

Should we elect or appoint county officials?

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Is an elected position, under the present system, more suitable for the administration of county government than an appointed one? Since all county systems throughout the nation have some elective offices, the more narrowly focused question is “For which county office, if any, would it be more suitable to change from elective to appointive?” Would the position of county auditor be more suitable for the administration of county government if it was an elective position?

GENERAL DISCUSSION

Counties primary functions include the operation of the judiciary, law enforcement, prisoner care, public transportation, public health, public safety and record keeping. County governments operate under the following doctrines:

- separation of power,
- elective process,
- legislative control,
- power of appointment,
- constitutionally instituted offices, and
- grants of authority.

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Today, 48 of 50 states have some form of county government. Connecticut and Rhode Island are divided into geographic regions called counties, but they do not have county governments. Louisiana and Alaska call their counties parishes and boroughs, respectively. Hawaii and Delaware with three counties each have the fewest, and Texas with 254 has the most. (Rural counties are those with populations under 50,000.) Although nationwide these account for nearly 74 percent of all county governments, these rural counties represent only 16 percent of the nation’s population. By contrast, urban counties, those with populations over 50,000, account for only 25 percent of all county governments, yet represent over 80 percent of the nation’s citizens.¹

DUTIES AND RESPONSIBILITIES

In addition to their constitutional authority, all elected county officials have statutorily-defined duties and responsibilities. Some elected county officials have statutorily-authorized fiscal management responsibilities that are not directly subject to the control of the Commissioners Court. In fact, many county offices operate independently of the Commissioners Court except during budgetary proceedings.

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The Constitution does, however, name the Commissioners Court as the administrative body of the county. This body is a court of record with quasi-judicial functions. Its legislative power is limited to implementing expressly authorized discretionary policies. The Court's authority is further limited by the Dillon Rule,* other decisional law, and the Constitution which confines its jurisdiction to "county business."

ESSENTIAL QUALITIES AND FEATURES OF GOOD COUNTY GOVERNMENT

Several qualities have been identified through the years as essential for good county government. Each official, elected or appointed, is responsible for making sure that county government is suitable to meet its responsibilities. Governments with the elements listed below are generally thought to be more suitable than those without.

- Equitable administration of services
- Efficient operations (achieving desired results at a reasonable and fair cost)
- Effective operations (achieving desired results)
- Uncomplicated, easily understood system
- Accountable public officials who are:
 - courteous, accommodating, and honest in their public interactions
 - progressive, insightful and assertive
 - competent, dedicated, innovative, motivated and have good rapport with civic, school, community, charity, government leaders
- Clearly defined duties for office-holders
- Citizen involvement and participation
- Partnerships with other governments and the private sector to enhance services
- Convenient public services such as one-stop shopping
- Education for the public about government operations
- Evaluation of services and strategic planning, goal-setting and revisions
- Equitable allocation of resources

DEBATABLE QUALITIES AND FEATURES OF GOOD COUNTY GOVERNMENT

Political scientists have questioned whether some attributes enhance county government.

- Does partisanship, political affiliation, add or detract from good government?
- Will a more flexible system that allows diverse areas to adapt their structure actually be more responsive?

ELECTED VS. APPOINTED

From the appointive perspective, political affiliation cannot be legally considered as a qualification for a job nor as grounds for termination. Theoretically, the appointive process is devoid of politics; the official who has the power to appoint as well as those who have the authority to confirm appointments may be subject to political influence. By contrast, in the election process, citizens who select their county office-holder may or may not be very informed about the candidate's qualifications for a particular office. We do know that a candidate's political party affiliation is important to the public at some level.

In Texas, most county government officials are elected, as authorized by the State Constitution. The position of County Auditor is one exception. Since, however, the

appointment is made by the State District Judge, the office is “indirectly-representative” by virtue of the statutory power of appointment vested in the State District Judge who is elected by voters within a judicial district. The table below delineates the current system for determining office-holders and presents an alternative for consideration.

■ **County Offices in Texas Government**

POSITION	CURRENT SYSTEM	ALTERNATIVE SYSTEM
Sheriff	Elected	Appointed
County Judge	Elected	Appointed
Commissioner	Elected	Appointed
Tax Assessor-Collector	Elected	Appointed
Treasurer	Elected	Appointed
Justice of the Peace	Elected	Appointed
Constable	Elected	Appointed
County Clerk	Elected	Appointed
District Clerk	Elected	Appointed
County Attorney	Elected	Appointed
District Attorney	Elected	Appointed
District Judge	Elected	Appointed
County Auditor	Judicially-appointed	Appointed
County Court-at-law Judge	Elected	Appointed

Note: All counties do not have each office listed above. Also, there are some statutorily and constitutionally “combined offices”. For example, some counties have the combined offices of tax assessor-collector/county sheriff and/or combination county and district clerk.

INDIVIDUAL OFFICES

Across this nation the duties, responsibilities, and methods of selecting county officials vary considerably. “Elected offices are commonly known as ‘row offices’ (or constitutional offices in some states) due to their appearance in a row on organizational charts or election ballots and the relative autonomy of each office from the central governing body. Row offices are most common in commission and board-structured counties but are also found in other county government structures. Row offices are usually fewer in number and may have less authority in non-commission counties. In charter counties, row offices may be appointed by the board or elected executive.”²

We know that the county clerks in Alaska and Pennsylvania are appointed. In at least 27 states, including Texas, citizens elect the county clerks. The position of Registrar of Deeds is an elected office in 16 states, and, unlike Texas, the county auditor is elected in 15 states. Citizens elect the county treasurers in 35 states; however, in Alaska the post is an appointed position. Sheriffs, on the other hand, are elected in all lower 48 states (except by special charter). Twenty-three states elect their Assessors with Montana reserving a discretionary choice—appointed or elected.³

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FACTORS FOR CONSIDERATION

Accountability: The public has a tendency to look to someone for ultimate responsibility. Accountability issues can be problematic in a decentralized system of government where there is more confusion and blurring of office-holder responsibility. Confusion lessens the legitimacy (public acceptance) of a system. Legitimacy is the essence of government. An example of “failed legitimacy” in Texas is the Constitution of 1869 that was rejected shortly after its ratification by passage of our present constitution.

Fiscal Management: Generally, the public perceives the Commissioners Court to be the accountable body for fiscal management of the county. To some extent this perception of accountability may be misplaced since some non-commissioner county officials have control over funds. For example, the sheriff, although subject to audit, has some discretion in the administration of proceeds derived from forfeitures. Some of the other county officials also have fiscal autonomy within a limited and specified category of responsibility.

Whatever the cause, political or otherwise, the effect has been an imbalance in public official accountability. It is unclear whether the public perceives this accountability distinction. This issue has created a groundswell of controversies among county officials; controversies involving litigation which have had legislative and political consequences.

Balance: Independently elected county officers are, at times, competitive among one another. This interaction adds a measure of balance to the system and provides a “check” on fellow office-holders. A competitive atmosphere can result in a more effective and efficient delivery of services, or it can bring about costly confrontations. These confrontations are typically attributed to one or more of the following: (1) the absence of clear and controlling legislation; (2) statutory and constitutional inconsistencies; (3) frustration over power-sharing; or (4) defiant and tenacious behavior inspired by constitutionally driven independence.

SUMMARY QUESTIONS

1. *Is it important to maintain the independent elected status of county officials?*
As a practical matter, the State has no supervisory authority over county governments because of the constitutional independence of its officers. State officials are elected locally by the same citizens.
2. *Would an appointive system make counties more vulnerable to state control?*
An appointment system may enhance the potential for state supervisory control; it is easier to control a commissioners court than a court plus eight independently elected officers.
3. *Are there any advantages within either the appointive or elective process that would provide a more credible entrustment of resources?*
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ADDITIONAL FACTORS FOR CONSIDERATION

- (a) The public's access to reliable information regarding a candidate's qualifications
- (b) The degree of voter interest or apathy that is prevalent
- (c) The extent to which a system encourages or discourages candidates to run for office
- (d) The availability of qualified candidates
- (e) The availability of qualified personnel for appointment, including the level of compensation to facilitate hiring
- (f) The extent to which the system of government is designed to detect and discourage corruption and abuse of office
- (g) The allocation of authority over major functions within the system
- (h) The extent to which reprisal against other county officials or employees may be facilitated by either an appointed or an elective system
- (i) The extent to which competition may increase effectiveness in a system
- (j) The extent to which the re-election process adds a measure of accountability to a system
- (k) The extent to which a balance or separation of powers is needed in county government. In other words does shared power (each office having a provision against unequal or arbitrary government action) facilitate good government?
- (l) The extent to which influence peddling may affect an appointive or elective system of government

END NOTES

- 1 Research Brief, NACo's Research Division, County Officials, Who's Elected and Who's Appointed, January, 1999
- 2 Ibid. NACo
- 3 Ibid., NACo
- * The Dillion Ruling held that local governments are subject to the will of the state legislature. This means that local governments can do only those things they are specifically empowered to do by their legislature.

The views expressed in this document are for discussion purposes and do not represent the views and/or opinions of The Texas Association of Counties, any Texas County represented by a PAG member, or any Texas County Officials Association.

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Response Form

In order for the PAG to develop a county policy statement on this discussion paper, we need your input. Please take a moment to complete the following questions and submit your response to us by July 20, 2000.

If additional space is needed, please attachment additional sheets to this document. Thanks in advance for your suggestions and comments.

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Other comments:

Name

County

Title

Date