

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH

for the

NEW JERSEY CONSTITUTIONAL CONVENTION

STATE ADMINISTRATIVE ORGANIZATION AND REORGANIZATION

by

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CONSTITUTIONAL PROVISIONS FOR STATE
ADMINISTRATIVE ORGANIZATION
AND REORGANIZATION ¹

I. New Jersey History

A. No provision for State administrative organization is contained in either the Constitution of 1776 or the Constitution of 1844.

B. Administrative Officers Given Constitutional Status.

1. The Constitution of 1776: Constitutional status is given to three administrative officers:

"...the attorney-general and provincial secretary shall continue in office for five years, and the provincial treasurer shall continue in office for one year... they shall be severally appointed by the council (legislative) and assembly (general) in manner aforesaid, and commissioned by the governor, or, in his absence, by the vice president of the council; provided always, that the said officers severally shall be capable of being re-appointed at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehavior by the council, on an impeachment of the assembly."
(Constitution of 1776, Section XII) Underscoring added, parentheses added.

2. The Constitution of 1844: The present constitution gives constitutional status to five administrative officers:²

"The State Treasurer and comptroller shall be appointed by the Senate and General Assembly in Joint meeting. They shall hold their offices for three years, and until their successors shall be qualified into office." (Article VII, Sec. II, paragraph 2) Underscoring added.

1. Exclusive of the State Militia.

2. Exclusive of the militia officers - i.e., the Adjutant-General and Quarter-master-General (Constitution of 1844, Article VII, Section 1).

"The Attorney General, ... Secretary of State, and the Keeper of the State Prison, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for five years." (Article VII, Section II, Paragraph 3) Underscoring added.

C. The Executive Power Over State Administration.

1. Under the Constitution of 1776:

"... The governor, or, in his absence, the vice president of the council (legislative), shall have the supreme executive power,..."
(Constitution of 1776, Section VIII) Parenthesis added.

However:

a) The Governor was appointed by the Legislature (Section VII); was president of the Legislative Council and had "a casting vote in their proceedings" (Section VII).

b) The Legislature appointed the three administrative officers given constitutional status (see Item B 1, supra); "and did assume from time to time the appointment of other officers: e.g., the keeper and inspectors of the state prison, surrogates after 1822, and county prosecutors after 1823".³

2. Under the Constitution of 1844:

"The Executive power shall be vested in a Governor." (Constitution of 1844, Article V, Paragraph 1)

However:

a) Creation of Administrative Agencies:

The Constitution leaves the Legislature free to create as many state administrative agencies as

3. Introduction to the Proceedings of the New Jersey State Constitutional Convention of 1844, by John E. Bebout

it deems advisable. The general pattern during the past century has been the creation of new and independent administrative agencies for the performance of new functions undertaken by the State, rather than the allocation of these functions to existing agencies. Partial consolidation has been effected on a few occasions, after exhaustive surveys by legislative and other committees.

Nevertheless, over seventy independent state administrative agencies exist today through legislative action.⁴

b) Appointing Power:

1) "Thus the power of appointment was expressly distributed by the constitution itself among all the departments of the government..." (69 N.J.L. 291, at p. 297 (1903), Court of Errors and Appeals.)

2) "All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law." (Constitution of 1844, Article VII, Section II, paragraph 8.) (Underscoring added)

3) No coherent pattern is provided for the appointment of officers and members of governing bodies of administrative agencies created by legislative acts; the methods currently provided by law being: by the Governor alone; by the Governor with the advice, consent, approval or confirmation of the Senate; by the Governor from lists furnished by designated organizations; and by the General Assembly and Senate in Joint Meeting.

4. In 1943 there were in existence 102 independent state agencies (exclusive of those provided for in the Constitution), i.e., 42 boards, 47 commissions, 3 councils, 4 authorities, and 6 with miscellaneous designations. Recommendations of the N.J. Commission on State Administrative Reorganization adopted by the Legislature from 1944 to 1947 provided for the consolidation and reorganization of 24 of the state administrative agencies within 5 major departments... See Reports of N.J. Commission on State Administrative Reorganization. In addition, the recommendations of the Commission on Post-War Economic Welfare, adopted by the Legislature in 1944, provided for the consolidation and reorganization of 7 administrative agencies within a State Department of Economic Development.

c) Terms of Office:

1) The terms of the three constitutional administrative officers appointed by the Governor are longer than the Governor's term of office (see Item B 2, supra). Since the Governor may not succeed himself, the terms of these officers necessarily extend into or beyond the next Governor's term.

2) The terms of office of most statutory officers and members of governing bodies of state administrative agencies overlap the Governor's term of office.

d) Removal Power:

The Constitution makes no provision for the exercise by the Governor of a power to remove appointed officers and members of governing bodies of state administrative agencies.

The Governor's power to remove statutory appointees is dependent on legislative action.

In most cases no such power is afforded the Governor.

e) Supervisory Power:

The present Constitution does not:

1) Vest in the Governor general power to supervise or investigate the conduct of the administrative agencies of the State;

2) Grant the Governor power to require information in writing from heads of adminis-

trative agencies.

By act of the Legislature the Governor has been given authority "to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State and to examine and investigate the management and affairs of any department, board, bureau or commission of the State."⁵

3. Comments on the Executive Power Over Administrative Agencies

a) By Governors of New Jersey⁶

1) Former Governor Moore:

"I am still of the opinion that something should be done at this time about the reorganization of our State administrative machinery. It is needlessly complicated, and neither the Governor nor the Legislature can exercise such prompt and adequate control over many State departments and agencies as is necessary to insure adherence to any fixed policy. I shall not try to schedule now definite savings that should result from a thorough reorganization of the State government. They will be substantial and we must save money. Aside from this there will be tremendous gains in improved administration." (First Annual Message to the Legislature, January 10, 1933.)

2) Former Governor Edison:

"We have more than four-score independent, or semi-independent State agencies, some with their own incomes and budgets, some which are little governments on their own.

"No one, therefore, can say just what the government of New Jersey costs. No one can get

5. Laws of 1941, chapter 16, as amended by Laws of 1941, chapter 315.

6. See also: Message of Governor Green (1889); Annual Message of Governor Wilson (1912); and Inaugural Message of Governor Edge (1917).

a complete picture of what is going on.

"The Governor should be given effective control over this administrative conglomeration. The eighty agencies should be consolidated into no more than twenty and a Governor's cabinet drawn from their executives."
(Inaugural Message to the Legislature, January 21, 1941.)

3) Former Governor Edge:

"...The Governor must be the actual head of the great business of New Jersey if he is to be held responsible for the results.

"Several department heads under the present hodge podge exercise greater authority and influence than the Governor. In some cases they do not even report to the Governor and are responsible only to themselves and indirectly to the Legislature. This conflicting system cannot be successfully defended....

"...I fully agree that the present situation, presenting over one hundred governmental boards, bureaus, commissions and departments is absolutely unsound and cannot produce the best results."
(Inaugural Message to the Legislature, January 18, 1944.)

4) Governor Driscoll:

"Being of the executive branch, I reminded my listeners of the fact that the Governor in this State, a rumor to the contrary notwithstanding, is not the sole Chief Executive of the State. He is just one of the chief executives of the State, because there are many heads of departments, appointed by boards, councils, and former Governors, who exercised authority during the Governor's term, and frequently exercised it entirely apart from the authority exercised by the Governor. I say this, not in criticism of the men with whom I am presently associated -- merely in criticism of an antiquated system that, instead of providing for a centralized and responsible authority, provides for divided responsibility and divided authority."
(From address given before The Newark Kiwanis Club, May 15, 1947.)

b) From Legislative Surveys and Reports:⁷

1) From Report of the Joint Legislative Survey Committee, 1925 (Bright Committee),
pp. 33 and 34:

"...The appointive power of the Governor, which ordinarily implies responsibility for the subsequent actions of his department heads, is in fact not nearly what it might seem to be. He makes thirteen appointments to departments headed by a single official; all but one -- the health officer of Perth Amboy -- must be approved by the Senate. He appoints the members of many commissions but here again Senate confirmation is required for positions of any importance. Furthermore, the membership of most of the commissions is large and the terms of the members generally overlap, so that a Governor in the course of a three-year term rarely becomes fully responsible for their activities, since he has not appointed a majority of the board.

"In some cases, the boards are ex-officio or entirely outside of the Governor's control as far as appointments are concerned....

"It is impossible for the Governor to keep in personal touch with the affairs of 78 administrative units and 18 special commissions. Most of them are required to submit a report to the Governor and the Legislature. Even if they reported fully upon their activities - which a number do not - it is evident that the Governor could not take the time to analyze their affairs in detail. The Governor is supposed to be fully advised concerning all of the State's operations and to exercise definite control over the entire State government. No such supervision is possible as a matter of fact under the present organization plan."

7. See also: Report of Reconstruction Commission to Governor Alfred E. Smith on Retrenchment and Reorganization in the New York State Government, October 10, 1919.

2) From Report to the Governor and the Legislature of New Jersey of the State Audit and Finance Commission, 1930 (Abell Commission), p. 6:

"...Reorganization of the government should be built around the Governor. In him is vested the executive power. On him is imposed the duty to execute the laws. The power and the duty go hand in hand. The Constitution itself contemplates centralization of power in the Governor. The power is given in order that he may discharge the duty.

"Our objective, therefore, is to make the exercise of executive power most effective. This requires that every administrative activity must be articulated, not only with each other but, primarily, to centralized executive control. The Governor should have the ways and means to carry into practical operation the entrusted reservoir of power."

c) From Other Documents:⁸

1) From The New Jersey Constitution - A Barrier to Governmental Efficiency and Economy, C. R. Erdman, Jr., (1934), p. 8:

"While the constitution happily does not provide for the popular election of any other executive officials, it is responsible for

8. See also: Record of Proceedings Before the Joint Committee of the New Jersey Legislature Constituted Under Senate Concurrent Resolution No. 19 (1942), pp. 203-270; Speeches on the Constitution of New Jersey, by former Governor Charles Edison (1943), pp. 20-23; Documents and Readings in American Government, by Mathews and Berdahl (1930) - chapter XXIII, "State Administration ... Administrative Reorganization"; Report on a Survey of the Organization and Administration of the State Government of New Jersey (National Institute of Public Administration, 1930); Report on a Survey of Administration and Expenditures of the State Government of New Jersey (School of Public and International Affairs, Princeton University, 1932); D. C. Cline, Executive Control Over State Expenditures in New Jersey, (1934).

placing a number of state officers beyond the effective control of the governor. The legislature in joint session elects the comptroller, state treasurer, auditor, commissioner of motor vehicles, commissioner of alcoholic beverages, etc. And even where the governor is given the power of appointment, as in the case of the attorney-general, the term is not coextensive with that of the chief executive. Consequently, no governor has the opportunity of effectively controlling many of the important executive positions which are popularly supposed to be a part of the governor's office. In short, New Jersey cannot obtain the best type of administrative organization without constitutional change."

2) From Executive Memorandum C, Princeton

Surveys, January 16, 1942:

"As a practical matter, the extent of the Governor's control of the State administration will depend largely upon the extent of his power to appoint and remove. Power to appoint gives him power to determine the broad lines of administrative policy through the selection of the person who will make policy decisions. Power to remove affords the effective sanction for his continuing day-to-day control of the departments...

"It needs no demonstration that the very number and disorganization of administrative offices in New Jersey may alone defy and defeat executive control. This situation thus becomes relevant to any consideration of an improved constitutional basis for the executive to act as administrative head."

4. Some reasons for an against giving the Governor wide powers to appoint and remove state officials:

a) As advanced by delegates of the New York Constitutional Convention of 1915 (citations from the Revised Record of the 1915 Convention):⁹

9. New York State Constitutional Convention Committee Report, 1938, Vol. VIII, Problems Relating to Executive Administration and Powers.

For

There should be no divided authority or responsibility in executing and administering the laws of the State. Therefore, the Governor should have the power to appoint or remove at pleasure. (Tanner, Vol. III, p. 3334.)

The people should know whom to hold responsible for maladministration of the government; they should not be distracted by a number of elective executive officials, but they should be able to concentrate and devote attention to the election and the defeat of a few officials. (Alfred E. Smith, Vol. III, p. 3353.)

If the Governor were to have wide powers of appointment, efficiency would be increased. It is important in constitutional government to unite power with responsibility. A person should be responsible for what ought to be done, rewarded if he does it, punished if he doesn't, and he shall have power to do it. (Wickersham, Vol. IV, p. 3372.)

The closer the State politics is run similar to large business institutions, the better it will be for the taxpayers. No large business has ever been a success without a head. (Letters to Mr. Green, Vol. IV, p. 3412.)

Against

One fundamental rule for statute making is to consider not what a good man will do but what a bad man may do. (Brackett, Vol. IV, p. 3340.)

The voters prefer to elect all State officers. (Letters to Mr. Green, Vol. IV, p. 3410.)

Every appointive officer instead of looking to efficiency keeps his eye on the Governor. (Brackett, Vol. IV, p. 3437.)

The people ought to be able to fill by election those offices which have large patronage. (Quigg, Vol. IV, p. 3371.)

b) Other Reasons Advanced:

1) By R. S. Field, on June 12, 1844,
at the Constitutional Convention of 1844:¹⁰

"I am in favor of giving the appointing power to the Governor because it is an Executive power--the great Executive power. If this is not an Executive, I beg leave to ask what is an Executive power? You may call your Governor the Executive, but if you deprive him of the appointing power, he is the Executive only in name. There are two great departments in government, the Legislature and the Executive. The Legislature make the laws and the Executive is to see that they are carried into execution. But he cannot do this himself. It must be done through the instrumentality of others. Then he must appoint those who are to be the instruments for carrying the laws into execution, or else he is not the Executive. But will you allow the Legislature to appoint officers to carry into effect, their own laws? If you do, you create a despotism. You may tell us if you please, that the Legislature is the representative of the people, but give them executive as well as legislative power and they constitute a tyrannical government, call it what you will."

2) By Former Governor Edison, on September 17, 1943:¹¹

"The governor has no cabinet, as the President of the United States has, and as many governors have. Rather, the men who head the various departments and who would normally make up his cabinet are persons appointed by earlier governors, elected by the Legislature, elected by commissions or boards, or even elected by non-governmental societies or associations. They are not responsible to the governor, and he can discover only at their pleasure what is going on in their departments. They are often political opponents of his. Some of them count that day lost when they cannot find some way to use the powers of their offices to embarrass him and to bring his administration into disrepute."

10. Proceedings of the New Jersey Constitutional Convention of 1844, p. 357.

11. Speeches on the Constitution of New Jersey, by Governor Charles Edison - (1943), p. 22.

5. Comments on, and recommendations for, re-organization of administrative agencies:

a) By the Joint Legislative Survey Committee
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of New Jersey (1925)...Bright Committee...

"The present organization of the executive branch of the State government includes 78 departments, boards and commissions, in addition to which there are 18 special or temporary boards--a total of 96. Neither logic nor consistency is apparent in the present scheme of things. The commission form of organization has been overdone; the Governor can not possibly control so complex a structure nor exercise the authority expected of him; the blame for waste and inefficiency cannot be definitely placed.

"Simplicity of organization may be expected to reduce the cost of operating the State government. Centralization of control is recommended. The number of independent executive agencies should be reduced from 78 to 14 through the establishment of large consolidated departments headed as far as possible by single executives rather than by commissions. The establishment of major controlling departments will not effect the internal organization or activities of most of the existing units to any great extent; it will effect marked economies through a simplification of overhead administrative machinery. It will provide adequate executive control. Nine boards and commissions should be abolished and others tied in with the major departments proposed. The plan should be put into effect by enacting a general administrative code."

b) Report on a Survey of the Organization and Administration of the State Government of New Jersey Made for the Governor and the State Audit and Finance Commission:¹³

"It is proposed to establish thirteen major departments which will carry on practically all of the administrative work of the New Jersey State government. In every case, these departments will be administered

12. From Reports of the Joint Legislative Survey Committee of New Jersey (1925), p. 23.

13. By The National Institute of Public Administration (1930), p. 12.

by single heads responsible to the Governor. Under this type of organization, the Governor will be placed in the position contemplated by Article V, Section 1, of the Constitution; that is, he will become in fact as well as in theory the chief executive of the State. Boards will be retained where there are quasi-legislative, quasi-judicial or advisory functions in connection with the departments.

"In addition, to the thirteen departments just noted, it is proposed to set up a department of audit headed by the Comptroller. This department will serve as the independent auditing office of the State government, since its head will continue to be appointed by the Legislature and will therefore not be controlled by the Governor or any of the administrative departments."

II. Constitutional Provisions in Other States

A. For table of state administrative agencies and officers given constitutional status in other state constitutions, see Constitutional Revision Project, Louisiana State University: Constitutional Problems, Monograph 23: The Executive; Constitutional Provisions for Administrative Offices and Agencies: The Missouri Manual.

B. The Governor's Power to Appoint Administrative Officers:

1. In cases not otherwise provided for by the constitution or by law:

Colorado	Maryland	North Carolina
Idaho	Montana	Utah
Illinois	Nebraska	Vermont
Maine	New Mexico	West Virginia

2. If provided by the constitution or by law:

Delaware	Minnesota
Louisiana	Pennsylvania

3. In forty-four states the governor's appointing power is limited by provision for the popular election of some state officers:

Alabama	Louisiana	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Texas
Florida	Montana	Utah
Georgia	Nebraska	Vermont
Idaho	Nevada	Virginia
Illinois	New Mexico	Washington
Indiana	New York	West Virginia
Iowa	North Carolina	Wisconsin
Kansas	North Dakota	Wyoming
Kentucky	Ohio	

4. In four states the governor's appointing power is limited by provision for election by the legislature of some state administrative officers:

Maine
New Hampshire
Tennessee
Virginia

C. The Governor's Power to Remove or Suspend:

In fourteen state constitutions provision is made for the exercise by the governor of a power to remove or suspend from office:

Colorado	Nebraska
Delaware	New Mexico
Florida	New York
Illinois	Pennsylvania
Maryland	South Carolina
Mississippi	Virginia
Missouri	West Virginia

In Missouri, "all appointive officers may be removed by the Governor." The appointees of the Governor may be removed for cause in Colorado, Illinois, Maryland, Nebraska, New Mexico, and West Virginia.

In Florida, the Governor may suspend for malfeasance, misfeasance, neglect of duty in office, commission of felony, drunkenness or incompetency, and, with consent of the Senate, remove all non-impeachable officers for any of such causes.

In Pennsylvania, the Governor may remove the Secretary of the Commonwealth and the Attorney General at pleasure.

In Delaware, the Secretary of State holds office during the pleasure of the Governor. Also, the Governor may for any reasonable cause remove any officer, except the Lieutenant-Governor and members of the General Assembly, upon the address of two-thirds of all the members elected to each House of the General Assembly.

In Virginia, the Governor may, during recess of the General Assembly, suspend from office any executive officer at the seat of the government, except the Lieutenant-Governor, for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law. The Governor is required to report the fact of such suspension and the cause therefor to the General Assembly at the beginning of its next session. The General Assembly determines whether the officer suspended shall be restored or finally removed.

In Mississippi and South Carolina the Governor may suspend financial officers ... defaulting state and county treasurers and defaulting tax collectors in Mississippi; and in South

Carolina, any officer having custody of public or trust funds who is charged by indictment with embezzlement or misappropriation of such funds.

For removal provisions in the New York Constitution, see subdivision E, infra.

D. The Governor's Power to Require Information in Writing from Heads of Executive Departments upon Subjects Relating to the Duties of Their Offices:

1. Thirty-three states authorize the governor to require such information:

Alabama	Indiana	Nevada
Arizona	Iowa	North Carolina
Arkansas	Kansas	Ohio
California	Kentucky	Oregon
Colorado	Louisiana	Pennsylvania
Connecticut	Maine	South Carolina
Delaware	Michigan	Tennessee
Florida	Minnesota	Utah
Georgia	Mississippi	Virginia
Idaho	Montana	Washington
Illinois	Nebraska	West Virginia

2. Seven of these states require such information be given under oath, if the governor so directs:

Alabama	Montana
Colorado	Nebraska
Delaware	West Virginia
Idaho	

E. The New York Constitution:¹⁴

1. Administrative Reorganization:

a) Nineteen civil departments in the state government are provided for in Article V, Section 2.

Except for those temporary in character and special in purpose, all administrative functions may be allocated

14. See attached Appendix.

only to one of such civil departments.¹⁵

b) The legislature may, subject to the limitations contained in the Constitution, "from time to time assign by law new powers and functions to departments, officers, boards or commissions, and increase, modify or diminish their powers and functions." (Article V, Section 3.)

c) No new department may be created. (Article V, Section 3.)

d) The legislature may create temporary commissions for special purposes and reduce the number of departments by consolidation or otherwise. (Article V, Section 3.)

2. Appointing and Removal Power of the Governor:

The head of the department of audit and control is the comptroller (elected by the people). The head of the department of law is the attorney-general (elected by the people). The head of the department of education is the Regents of the University of the State of New York who appoints (and at pleasure removes) a commissioner of education to be the chief administrative officer of the department. The head of the department of agriculture and markets is appointed "in a manner to be prescribed by law". (Article V, Section 4).

15. People v. Tremaine, 252 N.Y. 27, at p. 51; 168 N.E. 817, at p. 825 (Court of Appeals - in construing a similar provision as it existed in the Constitution of 1926).

"... Except as otherwise provided in this constitution, the heads of all other departments, and the members of all boards and commissions, except temporary commissions for special purposes, shall be appointed by the governor by and with the advice and consent of the senate and may be removed by the governor, in a manner to be prescribed by law." (Article V, Section 4.)

F. Model State Constitution:¹⁶

"Section 507. Administrative Departments. There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify or diminish the powers and functions of such departments, offices, or agencies. All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise.

"The heads of all administrative departments shall be appointed by and may be removed by the governor. All other officers in the administrative service of the state shall be appointed by the governor or by the heads of administrative departments, as provided by article IX Civil Service of this constitution and by supporting legislation. No executive order governing the work of the state or the administration of one or more departments, offices and agencies, shall become effective until published as provided by law."

16. Prepared by the Committee on State Government of the National Municipal League, Partial Revision of 1946.

III. Recommendations for Change in
Constitutional Provisions

A. Report of the Commission on Revision of the New Jersey
Constitution ... submitted to the Governor, the Legislature
and the People of New Jersey, May, 1942.

1. Appointing Power:

a) Provides for the nomination and appointment of the heads of all administrative departments and the members of all boards, councils and commissions, except the State Treasurer and Comptroller, by the Governor with the advice and consent of the Senate. (Proposed Constitution, Article IV, Section III, paragraph 4.)

b) Provides that the State Treasurer and Comptroller shall be appointed by and be responsible to the Legislature. (Proposed Constitution, Article IV, Section III, paragraphs 1 and 6.)

2. Removal Power:

a) Provides that the heads of all administrative departments shall serve during the term of the Governor appointing them, at his pleasure, and until their successors have been appointed and qualified. (Proposed Constitution, Article IV, Section III, paragraph 5.)

b) Authorizes the Governor, on complaint submitted to him by 20 or more citizens, to investigate the conduct of any State officer, except a member of

the Legislature, an officer appointed or elected by the Legislature, or a judicial officer. The Governor may remove such officer, after notice and opportunity to be heard if, in his opinion, the investigation discloses misfeasance or malfeasance in office. (Proposed Constitution, Article IV, Section II, paragraph 6.)

3. Power to Require Written Information:

"....The Governor may, whenever in his opinion it would be in the public interest, require from the Comptroller or the Treasurer written statements under oath of information on any matter relating to the conduct of their respective offices." (Proposed Constitution, Article IV, Section III, paragraph 6.)

4. Administrative Organization:

a) Provides for the allocation, from time to time, by the Governor by executive order, of all executive and administrative offices, agencies and instrumentalities of the State Government among and within nine named major departments. (Proposed Constitution, Article IV, Section III, paragraph 1.)

b) Provides for the allocation from time to time, by the Governor by executive order, of executive and administrative functions, powers and duties, among and within the nine major departments, to promote efficiency and economy in the operation of the State Government; also, to group, coordinate and consolidate the offices, agencies and instrumentalities according to major purposes. (Proposed Constitution, Article IV, Section III, paragraph 2.)

c) Any allocation or reallocation of functions, powers and duties is made subject to veto by the Legislature within thirty days. (Proposed Constitution, Article IV, Section III, paragraph 3.)

d) Each department is to have a single administrative head, unless otherwise provided by law. (Proposed Constitution, Article IV, Section III, paragraph 4.)

5. Comment by the Commission on Revision:

In the "Summary and Explanation" prefacing its proposed draft of a revised Constitution, the Commission on Revision had this to say regarding Article IV:¹⁷

"The functions of modern executives in all forms of business organization contrast sharply with the office of Governor of New Jersey, who can be an executive in name only. Hampered by whimsical laws and inadequate constitutional authority, the Governor of New Jersey suffers as an executive from the multiplicity of offices, commissions, boards, bureaus, and other agencies, and from lack of authority to control his most important departments. Our greatest need, to which the revision is directed, is to strengthen the executive authority.

"This has been achieved by redefining the role of the executive as head of the administrative organization, by making possible the simplification of the subordinate administrative structure and by clarifying the relationship of the Governor to the Legislature.

"As chief executive officer, the Governor is responsible for the efficient, orderly, and co-ordinated conduct of governmental business. The extent of his accountability depends upon his power to obtain from all his subordinates an adequate performance of their duties. This in turn means that these subordinates must be rendered accountable to him. Under the existing Constitution, the Attorney-General, Secretary of State and keeper of the State prison are given five-year terms which place them outside the line of executive control. In addition to these officials, numerous state officers, boards and commissions have been established without any concerted plan of synchronizing

17. Report of the Commission on Revision of the New Jersey Constitution, 1942, pp. 19-21.

their terms of office, their appointment to office, or their functions within a properly co-ordinated and responsible executive department. The result is that the office of Governor has been deprived of real managerial functions and executive responsibility has been scattered among executive agencies created and filled by legislative authority.

"The first remedy for this situation is supplied by providing for the nomination and appointment of heads of all administrative departments by the Governor with the advice and consent of the Senate. The hand of the Governor is strengthened in this respect by a provision requiring senatorial action within thirty days on such nominations as the Governor may make. Only the State Treasurer and the Comptroller remain legislative offices, in the sense of appointment and responsibility, in order to give the Legislature a check upon the expenditure of appropriations which it has authorized. By fixing the term of all such department heads to coincide with that of the Governor, and by authorizing their removal at his pleasure, the Governor is appropriately granted the power essential to secure smooth-running state government.

"The second remedy is provided in administrative organization. Provision is made for the allocation of all executive and administrative offices together with their powers, duties and functions, within nine major departments. The responsibility to achieve this allocation by executive order is placed upon the Governor. Any reallocation of functions, however, is made subject to veto by the Legislature within thirty days. Such a reorganization will bring into a compact administrative organization more than ninety agencies at present performing administrative functions. No constitutional allocation is attempted because of the special treatment demanded by the variety in type, size, term, and duties of these agencies. By combining administrative activities into nine departments, there will be created a responsible and accountable corps of administrative officers to function as a gubernatorial cabinet. In order to allow for situations where a plural executive has proved advantageous, the Legislature is authorized to make an exception to the general requirement of a single executive at the head of each administrative department. The Governor is thus provided with the means of securing control over administrative activity. His program can be planned in consultation with his chief administrative assistants, and his policies can be carried out under his supervision. Within the field of administration, duplication of effort can thus be eliminated, conflicting spheres of action can be avoided and purposes co-ordinated.

"The principle of strengthening the executive does not occasion a corresponding weakening of the Legislature. When the Governor is made a powerful and responsible head in his own sphere of administration, the Legislature can be relieved of executive functions and its attention confined solely to legislation. The relation of the Governor to the Legislature is thus defined more clearly by retaining each branch in its own sphere and preserving the traditional checks and balances. Only in connection with budgetary matters is this relationship altered in the proposed revision...."

6. Hearings before the Joint Legislative Commission
Constituted under Senate Concurrent Resolution No. 19,
1942:

a) Proponents: Their arguments reflected the observations made in former years by Governors (page 5, supra, legislative surveys and reports (page 7, supra) and other authorities (pp. 8-13 supra), as well as those generally stated in the Commission Report just quoted. Highway Commissioner Spencer Miller said:¹⁸

"...In view of the changes in society and the resulting changes in government which have occurred since that time (1844, when the Constitution was framed), there is no Article which is more in need of reconsideration in the light of present conditions (than the Executive Article, Article V in the Constitution of 1844)...."

"The results of the traditional neglect of the executive office are apparent on every hand. A modern chief executive in a large scale enterprise is expected to concern himself with matters of general policy and to supervise his organization through a small number of administrators directly responsible to him. Details are left to these chief assistants and their subordinates. In the New Jersey Government the order of things is reversed. The Governor is required to appoint and deal with a whole host of minor functionaries, while most of his principal assistants are carefully insulated against both his legal and his moral influence. A new Governor discovers that the administrative part of State Government, of which he is supposedly the general manager, is divided among something like a hundred independent, often competing agencies. Many of these departments are headed by boards, the numerous members of which it would be utterly impossible for the Governor

18. Record of Proceedings before the Joint Legislative Committee....
1942, pp. 205-9

to become acquainted with during his three-year term. The Governor finds that his duties with respect to the several departments are bewildering in their number and dissimilarity. Furthermore, many of his duties are of such an inferior or inconsequential character that they have no value whatever as instruments of executive power....

"(The proposed Executive Article) gives the Governor the power to appoint and dismiss his own chief assistants, and enables him after investigation and hearing to dismiss any other administrative officer found faithless to his trust. This, substantially, follows the precedent set by the United States Constitution. The Governor cannot be held responsible for administration unless he can enforce responsibility down the line through assistants in whom he has confidence....

"The time limit on confirmation and the prohibition against further joint meeting appointments except for comptroller and treasurer should go a long way toward making both the Governor and the Legislature more responsible servants of the public interest....Thomas Jefferson said.....:

"Nomination to office is an executive function. To give it to the Legislature, as we do, is a violation of the principle of the separation of powers. It swerves the members from correctness, by temptations to intrigue for office themselves, and to a corrupt barter of votes; and destroys responsibility by dividing it among the multitude.....'

"In the second place, the proposed Constitution reduces the number of administrative departments and makes the Governor primarily responsible for their internal organization and for the distribution of powers among them. No chief executive can deal effectively with something like a hundred different agencies. The proposed Constitution would reduce the number to nine. Perhaps this number is too small.... The point is that the number should be small enough so that the heads of the departments can sit together with the Governor in intimate conference, for consideration of common problems and co-ordination of effort....

"In the third place, the proposed Constitution would diminish the non-essential political and ministerial duties of the Governor. The reduction in the number of departments and the consequent reduction in the number of separate appointments to be made go in this direction...."

b) Opponents: Those who opposed or would radically modify the Commission's proposal, made essentially these arguments:

1. There is no need to provide for administrative reorganization by constitution; it can be done by statute.¹⁹

2. The proposal would freeze all present and future activities of the State Government into nine departments. This takes no account of changing conditions. If any provision were made, it should be that there be such departments as might from time to time be established by law.²⁰ Others argued for the setting up of specific departments: a separate Department of Education (the draft provided for a Department of Education and Civil Service), a separate Civil Service Department, a Consumers' Department, Recreation Department, Motor Vehicle Department, Banking and Insurance Department, separate Departments of Taxation and of Finance (combined in the draft). One proposal was that the recommended Department of Agriculture be taken out of the Article; it is presently "a private, independent corporation," and that was satisfactory to the farm group.²¹

3. Empowering the Governor to allocate all administrative and executive offices and agencies among the nine named departments was giving him "a blank check, which he could fill in as he pleased in this regard." The veto power given the Legislature on the Governor's allocation or reallocation of administrative functions, powers or duties would be less effective than thought; one House, by refusing to override the Governor, could thwart the intended purpose of this provision.²²

4. The entire proposal would lead to "executive domination and legislative insignificance."²³

5. Making the terms of all department heads end at the same time with the Governor's would result in interjecting politics into departments where efficiency and not political expediency is desirable.²⁴

19. Record of Proceedings before the Joint Legislative Committee...
1942, p. 229

20. Ibid, p. 230

21. Ibid, pp. 253-4, 257, 259, 261, 264, 836, 849

22. Ibid, pp. 230-1

23. Ibid, p. 828

24. Ibid, pp. 233, 711

No person wishing to make administration a career could occupy such a position; there had to be some assurance of tenure.²⁵

6. The argument that government is like private business and that the way to get efficient and economical government is by having a strong and powerful executive, is faulty. The supporters of this theory point to New York for example, but the operation of the system installed there under Governor Alfred E. Smith has not been efficient under his successors. It has resulted in the building up of a political machine, and a greatly increased cost of government.²⁶

B. Proposed Revised Constitution of 1944:

1. Appointing Power:

a) Provides for nomination and appointment by the Governor of all single heads of principal administrative departments, with the advice and consent of the Senate. (Article IV, Section III, paragraph 6.)

b) Provides for appointment by the Governor of the members of all boards and commissions, when same are heads of principal administrative departments, with advice and consent of Senate. (Article IV, Section III, paragraph 7.)

c) Provides for election of State Comptroller, State Treasurer and State Auditor by the Senate and General Assembly in joint meeting. (Article VI, Section II, paragraph 1.)

d) Provides that if any board, commission, or other body, heading any principal department, has power to appoint an administrator, director, or other

25. Ibid, p. 710

26. Ibid, p. 710

chief executive, such appointment shall be made with the approval of the Governor. (Article IV, Section III, paragraph 7.)

2. Removal Power:

a) Provides that all single heads of principal departments shall hold their office until the next Governor is elected and qualified, and until their successors are appointed and qualified, but they may be removed by the Governor as shall be provided by law. (Article IV, Section III, paragraph 6.)

b) Gives the Governor power to investigate the conduct of any state officer, except a member of the Legislature, the Comptroller, Treasurer, Auditor, or a judicial officer, and to remove such officer after service of charges and opportunity for public hearing, if in his opinion the hearing discloses misfeasance or malfeasance in office. (Article IV, Section I, paragraph 14.)

3. Power to Require Written Information:

Provides that whenever, in his opinion, it would be in the public interest, the Governor may require from the State Treasurer, State Comptroller, or State Auditor, written statements under oath of information on any matter relating to the conduct of their respective offices. (Article VI, Section II, paragraph 1.)

4. Administrative Organization:

a) Authorizes the Governor to create, by executive order not more than 20 principal departments in

the State Government. (Article IV, Section III, paragraph 1.)

b) Authorizes the Governor to allocate, by executive order, all administrative and executive offices, departments and instrumentalities among and within the principal departments, in such manner as to group the same according to major purposes (Article IV, Section III, paragraph 1), subject to veto by both houses of the Legislature within six weeks of transmittal of the order to them. (Article IV, Section III, paragraph 4.)

c) Authorizes the Governor to reorganize, merge, consolidate and divide, by executive order, all administrative and executive agencies and principal departments, and to allocate and reallocate them, in whole or in part, and their functions, powers and duties, among and within such agencies and departments, in such manner as to promote efficiency and economy in the operation of the State Government (Article IV, Section III, paragraph 2), subject, however, to the veto of both houses acting within six weeks of transmittal of the order to them (Article IV, Section III, paragraph 4).

d) Any such executive order may provide for the transfer of personnel, property and appropriation balances, and the abolition and creation (within limits of available appropriations) of executive and administrative offices, positions and employments;

provided that no person shall be deprived of any right or privilege accorded him by civil service law (Article IV, Section III, paragraph 3).

e) No executive order shall effect any officer, or his office or the functions, powers, or duties thereof, elected by the Legislature in joint meeting (Article IV, Section III, paragraph 9).

f) Executive orders are to become effective six weeks after transmission to the Legislature, unless disapproved within such time by resolution (Article IV, Section III, paragraph 4).

g) The Legislature is given power to assign new functions, powers and duties to, and increase or diminish the functions, powers and duties of, any administrative or executive agency or department (Article IV, Section III, paragraph 5).

h) The principal departments are to be under the Governor's supervision and control (Article IV, Section III, paragraph 6).

i) The Governor may appoint such state officers as he may select, to serve at his pleasure, as members of his cabinet (Article IV, Section III, paragraph 8).

A P P E N D I X

SELECTED CONSTITUTIONAL PROVISIONS RELATING TO STATE
ADMINISTRATIVE ORGANIZATION AND REORGANIZATION

1. ARKANSAS: (Creation of permanent State offices):

Article XIX, Sec. 9: "The General Assembly shall have no power to create any permanent State office not expressly provided for by this Constitution."

2. MISSOURI: (Executive department - assignment of agencies to departments):

Article IV, Section 12: "The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial departments. In addition to the governor and lieutenant governor there shall be a state auditor, secretary of state, attorney general, a state treasurer and a department of revenue, department of education, department of highways, department of conservation, department of agriculture and such additional departments, not exceeding five in number, as may hereafter be established by law. Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane."

3. NEW YORK:

a) Civil Departments in the State Government:

Article V, Section 2: "There shall be the following civil departments in the state government: First, executive; second, audit and control; third, taxation and finance; fourth, law; fifth, state; sixth, public works; seventh, conservation; eighth, agriculture and markets; ninth, labor; tenth, education; eleventh, health; twelfth, mental hygiene; thirteenth, social welfare; fourteenth, correction; fifteenth, public service; sixteenth, banking; seventeenth, insurance; eighteenth, civil service; nineteenth, commerce."

b) Assignment of Functions:

Article V, Section 3: "Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions, and increase, modify or diminish their powers and functions. No new departments shall be created hereafter, but this shall not prevent the legislature from creating temporary commissions

for special purposes and nothing contained in this article shall prevent the legislature from reducing the number of departments as provided for in this article, by consolidation or otherwise."

c) Department Heads:

Article V, Section 4: ".... Except as otherwise provided in this constitution, the heads of all other departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the governor by and with the advice and consent of the senate and may be removed by the governor, in a manner to be prescribed by law."

4. VIRGINIA: (Power to require information):

Section 74: "The Governor may require information in writing, under oath, from the officers of the executive department and superintendents of State institutions upon any subject relating to the duties of their respective offices and institutions; and he may inspect at any time their official books, accounts and vouchers, and ascertain the conditions of the public funds in their charge, and in that connection may employ accountants."

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