

EL DORADO COUNTY GRAND JURY 2014-2015

THE EL DORADO COUNTY CHARTER: TIME TO ADMIT & CORRECT A MISTAKE

Case GJ-14-15

The 2013-14 Grand Jury issued a report, *The El Dorado County Charter: A Prescription for Dysfunction, GJ-13-20*, recommending specific changes to the El Dorado County Charter. The Grand Jury found that the structure of government prescribed by the charter discouraged cooperation among county officials and contributed to chaos, confusion and poor morale among employees, all to the detriment of efficient and effective county government.

The 2008-09 Grand Jury reached similar conclusions. That report concluded that the charter contributed to the county operating with an obsolete government philosophy, preventing innovation in county department operations.

After conducting our investigations this year, interviewing many witnesses and reviewing hundreds of pages of documents, we concur with the 2008-09 and 2013-14 reports. Both are attached to this report.

The 2009-10 Charter Review Committee reviewed the 2008-09 Grand Jury report. After proper consideration, including its own examination of the proposal and alternatives, it recommended to the Board of Supervisors that the Charter be repealed.

With this report three separate El Dorado County Grand Juries and a Charter Review Committee have recommended repeal or substantial amendment of the charter. The 2008-09, 2013-14, 2014-2015 Grand Juries each reached their recommendation based on their own observations and study of El Dorado County government.

HISTORY OF THE CHARTER

The California Constitution authorizes – but does not require – a county to adopt a charter by majority vote of its electors. A county without a charter is a general law county. The number and duties of its elected officials are governed by state law. A charter county can alter that structure in limited ways. Fourteen of California's 58 counties are charter counties.

El Dorado County operated as a general law county for 144 years until it adopted a charter in 1994. Advocates for the charter argued that the charter largely codified existing El Dorado County government structure and that the charter preserved local control while giving residents a direct say in how government operates. Their immediate motivation appears to have been to prevent the governor from making an appointment to fill a vacancy on the Board of Supervisors. Although a charter does allow some local control, it also prevents the county from easily utilizing the flexibility allowed by state law unless specifically authorized by a charter amendment approved by the voters.

The El Dorado County Charter provides for a five member Board of Supervisors, the three elected officials required by the state constitution and four additional elected officials, the Surveyor, Auditor/Controller, Recorder/Clerk, and Treasurer/Tax Collector. The charter provides term limits for members of the Board of Supervisors but not for other elected officials. The Charter requires the Board of Supervisors to hire a Chief Administrative Officer that is the chief executive officer of the County, who serves at the pleasure of the Board. However, seemingly conflicting provisions of the charter assign to the Board of Supervisors itself, responsibilities customarily assigned to a chief executive.

CHARTER REVIEW COMMITTEE OF 2014 FAILED IN ITS DUTY TO REVIEW MEANINGFULLY THE CHARTER

The El Dorado County Charter includes a provision (§ 701) requiring that the Board of Supervisors appoint a charter review committee every five years to review the charter and make recommendations for amendments or revisions.

The Board of Supervisors appointed a new charter review committee in spring 2014. It met six times between June 16th and September 2014. The Foreman of the 2013-14 Grand Jury transmitted its charter report to the Charter Review Committee and addressed the Committee in an open Committee meeting, drawing attention to the Grand Jury's report and asking that it be considered. Disappointingly, the Charter Review Committee gave the Grand Jury's report no consideration. Instead, the report was *received and filed*.

The Chairman of the Charter Review Committee testified to the Grand Jury that it was his opinion that the committee did not have the authority to consider the grand jury's report unless directed to do so by the Board of Supervisors. This is erroneous. The Charter Review Committee's authority comes from the Charter itself, not from an action of the Board of Supervisors. The Charter requires the Committee to review the Charter and make recommendations for amendment and repeal. The Chairman's refusal to consider any review or recommendation that he was not directed to take by the Board of Supervisors was an abdication of the committee's legal responsibility.

The Board of Supervisors should immediately convene a special charter review committee to perform the work not done by the 2014 Charter Review Committee. This committee and any future charter review committees should be created with recognition of the importance of their work. The committee should be composed of citizens with experience in the complexities of large organization management, whether public, private or volunteer. They should be given sufficient time to perform a thorough review of the charter, to thoroughly consider whether it should be revised to better serve the citizens of El Dorado County, and to allow substantive involvement of the interested public.

THE ABSENCE OF A ROBUST LOCAL MEDIA MARKET MEANS VOTERS IN EL DORADO COUNTY LACK RELIABLE INFORMATION ABOUT COUNTY GOVERNMENT

The Board of Supervisors and the Charter Review Committee have been unwilling to consider the need for repeal or amendment of the charter. Yet, we can only hope that the repetition of grand jury reports on this issue will somehow catch the attention of voters. Unfortunately, we know from our own experience that it is very difficult for citizens in El Dorado County to obtain credible information needed to cast an informed vote.

The citizens of El Dorado County don't have ready access to media sources offering clear, reliable information about our county government. We have no broadcast television or radio stations on the West Slope, where the majority of the county population lives. There are two local access television channels only available to Comcast cable customers. Most regional media is located in Sacramento or Reno-Carson City, Nevada, offering little more than occasional stories about El Dorado politics, officeholders, or candidates. The principal local newspaper, the Mountain Democrat, is published but three times a week, has a circulation of only 10,300, and appears to obtain its information from warring elected officials or from the ever active gossip mill.

The Grand Jury has direct experience with the Mountain Democrat's failure to report factually about local government. That newspaper published a series of articles and opinion pieces attacking the 2013-14 Grand Jury report about the county charter. In one editorial, the Mountain Democrat stated as *fact* that the report was written by the Chief Administrative Officer:

This detailed rewriting of the El Dorado County Charter is not the work of this Grand Jury... This rewriting is so detailed it would not have been done by any grand jury present or past. It is clearly the work of the current chief administrative officer. Its aim is clear – to neuter the Board of Supervisors and arrogate all power to herself.¹

Members of the Grand Jury know from their own personal experience that the entire report was written by members of the Grand Jury and no part of the report was influenced by any other person. The Mountain Democrat attacked the Grand Jury report with untrue, unsourced and unverified statements and did much to ensure the Grand Jury report was not given credible consideration.

¹ Mountain Democrat, June 27, 2014, page A4, *Neutering the Board*, Opinion By Mountain Democrat

THE 2014-15 GRAND JURY'S INVESTIGATIONS LEAD IT TO CONCLUDE THAT THE FAILINGS OF THE CHARTER IDENTIFIED BY THE 2008-09 AND 2013-14 GRAND JURY REPORTS WERE VALID

During the course of our year of service, we interviewed numerous witnesses, including members of the Board of Supervisors, elected officials, county employees, employees of other local governmental agencies and members of the public, over many hours week after week. We reviewed hundreds of pages of documents. We observed meetings of the Board of Supervisors as well as meetings of other local governmental agencies. As the year progressed we observed significant dysfunction in El Dorado County government and concluded that the deficiencies in the Charter identified by the 2008-09 and 2013-14 Grand Juries were correct.

THE CHARTER AFFORDS STATUS TO ELECTED OFFICIALS HIGHER THAN THAT GIVEN TO THE MEMBERS OF THE BOARD OF SUPERVISORS, WHICH HINDERS THE BOARD OF SUPERVISORS' ABILITY TO PERFORM ITS DUTIES

The Board is charged by law with being the policy making body for the County. However, elected officials do not believe they take direction from the Board of Supervisors and may be motivated by their own political interests and biases. Their longevity in office and their higher salaries provide them immunity from Board direction.

Members of the Board of Supervisors are subject to term limits. The other elected officials are not. This allows elected officials to accumulate power over many terms in office.

Members of the Board of Supervisors are paid as part time employees while other elected officials receive full salaries.

ELECTED OFFICIALS REFUSE TO COOPERATE WITH THE BOARD OF SUPERVISORS AND THE COUNTY'S CHIEF ADMINISTRATIVE OFFICER

The Charter provides for a Chief Administrative Officer who acts as chief executive officer for the Board of Supervisors while serving at the pleasure of the Board. The Chief Administrative Officer is responsible to implement and execute the policies established by the Board.

The Auditor/Controller, Recorder/Clerk, Surveyor and Treasurer/Tax Collector are elected and do not report to the Board of Supervisors. They may refuse to cooperate with the Chief Administrative Officer when it isn't in their political interests or to their liking to do so. A power struggle between the Chief Administrative Officer and one or more elected officials may ensue in which case effective governance is lost.

THE CHIEF ADMINISTRATIVE OFFICER WAS TERMINATED WITHOUT A PLAN TO REPLACE HER

In November 2014 the county's Chief Administrative Officer, Terri Daly, resigned under pressure. (See Grand Jury Report Case GJ-14-07). Because she had been the county's fifth Chief Administrative Officer in less than ten years the Grand Jury wanted to understand what went wrong. What we discovered is that the Chief Administrative Officer was not ousted for any failure of good behavior but as a result of a power struggle among elected officials. And, as each of those officials was focused on maintaining or strengthening his or her personal power, the good of the county was sacrificed.

No effort was made to plan for a smooth transition; no plan was made to replace the Chief Administrative Officer. She was peremptorily dismissed to get her out of the picture. As of this writing, more than seven months after the Chief Administrative Officer's departure, an interim and underqualified Chief Administrative Officer is in place and a search has not been initiated for a permanent replacement. Had the Chief Administrative Officer been forced to resign for malfeasance her peremptory dismissal may well have been justified. But under that circumstance an immediate search should have been initiated to find a qualified replacement. Instead, county government has been left to flounder. The Grand Jury initiated an inquiry into why this happened. We concluded that the Board of Supervisors terminated the Chief Administrative Officer at the behest of the Auditor/Controller. Any other reasons given for her dismissal were obfuscations of this reality. Daly's contract was bought out at significant cost to the county.

FIGHTING BETWEEN THE CHIEF ADMINISTRATIVE OFFICER AND THE AUDITOR/CONTROLLER LED TO LOSS OF \$1.5 MILLION IN FEDERAL REIMBURSEMENTS THIS YEAR WITH ADDITIONAL LOSSES ANTICIPATED IN EACH SUCCEEDING YEAR

The Auditor/Controller is known to target individual officials and employees whom he believes should be terminated. He is known to hound those individuals and their supervisors until they are either terminated or resign. The Auditor/Controller was engaged in this pattern of conduct with an employee of the Information Technologies Department. He repeatedly complained to the Chief Administrative Officer, the District Attorney and others about her.

El Dorado County, like every other county in the state, must submit a countywide Cost Allocation Plan required by federal Office of Management and Budget Circular A-87 in order to receive federal funds for operating certain federal programs. Pursuant to California law, the Auditor/Controller is the official responsible for submitting El Dorado County's Cost Allocation Plan. Knowing that his failure to submit a complete Cost Allocation Plan would result in loss of federal funds for the county, the Auditor/Controller allowed his animosity toward an Information Technologies employee whom he had identified for attack to interfere with his obligation to the County's fiscal health. Apparently, it was more important to the Auditor/Controller to cast blame on the Chief Administrative Officer and Information Technologies personnel than it was to perform his obligation to submit a complete countywide Cost Allocation Plan to the State. This resulted in a loss to the County of approximately \$1.5 million in fiscal year 2014-15 and \$1 million in each of the next two fiscal years.

BOARD OF SUPERVISORS CANNOT FORCE AN ELECTED DEPARTMENT HEAD TO ADOPT GOOD BUSINESS PRACTICES

Grand Jury Report, Case GJ-14-07, found that the Board of Supervisors has not met its responsibilities for managing county human resources. That report found significant failures to comply with federal and state law and best practices for human resources management. The report was initiated after the Grand Jury heard complaints from a number of employees about the behavior of elected officials. When we asked members of the Board of Supervisors about these issues the only response we received was that they have no power to compel good behavior in an elected department head. In other words, they blamed the charter for giving these elected officials autonomy. The failure to manage human resources effectively is, at least in part, a function of the charter's separation of powers between elected department heads and the Board of Supervisors.

ELECTED OFFICIALS MAY FOR POLITICAL PURPOSES RESIST BOARD OF SUPERVISORS' EFFORTS TO IMPLEMENT GOOD BUSINESS PRACTICES

The Board of Supervisors entered into a contract with Tyler Technologies for the purchase, modification and implementation of a single, automated, Enterprise Resource Planning system to replace several components of the county's batch oriented systems. The systems being replaced can require duplicative work where items may *disappear* if not re-entered into a subsequent point in the system flow. Implementation of the Enterprise Resource Planning system intends to bring transparency to county finances including the Auditor/Controller, Treasurer, Tax Collector and others. These financial officers may, therefore, be motivated to resist and delay implementation of the new system.

Recognizing that the county suffered from issues related to low employee morale, the Board of Supervisors entered into a contract for organization and management consulting services, including a workplace assessment survey at a cost to the county of almost \$100,000. Certain elected officials feared the results of that effort, and successfully sought to have it quashed. Employee expectations were raised and then defeated.

THE CHARTER LIMITS THE FLEXIBILITY OF THE BOARD OF SUPERVISORS TO IMPLEMENT CHANGES TO THE COUNTY ORGANIZATION APPROPRIATE FOR CHANGING TIMES

California Government Code § 26980 allows the county, with the approval of the voters, to consolidate the offices of auditor, controller, tax collector, treasurer into a chief financial officer: the director of finance. Since 2005 at least thirteen counties have taken steps toward consolidating these offices; they report increased efficiency, better inter-departmental communication, improved employee performance and consequent reduction in cost. The Charter removes the possibility of consolidating these offices or attempting any other organizational innovation from the Board's consideration without first amending the charter.

SOME MEMBERS OF THE BOARD OF SUPERVISORS FAIL TO UNDERSTAND THEIR ROLE

The Board of Supervisors is the governing body of the county. Like the board of a corporation, the role of the Board of Supervisors is that of policy maker for the county. The Board should have a vision for the future of the County and guide the County toward the realization of that vision. The Board is required to hire a Chief Administrative Officer who serves at the Board's pleasure and is responsible for implementing the Board's vision with the help of her senior staff.

Unfortunately, some members of the Board of Supervisors have no prior experience in any organization functioning under the direction of a board, whether corporate, public or volunteer, and have no understanding of how a board functions in any such organization. Some members of the Board of Supervisors seem to believe it is their role to direct individual staff members and to be involved in the day-to-day function of county government.

Members of the Grand Jury were appalled to hear a member of the Board of Supervisors chastise an employee for raising an issue for the Board's consideration without direction from the Board to do so. The Board member's complaint reflects a very troubling failure to understand the role of the Board, the role of staff or the complexities of the issues affecting the county.

The California State Association of Counties offers excellent training for members of boards of supervisors. Training is available for new supervisors to help them understand their roles and responsibilities, legal obligations, and how to work effectively with each other and with staff. Additional training is available on a broad range of topics to assist members of county boards of supervisors confronting the challenges of their office. El Dorado County supervisors have not taken advantage of this training.

FINDINGS

1. The Board of Supervisors is required to convene a Charter Review Committee within five years of the last charter review.
2. The 2014 Charter Review Committee was required to "...make recommendations for amendments to or revisions of the charter to the Board." The Charter Review Committee was not limited to reviewing amendments suggested to it by the Board of Supervisors.
3. The 2014 Charter Review Committee had the responsibility to conduct a comprehensive review of the charter and should have given meaningful consideration to the two Grand Jury reports recommending changes to the county charter.
4. The 2014 Charter Review Committee failed to consider recommendations made by either the 2013-14 Grand Jury or the 2008-09 Grand Jury and it made no findings regarding those recommendations.
5. The Charter Review Committee met only six times. The first meeting was devoted to organization and introduction. This is insufficient time for a substantive review of the county charter, insufficient time to allow members of the public to propose amendments for the committee's consideration and insufficient time for the public to have meaningful input.
6. The charter creates an imbalance between the power exercised by the Board of Supervisors and the elected department heads, rendering the Board of Supervisors unable to govern the county.
7. The Charter imposes responsibilities on the Chief Administrative Officer as the chief executive officer of the County but does not give this official the authority necessary to perform those responsibilities.
8. The above deficiencies in the Charter have promulgated dysfunction in county government so that the county cannot attract the best candidates for either elected or appointed positions.
9. Some members of the Board of Supervisors do not appreciate the importance of the expertise offered by their professional staff and do not understand the role staff can and should play in implementing policies established the Board for effective functioning of county government.
10. Members of the Board of Supervisors are in need of training to help them be effective.
11. Members of the Board of Supervisors have not availed themselves of training offered by the California State Association of Counties.

RECOMMENDATIONS

1. The El Dorado County Charter should be repealed and county government structured as a general law county pursuant to the California Government Code.

In the alternative the El Dorado County Charter should be amended to:

- Repeal term limits for members of the Board of Supervisors.
 - Redefine the authority of the Chief Administrative Officer as set forth in the 2013-14 Grand Jury report.
2. The Board of Supervisors should immediately convene a special charter review committee to perform the work not done by the 2014 Charter Review Committee. This committee and any future charter review committees should be created with recognition of the importance of their work. The committee should be composed of citizens with experience in the complexities of large organization management, whether public, private or volunteer. They should be given sufficient time to perform a thorough review of the charter, to thoroughly consider whether it should be revised to better serve the citizens of El Dorado County, and to allow substantive involvement of the interested public.
 3. Members of the Board of Supervisors should define the direction for the county and should adopt appropriate policies to implement that direction and direct the Chief Administrative Officer to implement those policies.
 4. Members of the Board of Supervisors should work through the Chief Administrative Officer and should not be involved in the day to day administration of county governance.
 5. The Board of Supervisors should establish procedures for bringing issues before the board and for interdepartmental relationships. They should then follow those duly adopted procedures and require all county officers, elected and appointed, to follow them as well.
 6. Each member of the Board of Supervisors should enroll in and complete the *New Supervisors Institute (Course No. 110)* offered by the California State Association of Counties.²
 7. Members of the Board of Supervisors should enroll in additional courses offered by the California State Association of Counties.²

ATTACHMENTS

- 2008-09 Grand Jury Report, Case GJ-08-005, *El Dorado County Charter Review*
- 2013-14 Grand Jury Report, Case GJ-13-20, *The El Dorado County Charter: A Prescription for Dysfunction*

² <http://www.counties.org/course-description/csac-institute-course-descriptions>

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

This Report has been provided to the El Dorado County Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org