

1961

Streamlining the Executive in Nebraska

Frank B. Morrison

Nebraska Office of the Governor

Follow this and additional works at: <http://digitalcommons.unl.edu/nlr>

Recommended Citation

Frank B. Morrison, *Streamlining the Executive in Nebraska*, 40 Neb. L. Rev. 634 (1961)

Available at: <http://digitalcommons.unl.edu/nlr/vol40/iss4/10>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Streamlining the Executive in Nebraska

Frank B. Morrison*

Richard E. Shugrue†

I. INTRODUCTION

The Nebraska Constitution establishes the executive branch of the state government,¹ vesting the supreme executive power in the governor,² and declares that he "shall take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered."³ Although the Nebraska Governor has been termed an official with little power to discharge the responsibility given him by the legislature and the constitution,⁴ the power and prestige of the office make him, in fact, responsible for the operation of the government. His power to appoint major department heads,⁵ his position on the Board of Pardons,⁶ his constitutional authorization to send messages to the legislature,⁷ including the initial state budget recommendations,⁸ and his role as commander of the militia,⁹ as well as his participation in legislative matters¹⁰—a notable departure from the doctrine of separation of powers—do

* B.S., 1927, Kansas State College; LL.B., 1931, University of Nebraska. Governor of Nebraska, 1961—.

† Research Assistant, B.A., 1959, University of Nebraska. Presently a junior in the College of Law, University of Nebraska.

¹ NEB. CONST. art. IV, § 6.

² *Ibid.*

³ *Ibid.*

⁴ Cahill, *The Separation of Powers in Nebraska*, 18 NEB. L. BULL. 367, 368 (1939): "The problem might rather be stated somewhat as follows: Given a certain number of responsibilities, either by the legislature or by the constitution, what may the governor, by virtue of his executive office, do to discharge them? In a word, the answer seems to be, 'Very little.'"

⁵ NEB. CONST. art. IV, § 1.

⁶ NEB. CONST. art. IV, § 13.

⁷ NEB. CONST. art. IV, § 7.

⁸ NEB. CONST. art. IV, § 7.

⁹ NEB. CONST. art. IV, § 14.

¹⁰ NEB. CONST. art. IV, § 15. The veto power of the governor, practically speaking, gives him four votes in the Unicameral. In order for the Legislature to pass bills over the governor's veto, a three-fifths vote of the elected members is required.

place the machinery of the state within the control of the chief executive. The constitution places the responsibility for efficient government on the shoulders of the governor. Thus, it is his responsibility to weed out inefficiency in government and, when necessary, to take steps to urge the legislature and the people of the state to amend the constitution when it may be a deterrent to economical or practical government.

This article will deal with recommended changes for streamlining the executive branch of Nebraska government through amendments to the constitution. The major areas in need of change are the boards and commissions created in the executive section of the Constitution; *i.e.*, the Railway Commission, Board of Control, Board of Pardons and other areas of executive responsibility, such as the Highway Commission and executive officers. The Unicameral has made significant strides in the area of streamlining state government. The changes recommended here deal with areas in which the present administration believes progress can and should be made.

Whenever Nebraskans contemplate amending their constitution they should keep in mind the fundamental principle of separation of powers inherent in almost all state governmental structures.¹¹ Nebraska's Constitution places governmental responsibility in three separate and distinct bodies—the Legislature, the Executive, and the Judiciary. The constitution allows little overstepping of the

¹¹ NEB. CONST. art. II, § 1: "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted." BEARD, *AMERICAN GOVERNMENT AND POLITICS* 535 (9th ed. 1944): "Among the other principles common to state constitutions . . . is the historic doctrine that the powers of government should be divided into legislative, executive, and judicial. This concept was not universal at the beginning of state constitutional development, however. In several states, the legislatures were almost supreme; in some they elected the governor, created courts at will, and controlled the entire process of government."

Compare the division of authority provision of the Nebraska Constitution with Massachusetts's Constitution, first adopted at a constitutional convention begun September, 1779, MASS. CONST. art. XXX: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

three. Much litigation has arisen because of laws which attempted to delegate to one of the three divisions of government the constitutional powers of either of the other areas.¹² If the people are to have confidence in the representative system of government, they

¹² See *State v. Hall*, 125 Neb. 236, 249 N.W. 756 (1933); *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946); *The Crete Mills v. Nebraska State Board of Agriculture*, 132 Neb. 244, 271 N.W. 684 (1937); and *Lincoln Dairy Co. v. Finigan*, 170 Neb. 777, 104 N.W.2d 227 (1960), which is the latest case on the subject holding that the legislature may not delegate legislative power to an administrative or executive authority. At least part of the policy for strict separation of powers stemmed from colonial dissatisfaction with appointed governors. From this subordinated and restricted position in the beginning, the office of the governor has risen to a place of high importance in American public life. HOLLOWAY, *STATE AND LOCAL GOVERNMENT IN THE UNITED STATES* 167 (1951). It is interesting that this doctrine of separation of powers is not explicitly written into the federal constitution. This shortcoming has resulted in an overwhelming growth of the executive branch of the federal government which Chief Justice Vanderbilt of New Jersey has termed "the outstanding political phenomenon of the twentieth century." VANDERBILT, *The Doctrine of the Separation of Powers and Its Present-Day Significance*, II ROSCOE POUND LECTURESHIP SERIES 53 (1953). He concludes, "In an age of personal government we need not despair of a rule of law—and so of liberty—if our legislators will but respect the essential wisdom of the doctrine of the separation of powers." *Id.* at 95. GOODNOW, *PRINCIPLES OF CONSTITUTIONAL GOVERNMENT* (1916), suggests that the division of powers is a distinct departure from the English form of "constitutional" government, noting that the whole American constitutional theory was influenced by the theoretical political scientists of the revolutionary era, chief of whom was Montesquieu, who was an early advocate of distinct separation of powers. "His theory of the separation of three powers of government was, in the opinion of the thinking public of that time, the basis of all free government. It was therefore incorporated into practically all the early state constitutions." *Id.* at 87. MUNRO, *THE GOVERNMENT OF THE UNITED STATES* (1930), points out that whereas every state constitution is different in many respects, "all states have the same general scheme of government—based upon the principle of division of powers." *Id.* at 455. Professor Munro points out, additionally, that this separation of powers provision common to all constitutions of American states is only one of four outstanding points of uniformity (the other three being republican form of government, division into local areas of government, and uniformity of party system).

It is interesting, too, that one of the defects of the Nebraska Constitution of 1875 was the limitation upon the expansion of the executive department, indicating that the drafters of that instrument distrusted executive expansion. I SHELDON, *NEBRASKA, THE LAND AND THE PEOPLE* 961 (1930).

Specific exceptions are made, and one of these is that the governor take an active part in helping mold a system of government which is modern and efficient. NEB. CONST. art. IV, §§ 7, 8, 15.

must select their chief executive officer on the basis of his program for improving the state at the least possible cost to the taxpayer. It is only through the governor's influence in legislative matters that he can carry out the programs which he outlines prior to his election.

Recent sessions of the legislature have dealt extensively with amendments to the state constitution.¹³ Alterations in the Executive clause have been included in these proposed amendments,¹⁴ for example, there have been bills to submit constitutional amendments to the voters to change the tenure of the governor from two to four years, and to elect the governor and the lieutenant governor on the same political ticket, rather than separately.¹⁵

II. THE RAILWAY COMMISSION

A bill has been introduced which proposes a constitutional change in the method of selecting the members of the State Railway Commission at large, but the legislature has passed over an important and perplexing problem.¹⁶ At the present time, the constitution provides for the terms of the railway commissioners and

¹³ For example, the 1957 session of the Legislature authorized submission to the voters of amendments to NEB. CONST. art. III, § 2; art. V, § 27, and art. VIII, § 4.

¹⁴ A bill to transfer the general management, control and government of all state charitable, mental, reformatory and penal institutions from the Board of Control to the Legislature was passed by the Unicameral in 1957, and when approved by the electorate in the 1958 general election, amended NEB. CONST. art. IV, § 19, thus removing the Board from the list of constitutionally established agencies.

¹⁵ In the 1961 session of the Legislature, L.B. 101 and L.B. 105 were introduced, providing for an increase in the term of office of the governor from two to four years and the same increase in the lieutenant governor's term. The bills also provided that these two officers be of the same political party and elected on the same ticket. L.B. 101 was passed by the Legislature 39-1, and the proposed amendment will be submitted to the voters at the general election in 1962. The new terms will, if authorized, begin with the 1966 general election.

¹⁶ L.B. 299, introduced on Jan. 24, 1961, was submitted to the Public Health and Miscellaneous Subjects Committee for hearing. The bill provided for an amendment to NEB. CONST. art. IV, § 20, to authorize the election of railway commissioners from districts as the Legislature might provide, but made no provision for establishing qualifications for members of the commission. *State v. Marsh*, 141 Neb. 436, 3 N.W.2d 892 (1942) held that the Legislature may make reasonable restrictions upon eligibility to hold the office of member of the Railway Commission, even though the constitution makes no such provision expressly.

their method of selection by popular election.¹⁷ The 1961 bill would revise the method of electing the commissioners by having individual elections on a district basis, rather than at large, as at present.¹⁸ However, the real problem with the Commission is whether the members should be elected at all. It would be better for the state if the governor were to appoint the commissioners on the basis of pre-determined qualifications. The Commission regulates highly technical fields of business within the state, and unfortunately, in the past some members of the Commission have been elected by the voters without a careful examination of the candidates' qualifications for office. It is doubtful whether the average voter could intelligently select a candidate on the basis of his knowledge of the regulated fields.¹⁹ This is not an indictment of the Nebraska voter, but rather an admission that the complex problems of public utility regulation are outside of the everyday experience of voters.²⁰

The kinds of businesses brought under state regulation as public utilities include petroleum pipelines, railroads, water companies, telegraph and telephone services, bus and truck lines, taxicab companies, and air transport companies. In addition to these extensive duties, the Commission licenses public storage warehouses and public grain warehouses as well as purchasers of grain for resale. In

¹⁷ NEB. CONST. art. IV, § 20.

¹⁸ Compare L.B. 299 (1961) with Neb. Leg. Council Rep. No. 100. *The Railway Commission* 18 (1960), in which recommendations for legislative action are made.

¹⁹ It should be kept in mind that the voter generally looks upon the Railway Commission race as a minor part of the election. BABCOCK, *STATE AND LOCAL GOVERNMENT AND POLITICS* 382 (1957), has recommended that the best prescription for good government is the short ballot: "[I]t reduces the number of candidates to proportions the voter can handle. Instituting the short ballot would mean doing away with numerous offices that ought not to be elective anyway, but should be made appointive or abolished altogether. This would strengthen the principle of placing legal responsibility on those who are compelled anyway to accept it politically. Moreover, the short ballot would force the obliteration or consolidation of many outmoded governmental units."

²⁰ No qualifications are laid down either by law or custom. The best qualification seems to be regarded as past experience on the Commission. The fact of the matter is that the Commission not only regulates difficult technical matters but, as a matter of course, holds quasi-judicial hearings with an internally created set of procedural rules. See comment, *New Rules of Practice and Procedure Before the Nebraska Railway Commission*, 40 NEB. L. REV. 129 (1960). One of the least qualifications should be that a member of the Commission be a member of the bar. *State v. Childe*, 139 Neb. 91, 295 N.W. 381 (1941), held that one not admitted to the bar is not authorized to practice before the Nebraska State Railway Commission.

thirty-six of the fifty states members of public utility regulatory agencies are appointed, usually by the chief executive, rather than popularly elected.²¹ In Nebraska, the present commission was created by a constitutional amendment passed in 1906.²² The three members are elected for staggered six-year terms.²³ The constitution provides that the powers and duties of "such commission shall include the regulation of rates, services and general control of common carriers as the Legislature may provide by law."²⁴ While it is true that the legislature may provide for qualifications of the members of the Commission, it has never done so.²⁵

A Legislative Council study committee has recommended that the Commission be removed from the list of constitutional agencies and made a statutory agency.²⁶

The 1957 Nebraska Legislature, upon the recommendation of another study committee of the Legislative Council, proposed a constitutional amendment to make the Board of Control a statutory rather than a constitutional agency. This amendment was subsequently approved by the people of the state. The reasoning there was that the Legislature should be allowed to make needed changes in the makeup or operation of state agencies which had the responsibility of major governmental programs or which had a great impact on the people of the state.

The committee report pointed out that no improvements could be made in such agencies which were established when conditions were different in Nebraska, as long as they are based on constitutional provisions and operated by constitutional authority. For example, the agency, under its constitutional authority, has inherent power to

²¹ Neb. Leg. Council Rep. No. 100, *supra* note 18.

²² The regulation of public utilities goes back to the Constitution of 1875 and the first governmental agency created to regulate utilities was established in 1885. The 1887 Legislature enacted a more comprehensive regulatory statute but the act creating it was declared unconstitutional in 1900. For a cross section of the history of the Commission before the courts, see *In re Railroad Commissioners*, 15 Neb. 679 (1883); *State v. Burlington & M.R.R. CO.*, 60 Neb. 741 (1901); *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1947), which broadly deals with eligibility for the Liquor Control Commission, but includes historical references to utility regulatory agencies in Nebraska.

²³ NEB. CONST. art. IV, § 20.

²⁴ *Ibid.*

²⁵ *State v. Marsh*, 141 Neb. 436, 3 N.W.2d 892 (1942).

²⁶ Neb. Leg. Council Rep. No. 100, *supra* note 18, Recommendation 3, p. 18. The Committee pointed out that the matter of attaching qualifications to the post of Railway Commissioner could be worked out if the commission were a statutory agency.

establish its own rules of procedure.²⁷ The committee found instances where the Commission's procedure was contrary to the usual procedure established by law.²⁸ If the agency were statutory in nature, the legislature could provide the appropriate rules of procedure to be allowed and make other necessary changes in accordance with agency needs.

III. THE BOARD OF CONTROL

Some objectors to the appointment of Railway Commission members have stated that if the commission could be improved by making it a statutory rather than a constitutional body, why has so much trouble been evident in the Board of Control, which is not only an appointive body but has also been removed by a 1958 constitutional amendment from the list of constitutional agencies?³⁰ These objectors fail to realize that that amendment merely took the Board of Control out of the constitution and gave the legislature authority to determine how the state institutions should be managed. It did not, in fact, change the government of the institutions. Moreover, the legislature has never established any qualifications for members of the Board of Control.³¹ Since there are no qualifications of a professional nature for members of the Board, they have often been appointed because of political factors. No governor has

²⁷ *Id.* at 18-19.

²⁸ A statutory agency could be forced by law to comply with a code of civil procedure allowing, among other things, for appeals. This is not necessarily true when the separation of powers clause is construed to protect the agency from internal disruption by the legislative branch of government. There is a question of the applicability of the Nebraska Administrative Procedure Act as passed by the 1959 session of the Legislature. NEB. REV. STAT. §§ 84-901, -908 (Supp. 1959). The new rules of Commission procedure are set out in Comment, *supra* note, 20, 40 NEB. L. REV. 129 (1960), and certainly provide some safeguards, procedurally. Note, however, that the rules are written by the Commission itself, and may be likewise altered.

²⁹ Neb. Leg. Council Rep. No. 100, *supra* note 18, at 20.

³⁰ That is by the 1958 amendment to NEB. CONST. art. IV, § 19, which gave the legislature power to provide for management of the agencies now under the Board of Control.

³¹ NEB. CONST. art. IV, § 19, provided for selection of the members of the Board of Control, but failed to establish any professional qualifications. The political qualifications were that the members were required to ". . . give such bonds . . . as may be provided by law." See also NEB. REV. STAT. § 83-101 (Reissue 1958), which provides that no more than two board members shall be of the same political party and that no two of them shall reside, when appointed, in the same congressional district.

been under any obligation other than an undefined moral obligation to appoint qualified persons. The salary limitation³² makes it difficult to obtain Board members qualified as penologists, psychiatrists, administrators or attorneys. Thus laymen, often with no institutional experience, are named to the Board. Notwithstanding these remaining problems, the 1959 Legislature was not idle with the power granted it by the 1958 amendment to Article IV.³³ The transfer of the School for the Deaf and the School for the Blind to the State Department of Education was completed on July 1, 1960. In 1961, a bill to establish state direction of penal and correctional institutions was introduced, which would remove from the Board of Control authority to manage the five penal institutions.³⁴

In addition, the legislature passed a resolution in 1959³⁵ which directed that a study of the Board of Control system be made. The study was completed and the committee recommended that the Division of Public Welfare be divorced from the Board of Control and established as a separate Department of Public Welfare to be headed by a director to be appointed by the governor, and that the director of the new department should have a minimum of seven years of experience in public welfare work.³⁶ The committee also recommended the Control Board be expanded to a seven-member, policy-making-only body, composed of a psychiatrist, an attorney, a doctor of medicine, one person with at least five years of public welfare work and three lay members, one of whom should be a woman to be appointed by the governor for staggered terms of six

³² NEB. REV. STAT. § 83-104 (Reissue 1958): "Each member . . . shall receive a salary of five thousand five hundred dollars a year, payable monthly. In addition to his salary, each member of the board shall be entitled to necessary expenses incurred while travelling on official business . . ." In addition to the above sum, twenty-five hundred dollars per year is paid to each member of the Board by the State Assistance Fund, in accordance with NEB. REV. STAT. § 68-310 (Reissue 1958), making a total of \$8,000.00 per year.

³³ The swift action was due, in part, to strong popular support for a change in the Board of Control system. NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUE BOOK 588 (1958) (218,062 for the amendment; 98,109 against).

³⁴ L.B. 375, introduced Jan. 26, 1961, read, in part: "to establish the position of Director of Penal and Correctional Institutions and to provide for his qualifications . . . to transfer control of all penal and correctional institutions from the Board of Control to the Director of Penal and Correctional Institutions. . . ."

³⁵ Leg. Res. No. 9, adopted June 26, 1959.

³⁶ Neb. Leg. Council Rep. No. 101, *The Board of Control* 22 (Nov. 1960).

years.³⁷ This board would be called the Board of Public Institutions and would appoint a director with administrative experience in state institutional management. These recommendations are definitely the first and proper step toward eliminating the poor Board of Control system now existing in Nebraska. The bill incorporating these ideas was introduced in the 1961 session.³⁸ But these bills should not be the end of Nebraska's efforts to improve state institutional management. Thought should be given to legislation to establish a state director of mental health, apart from the Board of Health,³⁹ to supervise the state mental health institutions, and to a state director of rehabilitations, either within or separate from the Department of Education, to direct the state rehabilitation institutions.⁴⁰ The problem of consolidating the bills and eliminating overlapping provisions should, of course, be left to the legislature. The rationale behind such changes in institutional administration is the same sound rationale as that behind altering the Railway Commission: To provide the best possible management and administration of our government. By such changes the management would be independent from political pressures hampering fair and impartial government. The retention of the Board of Control as merely a policy-making board would be useful for formulating institutional policy and maintaining general oversight over the application of that policy.⁴¹ The complexities of modern institutional management, penology, and the regulation of complex public utilities are better left to experts in those fields.

While Nebraska may be behind some states in improving the system of "government by board and commission," we can benefit

³⁷ *Id.* at 23.

³⁸ L.B. 279, introduced Jan. 23, 1961, read, in part, ". . . to replace the Board of Control by a Department of Public Institutions . . . to provide the qualifications . . . of such board . . ."

³⁹ NEB. REV. STAT. § 71-2612 (Reissue 1958), provides that the Director of Health shall be the executive officer of the State Board of Health and that he shall administer ". . . all laws relating to public health . . ." which, in the absence of a provision in the laws creating a Department of Mental Health, seems to make the Director of Health the *ex officio* director of Mental Health.

⁴⁰ The placing of the Director of Mental Health within the Department of Education is consistent with the concept of rehabilitation of the mentally ill. In the alternative, it is noted, that the director could be placed directly under the State Department of Public Institutions.

⁴¹ The Board of Control, if continued, would be a part-time organ only. It would be non-salaried. Under this arrangement, the responsibility for the policy would lie with the board, leaving no question of where the blame should be put for bad decisions. Neb. Leg. Council Rep. No. 101, *supra* note 36, at 23.

from the experiences of the other states and avoid their shortcomings in the area of welfare and correctional work. Many states place all institutions of one type under a separate agency.⁴² Illinois⁴³ and Massachusetts⁴⁴ are significant examples of this form of administration. The legislative council study committee on the Board of Control noted that the national trend does not favor committing the control of state institutions to a full-time board with executive and administrative powers.⁴⁵

As indicated, the present state administration looks with some reserve upon government by board and committee. However, the problems of such a system cannot be solved overnight. In addition, each branch of the government has individual problems which tend to perpetuate government by committee. Therefore, a slow retreat from the system is recommended. First-glance inconsistencies in the policy of avoiding government by board and the recommendation of continuing the Railway Commission with qualified personnel are reconciled because of the nature of the Commission. The Rail-

⁴² *Id.* at 13. See also BEARD, *AMERICAN GOVERNMENT AND POLITICS*, 628 (9th ed. 1944): "In a number of states constitutional amendments or statutes or both have consolidated, more or less, the offices and boards of state administration . . . placed them immediately under the governor's supervision, enlarged his appointing, removing, and directing powers, made him responsible for the preparation of the budget, and given him, in some respects, a position akin to that of the President of the United States." Beard emphasizes that Nebraska has made strides in this matter of reorganization and consolidation in the so-called code departments. HOLLOWAY, *STATE AND LOCAL GOVERNMENT IN THE UNITED STATES* (1951), adds that the trend in reorganization is toward integration of the once independent executive agencies.

⁴³ ILL. REV. STAT. c. 127, §§ 55, -55.30 (1959), creates a Department of Public Health, "[T]o have general supervision of the interests of the health and lives of the people of the State." ILL. REV. STAT. c. 127, § 55(a) (1959), creates a Department of Public Safety, with control of penal administration. A Department of Public Welfare is established by ILL. REV. STAT. c. 127, § 53 (1959). In addition to the separate departments Illinois utilizes advisory boards for separate divisions of departments. For example, ILL. REV. STAT. c. 127, § 6.04 (1959), sets up a Board of Welfare Commissioners composed of five persons, an advisory board for the hospital-school and facilities and services, an advisory board to the Division of Alcoholism, etc. This broadened government by board is necessary because of unusual technical problems in, for example, the area of alcoholism.

⁴⁴ MASS. GEN. LAWS c. 121 (1932), establishes a Department of Public Welfare, subdividing into authorities the specific welfare duties, such as housing and redevelopment authorities, MASS. GEN. LAWS c. 123 (1932), establishes a Department of Mental Health. MASS. GEN. LAWS c. 125 (1932), establishes the Office of Commissioner of Correction.

⁴⁵ Neb. Leg. Council Rep. No. 101, *supra* note 36, at 16.

way Commission must operate as a regulatory agency in adjudicating individual rights of companies or citizens. The commission system provides for a meeting of three qualified members' minds for the fairest regulation of utilities. A distinction can also be seen between the nature of the duties of a Board of Control and that of the Railway Commission. The latter is not in business, so to speak; it regulates, primarily, as directed by law. The Board of Control, on the other hand, is in business—managing institutions, purchasing supplies, hiring physicians, nurses, penologists, administrators and educators, and hunting for ways in which to operate a function of state government on an efficient and economical basis.

IV. THE HIGHWAY COMMISSION

In light of the above distinction, the present administration recommends a change in the State Highway Advisory Commission. The administration had supported a bill which would make the Commission an executive body, but as a part-time, policy-making organ.⁴⁶ The Commission is analogous to the Board of Control in that its primary concern is doing business for the state, *i.e.*, building roads. It does not regulate or adjudicate rights of private parties as its major job. There does not seem to be justification for a full-time Highway Commission. It should, however, have executive authority. The proposed legislation would make the commission an executive body and authorize it to hire and fire the state engineer. At the present time, the commission only advises the governor, who has executive power over the state engineer.⁴⁷ The governor thus has the last word over construction of highways, though he is constantly subjected to political pressures and may know absolutely nothing of technical highway problems. It can be seen that by placing policy-making decisions in the hands of an expert commission and removing highway building from political crossfire, the Department of Roads can get to the job of improving Nebraska's highways.

⁴⁶ L.B. 470, introduced Jan. 31, 1961.

⁴⁷ The governor, as chief executive officer of the state, has direct control of departments under him. NEB. REV. STAT. § 81-701.05 (Reissue 1958), transferred all the powers of the Department of Roads and Irrigation to the Department of Roads. NEB. REV. STAT. § 81-701.01 (Reissue 1958), provides that the state engineer shall have full control, management, supervision, administration and direction of the Department of Roads. The State engineer is appointed directly by the governor, who can, therefore, control all policy and decisions of the department.

V. THE BOARD OF PARDONS

The administration has also supported a measure which would drastically revise the Board of Pardons.⁴⁸ All three members of the present board have supported L.B. 377⁴⁹ which contemplates establishment of a full-time Board of Pardons composed of professional men appointed by the governor.⁵⁰ The three members of the board, the Governor, the Attorney General and the Secretary of State, appearing before the Government and Military Affairs Committee of the Nebraska Legislature, admitted they had neither the time nor the qualifications to do the best job possible. The tendency toward political overtones in the decisions of the Board of Pardons cannot be disputed. The Attorney General contended that it is unfair to the prisoners to have him sit on the Board because of his role as chief prosecutor for Nebraska. The Secretary of State pointed out that criminology is a highly specialized field and the Board must have people trained in the area to function at its best. The Legislative Council Study Committee on Penal Systems has recommended an amendment to the constitution abolishing the present ex-officio Board of Pardons.⁵¹ The legislature now has the support and the opportunity to create a permanent three-member Board of Pardons, appointed by the governor.

VI. LONGER EXECUTIVE TERMS

A proposed constitutional amendment,⁵² which would lengthen the term of office of both the governor and lieutenant governor from two to four years, and require them to be elected jointly, as members of the same political party, is recommended. There is little question that the system of four-year executive terms⁵³ has worked favorably in the federal government. State government would be

⁴⁸ NEB. CONST. art. IV, § 13, provides for the Board of Pardons, naming the Governor, Attorney General and Secretary of State to such Board, reserving in the Governor the power to "grant respites or reprieves in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment, but such respites shall not extend beyond the next meeting of the Board of Pardons. . . ."

⁴⁹ Public hearing on L.B. 377 by the Committee of Government and Military Affairs of the Legislature, March 24, 1961.

⁵⁰ L.B. 377, introduced Jan. 26, 1961.

⁵¹ Neb. Leg. Council Rep. No. 105, *Penal Systems*, 5 (Nov. 1960).

⁵² L.B. 101 and L.B. 105, introduced Jan. 6, 1961. See note 14, *supra*.

⁵³ U.S. CONST. art. II, § 1.

wise to adopt such a system since it would give the governor an opportunity to propose and carry out a program for Nebraska without the necessity of beginning a campaign for re-election almost immediately after taking the oath of office.

Moreover, the illnesses and death of Governor Brooks illustrated vividly to Nebraskans the breakdown in state governmental continuity when governor and lieutenant governor are elected from different political parties. Serious questions of disability of the executive are left unresolved at this date because of the gaps in our law. Moreover, continuity in government is essential in this day of complexity in government. There is no denying that the operation of government would be improved if the lieutenant governor could step into the governor's shoes and carry out the governor's program when the latter was incapacitated.

VII. APPOINTED OFFICERS

Finally, if and when sweeping changes in the executive clause of the constitution are made, it is recommended that the governor be empowered to appoint all officers of the executive department. Although in most states the governor has no part at present in the selection of these officers,⁵⁴ the policy behind their selection by appointment is sound.⁵⁵ The governor is elected by the people to manage the state government, in which the other executive officers play significant roles. However, at times stalemates have existed between the governor and one of the four executive officers, which disrupted the establishment of a uniform state policy. No coordination between executive agencies is guaranteed. The appointment of executive officers would centralize responsibility and remove any possible excuse the governor might have for failure to fulfill the responsibility clearly his by virtue of the constitution. The days of popular suspicion of governors have passed. The system of checks and balances in state government protects the people from abuse

⁵⁴ The governor has no part in the selection of the secretary of state in 41 states; of the auditor in 36 states; of the treasurer in 47 states; and of the attorney general in 43 states. GRAVES, *AMERICAN STATE GOVERNMENT* 317 (1936).

⁵⁵ NEB. CONST. art. IV, § 6 (1875), read, "The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed." The insertion of the words "efficiently and economically" into NEB. CONST. art. IV, § 6 (1920), at least in theory alter the old state of affairs and suggest that the governor now has some control over the operation of all branches of the executive division of government.

by the governor's office and a change is needed to insure efficient and economical government on the executive level.⁵⁶

VIII. CONCLUSION

It is the policy of this administration to encourage streamlining of state government and to discourage government by boards and commissions which result in loss of efficiency and failure of the people to be able to pinpoint responsibility for actions adverse to their interests.

The purpose of the division of powers clause in the Nebraska Constitution is to insure that the people of the state can spot responsibility for governmental action and approve or disapprove at the polls. It is imperative, then, that the governor have power over state agencies for which he is, in fact, held accountable on election day.

⁵⁶ Indeed, an argument for this efficiency through appointment of executive officers was advanced shortly after the 1919-1920 Constitutional Convention by GETTYS, *THE REORGANIZATION OF STATE GOVERNMENT IN NEBRASKA* 42 (1922) along the lines proposed in this paper, i.e., shortening of the ballot: "If the ballot were shortened the attention of the people could be concentrated on the election of a few candidates with greater possibility of choosing much more highly qualified officials for the most important public offices."