska

In two recently reorganized areas, the state of Alaska and the Commonwealth of Puerto Rico, succession to the governorship falls to the secretary of state who is elected in Alaska and appointed in Puerto Rico. Neither of these jurisdictions has a lieutenant governor. Nispel comments, "It is apparent that these new constitutions in Alaska and Puerto Rico have tried to give greater prestige and provide for fuller utilization of a gubernatorial successor."<sup>27</sup> These gubernatorial successors, like Hawaii's lieutenant governor, are not required to preside over the senate, but are given duties within the executive branch.

Like the two top offices in Hawaii, the governor and the secretary of state of Alaska are the only elected administrative officers in the new state government. Election provisions in Alaska are such, however, that both have the same qualifications and are from the same party.

In presenting its recommendations for the organization of the executive branch of the Alaska state government, a Public Administration Service survey team commented on the role of the secretary of state as follows:

The Constitution of the State of Alaska places the Secretary of State in a position somewhat analogous to that of the Vice President of the United States; i.e. of understudy to the Governor. The framers of the constitution

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<sup>25</sup>Hawaii, Constitutional Convention, 1950, Standing Committee Report No. 67, p. 4.

<sup>26</sup>Article XVI, sec. 6, see below pp. 14-16.

<sup>27</sup>Nispel, op. cit., p. 12.

wisely refrained from placing in this office any authority or function which might dilute the position of the governor as chief executive of the State. Thus, the role to be played by the Secretary of State will be determined almost entirely by the duties and functions the Governor delegates to him. Under such an arrangement the role of the Secretary of State can span the spectrum from being a position, the importance of which is secondary only to that of the Governor, to being almost a complete nonentity.<sup>28</sup>

At the same time that the desirability of a flexible role for the second state officer is recognized, the value of utilizing the secretary for specified duties is also noted:

However, the recognition of this calculated "indefiniteness" in the role of the Secretary of State should not preclude the assigning of certain functions of a ministerial or non-policy nature to this official.<sup>29</sup>

The survey suggested that the following non-policy functions be assigned to the secretary of state by the legislature:

1. Administration of state elections.
2. Appointment of all notaries public (formerly appointed by the governor).
3. Custody of the state seal.
4. Supervision of a secretariat which would provide clerical and secretarial services for all licensing boards.
5. Registration of all corporations and collection of the corporation franchise tax.
6. Registration of log and cattle brands.<sup>30</sup>

In passing its state government organization act, the first Alaska state legislature assigned only the first three duties listed above to the secretary of state. It will be observed that these duties are all ministerial and related to the traditional functions of the office, which is high in status but limited in authority.

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<sup>28</sup>Public Administration Service, Proposed Organization of the Executive Branch, State of Alaska, Chicago, 1958, pp. 18-19.

<sup>29</sup>Ibid., p. 19.

<sup>30</sup>Ibid., pp. 18-19.

Supervision of licensing boards was assigned to a department of commerce, except where specific provision was made for licensing by other departments. The final two duties listed above were allocated to a department of revenue.

For organizational purposes, the secretary of state was placed within the office of the governor, an indication of the close relationship of the two offices.<sup>31</sup>

### Puerto Rico

Puerto Rico presents an unusual solution to the problem of gubernatorial understudy. The governor appoints his successor, for an indefinite term, with the advice and consent of the legislature; he may be removed by the governor at his discretion. The department of state has responsibilities which differ greatly from those of any known agency in an American state; indeed, its functions resemble to a considerable degree those of the United States Department of State. For the present purpose, only the general duties of the secretary of state need be summarized.

1. To direct, supervise and coordinate all activities of the department.
2. To hold the office of governor in cases of vacancy or absence. "To this end he keeps himself in touch with the problems of the governorship."
3. To share ceremonial functions with the Governor.
4. To participate in important meetings such as those concerned with legislative and administrative programs.
5. To be a member of the Council of Secretaries (similar to a Governor's cabinet).
6. To regulate the use of the flag and coat of arms of the Commonwealth.<sup>32</sup>

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<sup>31</sup>House Bill 114, Alaska First State Legislature, "State Organization Act of 1959."

<sup>32</sup>Puerto Rico. Bureau of the Budget, Manual of Organization of the Government of the Commonwealth of Puerto Rico, [San Juan], 1955, pp. 50-55.

### PART III. THE LIEUTENANT GOVERNOR IN HAWAII

#### The Lieutenant Governor as Politician

Of primary importance to any consideration of the duties and responsibilities of the lieutenant governor of Hawaii is the fact that he is a partisan official, one of only two elected at the executive level of state government. As an elected officer he has certain responsibilities to the party which has selected him to run for office and some degree of identification with its interests. Since candidates for political office are not necessarily elected on the basis of their administrative skills, there is no guarantee that a lieutenant governor, or for that matter a governor, will be highly skilled in the administrative process.

Another basic consideration in the assignment of duties to a lieutenant governor is that in some states, including Hawaii, he may be of a different party from that of the governor, since there is no constitutional requirement that the two elected executives be of the same party. Although voters tend to choose the two top officers from the same party even in those states where there is no requirement that this be done, it is entirely possible that from time to time the governor and lieutenant governor will be chosen from different parties.

Nor is there any guarantee of harmony even should the two officers be of the same political affiliation, since candidates for top office must sometimes satisfy the demands of differing party factions for representation on the slate. There are several examples of the election of mixed non-legislative slates at the county level of government in Hawaii; similar selections of officers from opposing parties could as readily occur at the state level.

In the political organization of the government of the state of Hawaii, there are four significant elements which are subject to a variety of combinations and permutations: (1) Governor, (2) lieutenant governor, (3) senate majority, (4) house

majority. Among the possible groupings for control of state government which could emerge, it is apparent that any of the following situations might occur:

1. All four might be from the same party. In such a case a considerable amount of productive agreement between executive and legislative branches might be expected.

2. The governor and lieutenant governor might be from one party and the majority of the members in each legislative house might be from another. In this case a certain amount of compromise might be expected from both sides, with each side working to formulate as effective a program as possible under the circumstances. Hawaii has had considerable experience with this combination since, although the appointed governor and secretary have been of the same political party, the legislature has often had a majority from the opposite political faith.

3. Suppose, however, that the governor and lieutenant governor were of opposite political faiths while the legislative majority favored one or the other.

If the governor and the legislative majority come from the same party, any attempts at obstruction of administration by the lieutenant governor and the legislators of his party could probably be effectively circumvented, unless the lieutenant governor had been assigned important discretionary power by statute.

If the lieutenant governor and the majority of legislators are elected from one political party and the governor is alone in representing the other, difficulties in administration can be readily imagined. Nevertheless, the executive power is still constitutionally vested in the governor, and obstruction by the lieutenant governor could be minimized, unless the governor's power has been diluted by assignment of additional statutory functions to the lieutenant governor.

Indiana's experiment in giving a number of important statutory duties and powers to the lieutenant governor, described in some detail above, demonstrates that changes in political factors can have negative effects upon what initially appear to be highly effective administrative procedures. The pitfalls of assigning definite statutory administrative or policy-making functions to the lieutenant governor are clear.

#### The Lieutenant Governor as Secretary of State

In providing for transition to state government, the lieutenant governor is required by the constitution to exercise and discharge the powers and duties of the secretary of the Territory, unless otherwise provided by law.<sup>33</sup> Commenting on this provision, the Constitutional Convention's Committee of the Whole Report No. 25 states:

This constitution has provided for a lieutenant governor, but not expressly for a secretary of state. The Territory has a secretary with certain powers and duties, some prescribed by the Hawaiian Organic Act and some by territorial laws. It is not known whether the legislature will desire to have both a lieutenant governor with the limited duties prescribed by the constitution and a secretary of state. Hence, your committee feels it wise to provide temporarily for the lieutenant governor to perform all of the functions of the secretary of the Territory until or unless the legislature . . . shall hereafter otherwise expressly provide.

In this tempered reasoning it is possible to detect some overtones of preference that the transitional duties of the governor be continued under the state government as a means of keeping occupied a well paid but potentially idle public servant.

A clue to the thinking of the framers of the constitution in providing that the lieutenant governor take over the duties of the secretary of Hawaii appears in the

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<sup>33</sup>Article XVI, sec. 6.

following statement:

Because the Lieutenant Governor has very little to do, your committee recommends that the legislature by law allocate the usual duties of the Secretary, hereinabove mentioned, to the office of Lieutenant Governor.<sup>34</sup>

Following the signing of Hawaii's proposed constitution, the committee responsible for the public education campaign also stressed that it was the intention of the delegates to the constitutional convention that the lieutenant governor function as secretary of state, taking on the duties of the secretary of Hawaii.

The duties of the lieutenant governor were conceived by the delegates to be similar in nature to those now performed by the secretary of the Territory and not of such nature as might interfere with overall administration should the lieutenant governor be of a different political party than that of the governor.

.....

If the office of governor becomes vacant for any reason the lieutenant governor becomes governor. In the event of the governor's absence from the state or his inability to discharge the duties of his office, the lieutenant governor then acts as governor during such absence or disability. At other times, it is intended that the lieutenant governor perform the duties of the secretary of state.<sup>35</sup>

Acting in place of the governor, the secretary of Hawaii has frequently aided the chief executive in carrying out his social and ceremonial responsibilities by greeting distinguished visitors, meeting community delegations, and making speeches as official representative of the territorial government. He has served from time to time as chairman or member of community committees or of special committees appointed by the governor. Another important responsibility has been the maintenance of records of appointments to all offices, boards and commissions.

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<sup>34</sup>Standing Committee Report No. 67, p. 4.

<sup>35</sup>Hawaii, Constitutional Convention, 1950, Committee on Submission and Information, The Constitution of the State of Hawaii, a series of newspaper releases explaining the various articles of the constitution. "Article IV, The Executive," by Delegate Frederick Ohrt. October, 1950, pp. 24-25.

In addition, the secretary of Hawaii has been assigned, both by Organic Act and by statute, a number of duties commonly allocated to secretaries of state on the mainland.

The Organic Act (section 69) requires him to "record and preserve all laws and proceedings of the legislature and all the acts and proceedings of the governor, and promulgate proclamations of the governor . . . ." Statutory implementation to these requirements is provided by making the secretary of the Territory the chairman of the board of commissioners of public archives under whose custody public records are housed and preserved, and by other provisions for the recording of administrative rules. Another major area of responsibility which has been assigned to the secretary of Hawaii has been the supervision of elections.<sup>36</sup>

#### The Role of the Lieutenant Governor in Hawaii

Considering the heavy burdens of the office, a governor needs considerable assistance in carrying out his multiple activities. Nevertheless, in no matter what ways his duties are divided, the ultimate responsibility for the discharge of executive functions remains with the governor.

The number and size of staff necessary to aid the governor in carrying out his many responsibilities will be determined, among other factors, by the size of the state, the organization of state government, and the personality and predilections of the individual governor. So that the governor may have complete confidence in the competence and loyalty of his staff, he should be able to appoint them to serve at his pleasure.<sup>37</sup>

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<sup>36</sup>Citations to the secretary of Hawaii are listed in Appendix II.

<sup>37</sup>The Constitution of the State of Hawaii, in Article IV, section 5, provides that the Governor shall appoint an administrative director to serve at his pleasure. In Act 273, 1959 Regular Session, the last territorial legislature specified broad areas in which the director is to assist the governor.

A recent study of the office of governor in the United States suggests that the following guides should be considered in staffing the chief executive's office. The governor's staff should be—

1. Adapted to local conditions.
2. Tailored to fit the particular governorship in question.
3. Kept flexible.
4. Kept as small as possible while providing enough staff assistance to enable the governor to operate effectively.<sup>38</sup>

To the extent that a lieutenant governor can merit the same confidence which the governor requires of his appointed staff, to that extent can he be involved in the administration of the government. Although the governor should be able to select and discharge his staff, he cannot discharge the lieutenant governor. Even if the governor has some voice in the selection of his running mate, that person may not be one with whom he can work effectively. Nor can he be certain in Hawaii, as has been mentioned, that his potential successor will even be elected from the same party.

Ideally, the governor and lieutenant governor should work as a team, dividing duties at the discretion of the governor on a flexible basis to meet changing situations.

Taking the limiting factors discussed above into account, the governor should be able to make the highest possible use of the lieutenant governor which is consonant with his ability and reliability. Certainly there are numerous ceremonial and social functions in which the lieutenant governor could represent the government. It has been common practice under territorial government to use the secretary of Hawaii in this capacity. Specific legislation is probably not necessary to continue these ceremonial functions.

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<sup>38</sup>Ransone, op. cit., pp. 313-16.

## Alternatives

The constitution of Hawaii provides that the lieutenant governor shall serve as acting governor and succeed to the governorship and that he shall perform such duties as may be prescribed by law. (Article IV, sec. 2, 4). The legislature is thus permitted, but not required, to assign duties to the lieutenant governor. Further, in setting forth transitional provisions, the constitution, in Article XVI, sec. 6, directs that "unless otherwise provided by law, the lieutenant governor shall exercise and discharge the powers and duties of the secretary of the Territory." In addition, the transition article of the constitution recognizes the lieutenant governor as secretary of state for the purposes of certifying the election of congressmen.

It will be observed that the responsibilities of secretary of Hawaii as secretary of state have been largely ministerial rather than discretionary; that he has been concerned with the carrying out of policy and with administering areas well-defined by statute, rather than with developing or operating substantive programs, as are heads of line departments.

In his role as acting governor, the secretary's activities have not been defined by statute but have depended upon the needs and wishes of the governor.

The secretary of Hawaii, like his mainland counterparts, has been assigned several duties which might as readily be given to other departments. The issuance of certificates of Hawaiian birth, for example, might be transferred to the health department. The filing of certain unfair labor practice complaints might be transferred to the department of labor and industrial relations.

With such miscellaneous duties assigned to other agencies, and with an adequate staff, the lieutenant governor could assume the major ministerial responsibilities of the secretary of Hawaii such as official custody of public records and the

supervision of elections. Thus, he would be following a design envisaged by the delegates to the constitutional convention. At the same time, he would be available to assist the chief executive in meeting the various demands of the state government's administration.

Functionally, the offices of governor and lieutenant governor of necessity must work together, the degree of cooperation being dependent upon circumstances. Although it is questionable that the lieutenant governor can be considered directly subordinate to the governor, since both officers are elected by all of the people, nevertheless it would be desirable that his office be organized within that of the governor. Since between them these two elected officers constitute the top management echelon of the state government, close coordination of their activities is necessary and can be most effectively accomplished within the same office.

By working closely with the governor, the lieutenant governor would gain understanding of the organization and operations of state government, knowledge which is essential to him as potential successor to the governorship.

In its plan for the organization of state government, the legislature might consider the following approaches to the office of lieutenant governor.

1. Follow the provisions of the constitution to the extent of having the lieutenant governor carry out the major duties of the secretary of Hawaii, those involving responsibility for elections and for records. Transfer to other agencies duties which are not clearly related to these major ministerial functions. Recognize the responsibilities of the lieutenant governor to the governor by avoiding the assignment of any additional duties. A general statement of legislative recognition that the lieutenant governor will carry out such duties as are delegated to him by the governor might be made. For purposes of intergovernmental relations and wherever else appropriate, provide that the lieutenant governor shall be deemed secretary of state.

2. Alternatively, establish a separate office of lieutenant governor without any specific duties. This approach would require that the duties of the secretary of Hawaii be allocated elsewhere; either entirely to another officer, such as a secretary of state, or distributed among other appropriate agencies.

Appendix I

LIEUTENANT GOVERNOR

Provisions of the Constitution of the State of Hawaii.

ARTICLE III

Impeachment

Section 20. The governor and lieutenant governor, and any appointive officer for whose removal the consent of the senate is required, may be removed from office upon conviction of impeachment for such causes as may be provided by law....

ARTICLE IV

Lieutenant  
Governor

Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor. He shall perform such duties as may be prescribed by law.

Compensation

Section 3. The compensation of the governor and of the lieutenant governor shall be prescribed by law, but shall not be less than eighteen thousand dollars, and twelve thousand dollars, respectively, per annum. Such compensation shall not be increased or diminished for their respective terms, unless by general law applying to all salaried officers of the State. When the lieutenant governor succeeds to the office of governor, he shall receive the compensation for that office.

Succession to  
Governorship

Section 4. When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the absence of the governor from the State, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.

When the office of lieutenant governor is vacant, or in the event of the absence of the lieutenant governor from the State, or his inability to exercise and discharge the powers and duties of his office, such

Appendix I (continued)

powers and duties shall devolve upon such officers in such order of succession as may be provided by law.

In the event of the impeachment of the governor or of the lieutenant governor, he shall not exercise the powers of his office until acquitted.

ARTICLE XVI

Lieutenant  
Governor;  
Secretary

Section 6. Unless otherwise provided by law, the lieutenant governor shall exercise and discharge the powers and duties of the secretary of the Territory.

Governor and  
Lieutenant  
Governor

Section 13. The first governor and lieutenant shall hold office for a term beginning with their election and ending at noon on the first Monday in December following the second general election.

Certification,  
United States  
Congressmen

Section 14. The governor of the State and secretary of state shall certify the election of the senators and representatives to the Congress in the manner required by law. For this purpose, the lieutenant governor of this State shall be deemed secretary of state.

SECRETARY OF HAWAII

Citations to Organic Act and Statutes

I. Provisions of the Hawaiian Organic Act

Sec. 69. Secretary of the Territory; acting secretary. That there shall be a secretary of the said Territory, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and who shall be a citizen of the Territory of Hawaii and hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall record and preserve all the laws and proceedings of the legislature and all acts and proceedings of the governor, and promulgate proclamations of the governor. He shall, within thirty days after the end of each session of the legislature, transmit to the President, the President of the Senate, and the Speaker of the House of Representatives of the United States one copy each of the laws and journals of such session. He shall perform such other duties as are prescribed in this Act or as may be required of him by the legislature of Hawaii.

The secretary may, with the approval of the governor, designate some other officer of the government of the Territory of Hawaii to act as secretary during his temporary absence or during his illness. Such designation and approval shall be in writing and shall be filed in the office of the governor, and a copy thereof, certified by the governor, shall be filed in the office of the Secretary of the Interior of the United States. Such person so designated shall, during the temporary absence or illness of the secretary, be known as the acting secretary of the Territory of Hawaii, and shall have and exercise all the powers and duties of the secretary, except those provided for by section 70 of this Act (U. S. C., title 48, sec. 535). Such acting secretary shall serve without additional compensation, but the secretary shall be responsible and liable on his official bond for all acts done by the acting secretary in the performance of his duties as acting secretary. /As am. July 2, 1932, 47 Stat. 565, c. 389; Aug. 21, 1958, 72 Stat. 707, P. L. 85-714; 48 U. S. C. A. 534.7

Appendix II (continued)

Sec. 70. Acting governor in certain contingencies. That in case of the death, removal, resignation, or disability of the governor, or his absence from the Territory, the secretary shall exercise all the powers and perform all the duties of governor during such vacancy, disability, or absence, or until another governor is appointed and qualified. [48 U. S. C. A. 535.]

Sections 64, 92, and 102 also refer to the secretary of Hawaii but the two sections quoted above contain the major substantive provisions.

## II. Statutory Citations

The following sections of the Revised Laws of Hawaii, 1955, as amended, relate to duties of the secretary of Hawaii:

General departmental regulations:

- 7-28 -- secretary defined
- 7-34, 37, 41 -- secretary's duty to record rules and regulations

The election law makes the following references to the secretary:

- 11-3, 11-30(g), 11-30(h), 11-36 to 11-39, 11-41 to 11-45,
- 11-67 to 11-70, 11-72, 11-74, 11-75, 11-78, 11-79, 11-93,
- 11-97(a), (d), 11-98, 11-100, 11-104, 11-113, 11-115,
- 11-148, 11-170, 11-172, 11-177, 11-178, 11-185, 11-186, 11-194

Public Archives:

- 13-4 -- ex officio member, chairman and executive officer, board of commissioners

Hawaiian birth:

- 57-40 -- issuance of certificates

Labor:

- 90-10 (b) -- unfair labor practice complaint served on

Documents:

- 224-11 -- furnishing certified copies

Name changes:

- 327-5 -- changes to be ordered by

Laws:

- Act 191, 1959 Regular Session -- sale and distribution

## Appendix III

ANNUAL SALARIES OF STATE GOVERNORS,  
LIEUTENANT GOVERNORS AND SECRETARIES OF STATE

Maximum or current figures as of September, 1957\*

State	Governor	Lieutenant Governor	Secretary of State
Alabama .....	\$12,000	\$ 12(a)	\$ 8,000(b)
Alaska .....	25,000	None	18,000
Arizona .....	18,500	None	9,600
Arkansas .....	10,000	2,500	5,000
California .....	40,000	20,000(b)	19,500(b)
Colorado .....	17,500	3,600	8,000
Connecticut .....	15,000	5,000	8,000
Delaware .....	17,500	12(j)	8,000
Florida .....	22,500	None	17,500
Georgia .....	12,000(1)	2,000	7,500(1)
Hawaii .....	25,000	19,000	None
Idaho .....	10,000(m)	20(j)	6,500
Illinois .....	25,000(o)	12,500(r)	16,000(p)
Indiana .....	15,000	11,500(v)	11,500
Iowa .....	12,500	4,000	7,500
Kansas .....	15,000	2,400(x)	7,500
Kentucky .....	15,000	6,000(y)	9,000
Louisiana .....	18,000	12,000	15,000
Maine .....	10,000	None	9,000
Maryland .....	15,000	None	10,000
Massachusetts .....	20,000	11,000	11,000
Michigan .....	22,500	8,500(ag)	12,500
Minnesota .....	19,000	9,600(ai)	14,500
Mississippi .....	15,000	1,500	8,250
Missouri .....	25,000	12,000	15,000
Montana .....	12,500	12(j)	7,500
Nebraska .....	11,000	650	6,500
Nevada .....	15,000(av)	600(as)	10,000
New Hampshire .....	15,000	None	9,516
New Jersey .....	30,000	None	13,000
New Mexico .....	17,500(cs)	40(j)	10,000
New York .....	50,000(bp)	20,000	18,500
North Carolina .....	15,000	3,100	12,000
North Dakota .....	10,000(ab)	1,600(ab)	6,000(ab)
Ohio .....	25,000	8,000	15,000

Appendix III (continued)

State	Governor	Lieutenant Governor	Secretary of State
Oklahoma .....	\$15,000(bj)	\$ 3,600	\$ 6,000
Oregon .....	17,500(bk)	None	12,500
Pennsylvania .....	35,000(bm)	22,500(bm)	20,000(bm)
Rhode Island .....	15,000	5,000	9,000
South Carolina .....	15,000	1,000	10,000
South Dakota .....	13,000	2,100	6,300
Tennessee .....	12,000(bp)	750(br)	10,000
Texas .....	25,000(bp)	25(bs)	15,000
Utah .....	12,000	None	9,500
Vermont .....	12,500	2,500	8,500
Virginia .....	20,000	1,260	7,000
Washington .....	15,000(m)	6,000	8,500(bu)
West Virginia .....	17,500	None	11,000
Wisconsin .....	20,000(ab)	6,500(ab)	12,000(ab)
Wyoming .....	15,000	None	10,000

\*Council of State Governments. Book of the States, 1958-1959, Chicago, 1958, p. 128, brought up to 1959 for Alaska and Hawaii.

- (a) Per diem, plus \$10 per diem during legislative sessions.
- (b) Effective on expiration of present term.
- (j) Per diem served.
- (l) Minimum: Acts 1953 provided a minimum salary for elected officials with an automatic increase of \$800 for each four years of service until fixed maximum is reached. Minimum for Governor, \$12,000 maximum \$16,000; other elected officials, minimum \$7,500 maximum \$11,500.
- (m) Plus residence.
- (o) \$30,000 after January, 1961.
- (p) \$20,000 after January, 1961.
- (r) \$16,000 after January, 1961.
- (v) Plus \$1,200 as President of Senate and \$5 per legislative day.
- (x) Plus \$6 per diem during legislative sessions.
- (y) Same compensation as Governor when serving as Governor, plus per diem during sessions of General Assembly.
- (ab) Effective January, 1959.

- (ag) Salary \$4,000; expense account \$1,000; member of State Administrative Board, \$3,500.
- (ai) Per term (2 years), plus \$50 per day for special sessions.
- (as) Plus \$25 per day while acting as Governor or when presiding over the Senate.
- (av) Plus mansion fund of \$7,200.
- (bj) Plus \$10,200 maintenance.
- (bk) Plus \$400 per month for expenses.
- (bm) New salaries; will not become effective until the terms of incumbents expire or new appointments are made
- (bp) Plus mansion and other expenses.
- (br) Plus \$1,500 for supplies and expenses.
- (bs) Per diem, not to exceed 120 days during regular session; \$25 per day for called sessions; same as Governor when serving as Governor.
- (bu) Plus \$200 per month in lieu of expenses at the seat of government. Constitutionality of this allowance being tested in courts.
- (cs) Plus \$15,000 for maintenance and operation of Governor's mansion.

THE HAWAIIAN HOMES COMMISSION  
WITHIN THE STATE ORGANIZATIONAL STRUCTURE

Summary

Placement of the Hawaiian Homes Commission within the state organizational structure is made difficult because the goals of the original Act establishing the Hawaiian Homes Commission are not particularly clear. What appeared to be the original goals seem to be too restrictive and may not meet the changed requirements of the homesteaders. In spite of the difficulty in determining functions, there are good reasons in favor of placing the Commission as one of the 20 principal departments; and there are perhaps slightly better reasons in favor of placement of the Commission as a division of one of the 20 principal departments. None of these arguments are particularly decisive.

This memorandum discusses these problems as well as suggesting administrative changes to improve agency efficiency. It also reviews the provisions of the Hawaiian Homes Commission Act, 1920, and the effect of the statehood enabling act upon these provisions.

THE HAWAIIAN HOMES COMMISSION  
WITHIN THE STATE ORGANIZATIONAL STRUCTURE

Hawaiian Homes Commission Act

The Hawaiian Homes Commission was established by the Act of July 9, 1921, 42 Stat. 108, Chapter 42, as amended, popularly cited as the Hawaiian Homes Commission Act, 1920. The Act establishes a commission of seven members, with four, including the chairman, being residents of the city and county of Honolulu, and one member each from the counties of Hawaii, Maui and Kauai. These members are appointed and may be removed by the Governor, with the consent of the Senate, and serve for terms of five years. All members must have at least three years residence and four must have at least one-fourth Hawaiian blood. The Commission is authorized to appoint an executive officer, who must reside at the major Hawaiian Homes settlement, and such clerical help as may be necessary. None of the personnel are covered by territorial civil service laws. The Commission may also hire agricultural experts, and the U.S. Secretary of the Interior is required to designate a sanitation and reclamation expert from the Interior Department to assist the Commission.

The Act sets aside as "available lands" certain designated areas (approximately 203,795 acres) of public lands and places them under the control of the Commission. The Commission is authorized to make regulations for purposes of administration and carrying out the purposes of the Act. The Commission also has authority to carry on water and other development projects with respect to these lands and to undertake other activities having to do with the economic and social welfare of the homesteaders, including the authority to derive revenues from the sale of the products of such projects or activities. In any five-year period, the Commission may develop and lease to homesteaders no more than 20,000 acres of these available lands. All lands not being leased to homesteaders are turned over to the Commissioner of Public Lands to be leased as public lands, but the entire receipts from such leasing are paid into the Hawaiian home-administration account.

The Act authorizes the Commission to lease to persons with not less than one-half Hawaiian blood the "available lands" for agricultural, pastoral or residential purposes for 99-year terms at a nominal rent of one dollar per year.<sup>1</sup> The Act specifies certain conditions to be included in the leases to control the use of the land and to insure that only a person who would be qualified to be a lessee will be able to acquire any interest in the land. The Act also provides for the succession to the interest of any lessee to designated family members or relatives; and, in the absence of any qualified successors, the Act provides for the payment by the Commission to the estate of the lessee of the value of any improvements placed on the land by the lessee. The Commission may also grant 20-year licenses to public utilities, churches, hospitals, schools and certain mercantile establishments owned or controlled by lessees.

The Act establishes two revolving funds and two special funds to be administered by the Commission as follows:

1. Hawaiian home-loan fund—derived from the payment of 30 per cent of territorial receipts from the leasing of sugar lands and from water licenses until the fund equals \$5,000,000—is to be loaned to lessees for the erection of dwellings, purchase of livestock or farm equipment or development of their tracts. Individual lessees may borrow up to \$12,000 if on agricultural or pastoral land, or \$6,000 if on residential land, and shall repay within 30 years; loans bear interest at the rate of 2½ per cent per annum.

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<sup>1</sup>According to the 1950 census, as analyzed in Hawaii's People by Andrew W. Lind (University of Hawaii Press, 1955), 12,245 or 2.5 per cent of the population are pure Hawaiians and 73,845 or 14.8 per cent are Part-Hawaiians. There is no breakdown of the Part-Hawaiian group so there is no way to estimate the number of this group who would qualify for benefits under the Hawaiian Homes Commission Act. Because the U.S. Census Bureau automatically classifies any individual with any fraction of Hawaiian blood, no matter how small, as Part-Hawaiian, it is probable that the majority of this group would not have the necessary 50 per cent Hawaiian blood. As a basis for comparison, the Hawaiian home lands are about 5 per cent of the total land area in the state and 11.7 per cent of the public lands of the state. In the Governor's Operating Budget for the Biennium 1959-1961, submitted to the Thirtieth Legislature, the commission reported 1,660 lessees which would represent a population of about 10,000 at the Hawaiian home settlements--approximately 1.7 per cent of the total population of the Territory.

2. Hawaiian home-development fund—made up from the payment of 25 per cent of the amount transferred annually into the Hawaiian home-loan fund, until the fund equals \$300,000, and from the transfer of excess funds in the Hawaiian home-administration account—is to be used for roads, sewerage facilities and other non-revenue producing improvements.
3. Hawaiian home-administration account—made up of the receipts from the leasing of available lands by the Commissioner of Public Lands—is to be used to pay salaries and other administrative expenses of the Commission. The Commission is required to submit to the territorial Bureau of the Budget its budget estimates for administration expenses to be approved by the Governor and the legislature, and any money in this account in excess of the amount approved by the legislature shall be transferred to the Hawaiian home-development fund.
4. Hawaiian home-operating fund—made up of all moneys received by the Commission from any other source—is to be used for the acquisition and construction of revenue-producing improvements, for transfer to the Territory to meet payments on territorial bonds issued for Hawaiian home revenue-producing improvements, for the operation and maintenance of such improvements, and for the purchase of utilities, services, supplies and equipment furnished on a charge basis to occupants of Hawaiian home lands. This fund may be supplemented by appropriations made by the legislature or by temporary transfers from the home-loan fund.

#### Goals of the Commission

Neither the Act nor any other laws actually specify what the goals or the purposes of the Commission should be. Congressional reports and statements of Prince Kuhio Kalaniana'ole, the Delegate to Congress from the Territory at the time the Act was enacted, indicate that these lands are to be used for the rehabilitation of the Hawaiian race through a return to the soil, but nowhere is the scope or methods of this rehabilitation set out. The lack of clear goals has apparently made the administration of the Act difficult for the Commission. On Oahu, for example, the demand for residential lots far exceeds that for farm lots, although the provision of farm lots was apparently the original intent of Prince Kuhio and Congress. Should the Commission ignore this intent, forget about farm lots and concentrate on providing residential lots? Can the Commission determine its own objectives? The Act does not provide clear guides.

Effect of Statehood on the Hawaiian Homes Commission Act

Title to the Hawaiian home lands will apparently be returned to Hawaii upon its admission into the Union, under the provisions of Section 5(b) of Public Law 86-3, 80th Congress, 1st Session, providing for the admission of the State of Hawaii. Section 4 of this law incorporates the Hawaiian Homes Commission Act as a provision of the Constitution of the State of Hawaii. Section 4 further provides that certain sections of the Act relating to its administration and any amendments to increase the benefits to lessees "may be amended in the constitution, or in the manner required for State legislation." A digest of these sections follows:

- Sec. 202. Provides for the Commission, qualification of members, officers and compensation.
- Sec. 204(2). Provides for the turning over of Hawaiian Homes land to the Commissioner of Public Lands for leasing to the general public with a withdrawal clause when the land is required for purposes of Hawaiian Homes Commission.
- Sec. 206. Limits the powers and duties of the Governor, the Commissioner of Public Lands and the Board of Public Lands over Hawaiian Homes lands.
- Sec. 212. Authorizes the Commission to turn land over to the Commissioner of Public Lands who may treat such lands as public lands but may only lease them.
- Sec. 213. Establishes two revolving funds, the Hawaiian home-loan fund and the Hawaiian home-operating fund, and two special funds, the Hawaiian home-development fund and the Hawaiian home-administration account.
- Sec. 219. Authorizes the Commission to employ agricultural experts.
- Sec. 220. Authorizes the Commission to undertake water and other development projects, and authorizes the legislature to appropriate funds from the territorial treasury to augment the various Hawaiian Homes funds and to issue bonds to cover revenue producing improvements.
- Sec. 222. Authorizes the Commission to make administrative regulations and provides for general administrative powers in the Commission.
- Sec. 224. Requires the U.S. Department of Interior to designate a sanitation and reclamation expert to aid the Commission.
- Sec. 225. Authorizes the Commission to invest unused loan funds.

All other provisions,<sup>2</sup> including impairment of the various funds or changes in the qualifications of lessees, may not be amended without consent of Congress. These amendment provisions raise certain legal questions which are beyond the scope of this report and will therefore not be considered here.

Executive and Administrative Reorganization:  
Placement of the Hawaiian Homes Commission

In complying with Section 6, Article IV, of the Constitution of the State of Hawaii, which requires that the executive branch of the government be organized under no more than 20 principal departments, the question naturally arises as to whether the Commission should be one of these principal departments, could be included within one of these departments, or should be considered as excluded from or separate from these 20 principal departments. Neither the Constitution nor Public Law 86-3 seems to specify the position of the Commission in the organization of the state government. Again, this is a legal question to be determined by the Attorney General. For purposes of this report, it will be assumed that there is no requirement that the Commission be placed in any specific position, and that the legislature has a free hand in locating the Commission in the organizational structure of the state.

Determination of Goals

An important objective in determining the placement of a government agency is to establish it so as to enable it to carry out its functions with maximum efficiency and effectiveness. Placement therefore requires an analysis of the agency's functions.

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<sup>2</sup>Briefly, the other provisions cover (1) certain definitions, including Hawaiian blood requirements, (2) lands set aside and boundaries, (3) limitation on placing more than 20,000 acres per five year period under lease, (4) land exchanges, (5) lease land sizes, kinds of licensees, (6) leases, conditions, cancellation, community pastures, (7) lessee successions, (8) loans, purposes, conditions, borrower insurance, liens, enforcement, (9) ineligibility of lessees under Farm Loan Act, (10) water licenses, and (11) reservation of right to amend in the Congress.

purposes and goals. As mentioned earlier, however, the goals of the Commission are not clear and opinions as to what they are vary widely; this is the source of many of the Commission's difficulties. Congressional reports and statements of Prince Kuhio indicate that the intent of the Act is to rehabilitate the Hawaiians as farmers or ranchers. On the other hand, there are those who feel that the Act merely provides a general welfare program for the qualified Hawaiians. How much guidance should the Commission provide? Should the Commission require that the lessees personally use their lands in order to learn farming or ranching, or is it permissible for the lessees to contract with others to grow crops on their lands in return for a percentage of the profits? If the demand is for residential lots, is it permissible for the Commission merely to provide housing without providing agricultural lands, especially if the qualified Hawaiians do not want to become farmers or ranchers? Is the responsibility of the Commission limited to supplying land, or is the Commission obliged to carry out an educational program designed to train its lessees to function as farmers and ranchers competing on the open market? Until Congress or the state legislature spells out these objectives to provide clearer guides, almost inevitably there will continue to be some confusion as to the proper functions of the Commission. This in turn means that the proper placement of the Commission in the state organizational structure will be difficult.

#### Arguments for Placement as Principal Department

Nevertheless, an argument can be made in favor of the proposition that the Commission be made one of the principal departments of the state government. This argument is based on the unusual nature of the Hawaiian Homes Commission Act, as evidenced by (1) its inclusion as a provision of the state Constitution, (2) the exclusion of the Commission's employees from civil service coverage and (3) the wide range of activities, in some ways duplicating those of the county governments and of

other state agencies, carried on by the Commission. The Commission supervises educational activities and social welfare work. It arranges for agricultural and ranching assistance for the lessees through experts. It carries on a credit program through its own loans and by assisting lessees in obtaining loans from other sources. It carries on general developmental projects, maintenance of roads and other community improvements in the settlements, supplies water and arranges for other utility services. The Commission's staff is not large enough to carry on all of these functions; and, perhaps, the continuous demand for these services is not such as to warrant enlarging the present staff. The result is that the Commission depends to a large extent upon the services of several other departments, including the Surveyor, Hawaii Water Authority, Office of the Commissioner of Public Lands, Highway Engineer, University of Hawaii Agricultural Extension Service, Board of Agriculture and Forestry, and other agencies. If it were to continue as a principal department, the Commission would probably have better access to the cooperating government agencies than if it were merely a division of one of the principal departments; and it would be better able to carry on a coordinated rehabilitation program. If it should be determined that the Commission should carry on its programs with some degree of independence from general state projects, it would be appropriate to establish it as a principal department.

#### Arguments for Placement as Division of Principal Department

But should the Commission operate independently? Are the Commission's problems so unusual that they cannot be considered as part of the overall program of the state government? Is it desirable for one agency to coordinate a range of activities as wide as the Commission presently attempts to do, or would the results be just as satisfactory or even superior if the agencies which are already properly staffed and equipped and are carrying on these activities for the general population of the

state were to be given the full responsibility for these activities with respect to the Hawaiian home settlements?

As long as the functions and goals of the Commission remain vague, there will be no clear answers to these questions. There are, however, some strong reasons supporting the proposition recently made in a study by the Public Administration Service that the Commission be made a division of some principal department, such as the proposed Department of Public Lands and Resources.<sup>3</sup> The primary purpose for such an organizational placement is to increase the effectiveness of the administration of the Act. No matter how independent the Commission might want to be, unless it has its own staff it will have to depend upon the services of other agencies. This in turn means that Commission projects or requests for services must be coordinated with the work loads of these agencies which have their own programs to carry out. If the Commission's activities are to be integrated into those of a department, which functions must be retained by the Commission and which can or ought to be released to other agencies? Again, the answer to this question depends upon how the goals of the Act are formulated. One responsibility to be retained by the Commission, and clearly specified in the Act, is that the Commission manage the Hawaiian home lands for the benefit of qualified Hawaiians. What of the other functions? Responsibility for welfare and educational activities could be placed within the departments of Public Welfare and Public Instruction, which are better qualified to plan and carry out these activities. Water development and road construction projects would probably be more economical if planned as parts of state projects, rather than as separate commission projects. Even the opening of additional Hawaiian home settlements could be more effectively carried out if planned as part of state economic develop-

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<sup>3</sup>Public Administration Service, Organization for the Administration of Natural Resources and Economic Development in the Territory of Hawaii, Chicago, Illinois, January, 1959.

ment projects. Withdrawal of Hawaiian home lands from leases made by the Commissioner of Public Lands might then be better coordinated with state development projects.

Even if it were conceded that the Commission must have direct access to the services of other agencies which Commission projects require, this necessity can be minimized through the reorganization of the government agencies. For example, if a Department of Public Lands and Resources, as proposed by the Public Administration Service is established, most of the agencies presently cooperating with the Commission will be made divisions of this principal department along with the Commission, and there should be direct access to these agencies as divisions within the same department.

There has been some expression of opinion on the part of lessees and individual legislators in the past that the administration of the Act by the Commission leaves much to be desired. As a step towards improving the administrative effectiveness of the Commission, making it a division of a department would give it the supervision and assistance in coordination which are largely lacking now. Placement of its personnel under the civil service laws should also be considered.

As a further step towards efficiency, thought might also be given to replacing the present commission-and-executive-officer type of organization with one division head who would be given the administrative powers now shared by the Commission and executive officer. The commission form of management has not been particularly effective, especially when commissioners, as in this case, have to be brought in from widely scattered areas and meetings can be scheduled only infrequently. Decisions are often delayed, and meetings so bogged down with minor matters that the Commission seldom finds time to consider and decide major policy matters. One man with full powers for making decisions as problems arise would most likely improve the administrative efficiency of this agency. At the very least, there should be a re-distribu-

tion of responsibilities so that the executive officer would be able to make all except policy decisions. The increase in effectiveness and efficiency which the kind of integration mentioned in this and the paragraphs above could bring would probably be more advantageous to the beneficiaries of the Act than if the Commission continued to operate independently of the other agencies in the state organization.

#### Summary

Placement of the Commission in the state organization is dependent upon a determination of the purposes and goals of the Act and how the Hawaiian home lands should be used to attain these goals. Like most agencies, the Commission may feel that its functions are unique and that it requires direct access to the Governor. There must, therefore, be a determination whether the Commission does have such need; and, depending upon this decision, the Commission could be made a principal department or integrated within another department. If there is to be no basic change in the Commission's activities and there is no legislative determination of policy, it may be suggested that the Commission be integrated as part of the proposed Department of Public Lands and Resources with the changes suggested above in the respective responsibilities of the Commission and other agencies and the Commission and its executive officer

THE ORGANIZATION OF CENTRALIZED DEPARTMENTS  
FOR LICENSING TRADES AND PROFESSIONS

Summary

Many state legislatures have made studies and enacted legislation concerning occupational licensing. The result in most instances has been the proposal or establishment of a centralized agency under which the individual licensing boards function. In the projected reorganization of the Hawaii state government it is clear that the individual occupational boards cannot remain as independent bodies nor can each one be raised to the status of "principal department." It is, therefore, inevitable that they will be subordinate to some higher authority.

This report proposes the creation of a centralized agency under which all of the existing trade and professional licensing boards will be placed. Functioning with a high degree of autonomy, the boards would perform essentially the same functions which they presently perform. Administrative services such as budgeting, purchasing, personnel and stenography would be provided by this centralized agency while rule making, the preparation and marking of examinations and all other matters requiring expert knowledge would be handled by each board.

THE ORGANIZATION OF CENTRALIZED DEPARTMENTS  
FOR LICENSING TRADES AND PROFESSIONS

Many recent state government surveys have examined and recommended some centralization of licensing functions. As of 1952, 18 states had adopted some centralized system of occupational and professional licensing or registration (California, Colorado, Georgia, Idaho, Illinois, Iowa, Kentucky, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Virginia and Washington).

The joint interim examining and licensing committee of the New Mexico legislature report<sup>1</sup> surmised that, "Some form of centralization offers greater hope for the protection of the public interest, which is the sole basis for any restriction on occupational freedom, than does the present independent board pattern." It stated further that:

The fundamental functional similarities in the occupational licensing process have not been fully understood or appreciated in this state. The present statutes reflect no consistent legislative policy on many vital points. The process of occupational licensure should be considered as a single functional unit or part of state government.

The report concludes with a recommendation that a department of licensing be created.

The lack of a consistent legislative policy is evidenced in our own territorial statutes. For example, Hawaii law requires 30 days' notice before a hearing to revoke a license of a professional engineer;<sup>2</sup> the same requirement

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<sup>1</sup>Final Report, Joint Interim Examining and Licensing Investigating Committee of the New Mexico Legislature (1956).

<sup>2</sup>Revised Laws of Hawaii 1955, 166-10.

for photographers<sup>3</sup> is 20 days, for contractors<sup>4</sup> 15 days and for real estate brokers<sup>5</sup> only five days. There is no logical reason why these provisions should vary.

The recommendation of the New Mexico committee follows the pattern of studies made in other states. The Council of State Governments publication, Occupational Licensing Legislation in the States (pp. 33-34), reported some of these findings.

The staff of the Arizona Special Legislative Committee on State Operations recommended establishment of a department of occupational registration. The department would have three divisions-- administration, examinations and investigations. It would perform all administrative functions, prepare and conduct examinations, and make all necessary inspections and investigations. Boards attached to the department would exercise quasi-legislative and quasi-judicial tasks and would advise the department on all matters pertaining to their particular professions or trades. This proposed organization would centralize the responsibility for licensing and would relieve the boards of administrative work, and it would provide an organizational structure wherein interests of the general public would be considered in the administration of licensing statutes.

The staff of the Michigan Joint Legislative Committee on Reorganization of State Government in 1950 also recommended creation of a Department of Professional Licensing. The proposed department would have responsibility for setting standards and accrediting professional and trade schools, issuing licenses, preparing and conducting examinations, and administering and enforcing licensing laws. The report suggested replacing the existing licensing boards with three-member advisory boards. These would assist in the preparation and grading of examinations and would conduct practical examinations. Boards would certify to the department applicants to whom licenses should be issued and would hear charges involving possible suspension or revocation of licenses. Finally, boards would furnish liaison between the department and the licensed occupations. This proposed organization would make it possible for the Governor to exercise administrative control over the licensing function and for the public interest to be represented in licensing administration.

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<sup>3</sup>Ibid., 169-14.

<sup>4</sup>Ibid., 166A-17.

<sup>5</sup>Ibid., 170-13.

The Minnesota Efficiency in Government Commission recommended establishment of a central licensing department, but its suggested organization would differ in a significant way from other existing or proposed licensing agencies. The basic recommendation was for creation of a five-member State Licensing Authority whose members would be appointed by the Governor. The Authority would have quasi-legislative and quasi-judicial functions. In consultation with the appropriate occupational licensing boards, it would have power to adopt rules and regulations. It would appoint members of the occupational licensing boards and would hear appeals from their decisions on admission of applicants to examinations, issuance of license and suspension or revocation of licenses. The authority would set all licensing fees and would appoint a director of licensing and registration. The director would head a central secretariat which would perform all administrative, secretarial, financial and investigative work for the authority and the individual licensing boards. These boards would have responsibility for preparing examinations, holding hearings upon charges filed against practitioners, certifying those qualified for licenses and recommending to the state licensing authority rules to implement licensing statutes. The commission concluded that its recommendations would provide a means for utilizing the expert knowledge of board members representing various professions and trades, would safeguard the interests of these groups and that of the general public, and would promote efficiency in the operation of the state government.

Similarities among recommendations of commissions on reorganization indicate a general concern with four major questions. First, proposals were designed to strengthen the Chief Executive's position with respect to licensing boards by providing means for holding them accountable and for ensuring elected officials a voice in forming licensing policy. Second, commissions attempted to divide duties between boards and central departments so that the latter would handle all administrative work while the former would have quasi-legislative and quasi-judicial responsibilities. Third, commissions were aware of the importance of maintaining participation of regulated groups in the licensing function. Fourth, recommendations were intended to provide an administrative structure which would assure consideration of interests of occupational groups and the general public in licensing policy and administration.

The same Council of State Governments report (pp. 32-33) outlines the structure that some of these licensing agencies and departments have been given.

The organization for occupational licensing in Illinois furnishes an example of ... centralization. The Department of Registration and Education, with the aid of twenty examining committees, regulates twenty-six licensed occupations, and the Director of the department appoints the members of the boards. Four other groups are licensed by boards connected with other state agencies, and another

department licenses one occupational group (insurance agents and brokers) without a board. The Department of Registration and Education performs all routine tasks connected with processing of applications and issuance of original and renewal licenses. The boards, however, usually prepare, conduct and grade examinations. All board rules and regulations are subject to the approval of the Director of the department. The department supervises trade and professional schools, enforces licensing statutes and conducts investigations of alleged violations. However, if formal complaints are filed, boards conduct the necessary hearings. If they recommend suspension or revocation of a license, the practitioner may appeal to the Director of the department. This division of duties gives the department responsibility for functions common to all boards and provides, through the power of the Director, for representation of the public interest in licensing. At the same time, the powers of the boards make possible the utilization of their expert professional knowledge and can protect the legitimate interest of practitioners in these fields.

Georgia has pioneered a method of organizing the licensing function. A joint secretary's office in the office of the Secretary of State serves twenty licensing boards. The joint secretary handles applications, issues licenses on the recommendation of the boards, keeps all records and has charge of all financial matters for the boards. Each board continues to regulate its profession or trade and conducts all examinations. This degree of centralization has brought economies in routine operations and has improved record keeping, while leaving unchanged the authority of licensing boards over the occupations they regulate.

New York presents still a different pattern of centralization. Some eighteen occupations are licensed by thirteen boards attached to the Department of Education. Boards connected with the Department of State license at least four other occupations; the Department of Health has one licensing board under its jurisdiction. The Department of Insurance and the Court of Appeals perform licensing functions in connection with insurance salesmen and attorneys respectively. The Department of Education prescribes standards for professional and trade schools and certifies those approved for training. It performs some tasks in connection with the processing of applications for licenses, administers examinations, issues licenses and handles all renewals. Inspectors assigned to the department investigate all complaints against practitioners in licensed occupations. Each board prepares and grades its own examinations. Most boards have some responsibilities for the evaluation and processing of applications. Boards also hold hearings when charges are filed against practitioners. A special three member committee, which includes one member of the Board of Regents (the governing board of the department), reviews the findings in disciplinary matters. Both the department and the boards have administrative and policy making functions.

A fourth example of centralized organization is found in California. Twenty-one occupational licensing boards are connected with the Department of Professional and Vocational Standards, and five other state agencies license some occupations. Each board makes rules; prepares, conducts and grades examinations; issues licenses; investigates alleged licensing violations, holds hearings and determines penalties. The department exercises no power with regard to any of these functions, but it has a staff of hearing officers who preside at all hearings before boards. Although it is authorized to establish an inspection division, it has not done so, and this activity remains under the control of each board. The department keeps records and handles funds for all boards. All powers over the various professions and trades are retained by the boards.

In Nebraska twelve boards are centered in the Department of Health, while six occupations are licensed by other agencies. The department issues licenses, keeps records, has charge of all financial transactions, enforces licensing statutes, conducts investigations, holds hearings and suspends or revokes licenses. Boards prepare and grade examinations and may make rules subject to the approval of the department. Thus functions of a given board are restricted to the one area in which the expert knowledge of its members is of most value. The department has responsibility for all other duties in connection with the licensing of professions and trades under its jurisdiction.

### Organization

With the exception of attorneys who are officers of the court and whose licenses are historically granted by the supreme courts of the various states, all trades and professions can be grouped under one department for licensing. Dividing the trades and professions into two groupings—those dealing with health and those dealing with trade and commerce—would create some of the administrative duplication which the present reorganization seeks to eliminate. Matters of public health should be handled by a board of health; however, the actual practice of medicine, chiropracty, barbering, etc., can best be administered by boards made up of members of the respective trade or profession within a central licensing agency.

Such a centralized agency may be important enough in size and functions to justify its establishment as one of the 20 constitutional departments. The ad-

administrator of this department must be a responsible individual experienced in public administration. His duties will involve exercising some authority in the various professions. So that all the trades and professions will stand on an even par, this administrator should not be a member of any particular trade or profession subject to regulation by his agency. Appointment by the Governor and confirmation by the Senate would help insure that he will be qualified.

It is possible, however, to establish this centralized licensing agency as a division under another department. An appropriate office within which to place the agency would be the office of the Secretary of State, should one be created. Record keeping, clerical and administrative services seem to come within the duties of a Secretary of State.<sup>6</sup> In providing this administrative framework, care must be taken to set out statutory qualifications for the director of a Division of Registration under the Secretary of State, to help assure that the administrator will be of high caliber. (See appended chart.)

#### Governing the Trades and Professions

Most states which have adopted a centralized system have recognized the need for self-policing of the trades and professions through the various boards or committees representing the particular trade or profession. A licensing department can be anything from an agency limited to providing clerical, stenographic and record keeping assistance, to an agency which actively participates in rule making, the preparation and marking of examinations in hearings and appeals. A centralized licensing department which provided only stenographic and clerical assistance would leave the composition and functions of the separate existing licensing boards substantially unchanged.

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<sup>6</sup>See Legislative Reference Bureau memorandum to the legislative Interim Committee on the functions of the Secretary of State, dated July 10, 1959.

From the experience in other states which have centralized this function, and upon the general principle that the public should be represented in the licensing boards, it seems advisable to give to the centralized department some measure of responsibility for governing the trades and professions. The degree of the department's participation in that governing is the key question. The trades and professions ought to remain essentially self-governed, with the individual boards possessing a high degree of autonomy. Board members, themselves belonging to the trade or association, would more easily recognize its problems and needs and are likely to seek the maintenance of high standards for their vocational group. Self-policing, combined with representation of the public interest through the director of the agency, would foster efficiency and fairness in the control of the licensed vocations.

Establishment of a licensing department or division need not greatly change the composition of the individual boards. Problems dealing with budget, purchasing, office procedure, supplies, office space, records, forms and personnel would be handled by a central administrator; instead of any board itself issuing a license, the department would issue the license "on the recommendation of the board." As a rule, the department's action concerning a trade or profession would be made only on the recommendation of the appropriate board.<sup>7</sup> (Since the head of the department would not be a member of any of the licensed trades or professions, it is anticipated that he would rely on the recommendations of the boards.)

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<sup>7</sup>A provision in the Illinois statutes provides that the director can act only on the recommendation of the board, Illinois Revised Statutes (1957), c. 91, sec. 22.4.

Presently, the rules and regulations issued by a territorial board are subject to review by the Governor. However, should a separate licensing department be created, the function of approving its rules and regulations would logically fall within the province of, and should be given to, the director of the agency. This delegation of authority should be made in order to effectuate a basic purpose of the constitutional limitation on the number of departments, viz., relieving the Governor of the burden of reviewing rules and regulations of numerous boards. (Illinois and Massachusetts both have provisions authorizing the licensing department to approve regulatory rules and regulations.)

The director, as an ex officio member of all boards, would be the representative of the general public. While having no vote, he would have the right to attend all meetings and take part in discussions. Through this attendance he could better familiarize himself with the problems in each regulatory field with a view toward improving administration of the agency. He could also add something by being in attendance. Although the trades and professions vary, there are great similarities in the process of licensing and regulation. The director could give each board the benefit of what he has learned at the meetings of other boards and the advantage of having an expert in public administration present.

It is possible to give the licensing department varying degrees of authority in each of the trades and professions. For instance, where specialized knowledge is necessary to see that drug stores have the proper equipment, the power to investigate should be left to the boards. On the other hand it does not take an expert to determine whether a barber has a current license. The department itself could conduct investigations for the boards in those trades or professions the regulation of which does not require specialists. The statute establishing each individual board would define the duties of the board and the duties of the

department in relation to the board. The department may participate in the preparation of examinations for one board, have approval power over the examinations of another board, while having nothing to say in regard to examinations prepared by still another board. The department, because of its flexibility, will be able to service each board as to its specific needs.

### Hearings

The establishment of independent hearing officers seems advisable. These hearing officers would preside over the hearings and take the role of "judge." The board, however, would have the right to make the ultimate determination. If the board wished, it could leave the whole matter to the hearing officer; the hearing officer then would make the decision. This delegation of authority could be made only by the board. (California<sup>8</sup> uses this system for all administrative adjudications.) The need for hearing officers to preside over these cases might not require a full time staff. The director, when the need arises, could engage hearing officers on a per diem basis, as is the practice in the Department of Labor and Industrial Relations in the conduct of employment security appeals.

The elements of the hearing procedures should be: (1) an independent hearing officer would preside over the hearings; (2) the board itself would have the right to make a final determination; (3) the director of the agency would review the decision of the board.

There are several forms that this review can take. In Connecticut<sup>9</sup> and Massachusetts<sup>10</sup> the aggrieved party has direct recourse to the courts, while in

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<sup>8</sup>Deering's California Code, Government (1958), sec. 11500, et seq.

<sup>9</sup>General Statutes of Connecticut (1958), c. 20.

<sup>10</sup>Annotated Laws of Massachusetts (1957), c. 112.

Illinois,<sup>11</sup> before going to the courts, the director has the power to order a rehearing before the same board or different examiners. The courts must be available to anyone adversely effected by a decision of the board, but there are advantages in giving the director the authority to order a rehearing. A suggested procedure is to give to the director the power to order a rehearing before the board. The director, as an ex officio member of the boards and having close contact with them, would be better able to see any substantial injustice. Although the director could not alter the decision of the board, his authority would further insure fair play in the hearing. This procedure could also relieve the burden on the courts. Of course, the courts would be available to any aggrieved person if he is not satisfied with the decision of the director.

#### Summary

In the reorganization of the territorial government into 20 departments of a state government it is clear that the various trade and professional licensing boards cannot be numbered among new departments. The first question is then "where shall they go?"

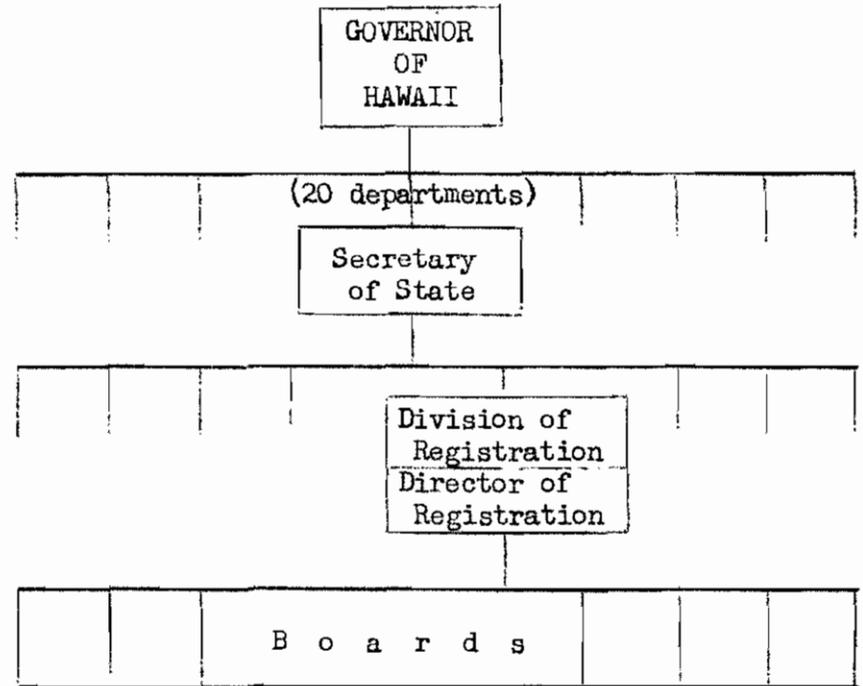
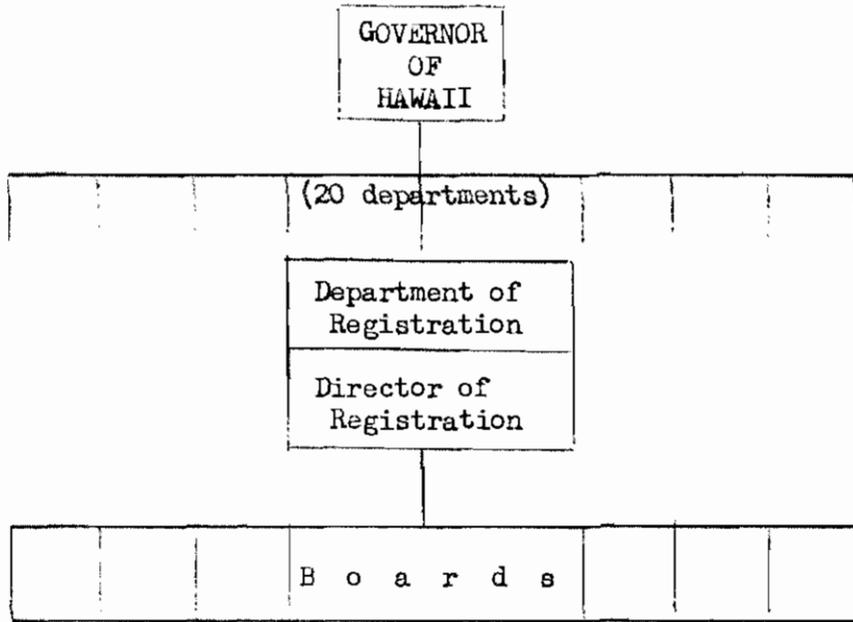
With a view towards maintaining high standards in the trades and professions by retaining the element of self-government, it is suggested that they all be grouped in one centralized agency. Positioned under this centralized agency, but functioning with a high degree of autonomy, the boards could issue rules and regulations pertaining to qualifications and conduct, prepare and mark examinations, direct investigations and hear complaints. The boards would be made up of members of the trade or profession with the director of the centralized agency as an ex officio member.

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<sup>11</sup>Illinois Revised Statutes (1957), c. 91, sec. 16b-1.

The centralized agency, under the direction of a qualified public administrator as director, would provide clerical, budgeting, purchasing and personnel services to the boards. To relieve the burden on the Governor, each board's rules and regulations would be subject to the approval of the director, rather than to gubernatorial approval. This agency would also provide hearing officers to preside over hearings given to aggrieved persons. The director would have authority to review the determinations of the boards, but this review should be limited to granting a rehearing. Resort to the courts would remain if the aggrieved party were not satisfied with the decision of the director with respect to his decision on a rehearing.

ALTERNATIVE ORGANIZATIONS OF THE STATE REGISTRATION AGENCY



-12-

I. FUNCTIONS OF THE DIRECTOR

- A. Administrative Services to Boards
  - 1. clerical and stenographic
  - 2. record keeping
  - 3. printing
  - 4. budgeting
  - 5. purchasing
  - 6. personnel
- B. Aid in Governing Trades and Professions
  - 1. approval of rules and regulations
  - 2. attendance at meeting as ex officio member
- C. Judicial Aids to the Boards
  - 1. hearing officers to preside over meetings
  - 2. review by director of rulings of boards

II. FUNCTIONS OF THE BOARDS

- A. Makes rules and regulations to supplement statutory requirements.
- B. Prepare and grade examinations.
- C. Direct investigations.
- D. Make determinations at hearings to revoke, suspend, refuse to renew or refuse to issue a license.

III. FUNCTIONS OF THE SECRETARY OF STATE  
(if that alternative is taken)

Structure of the Division of Registration would be same under Secretary of State as for Department under Governor. The Director of the division would have a relatively free hand in administering his division.

