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WHY WE SHOULD ABOLISH FLORIDA'S ELECTED CABINET

JON C. MOYLE*

Over the years I have observed Florida's elected cabinet system and its role in the political process in Florida. I have been involved in several cabinet campaigns, and at one time I argued vigorously in favor of the elected cabinet system. But that was before I understood how that system really works.

The *St. Petersburg Evening Independent* has described the Florida cabinet system very appropriately:

It's like the Abominable Snowman. It's unknown, mysterious. You hear about it in a news report or see it in a headline. Few have actually seen it, yet many believe what they are told about it. And it leaves big footprints.¹

I have personally observed some of these footprints. I have heard Cabinet officials defend the cabinet system on the basis of openness in government while obscuring the fact that the most important work of the Cabinet in the executive branch is conducted behind closed doors. I have witnessed also a gradual and dangerous weakening of the executive branch amid the bickering and grandstanding of elected Cabinet officials.

Now I no longer support the cabinet system. And I am convinced that abolition of the elected Cabinet, as recommended by the Constitution Revision Commission, is without a doubt in the best interests of the people of Florida.

Substantial reforms have been made in Florida government in recent years. We have reapportioned our legislature and improved it to the extent that it is described as among the finest in the nation. The adoption of article V in 1972 streamlined our judiciary, and the adoption of the merit selection system has largely removed politics from the appointment of judges. But the third branch of our state government remains a relic of the nineteenth century, and the time has come to reform the executive branch as well. We should insist that the executive branch become a co-equal partner in our state government.

The Florida Cabinet has served the people well in many respects over the years. I would not argue that it has not. There have been

* The author wishes to thank former Governor LeRoy Collins for his advice and counsel and James Bacchus for his assistance in preparing this article for publication.

1. *St. Petersburg Evening Independent*, June 7, 1978, § A, at 18, col. 1.

accomplishments, to be sure. There have been good men and there have been bad men in Cabinet positions. No doubt this would be true in any system we might devise. But I think we all can agree that the Cabinet is a political system. It is not holy ground.

For democratic government to succeed, it must be efficient, not wasteful. It must be flexible. It must be responsive to public needs, not to the ambitions of officeholders, no matter how personally attractive or capable we may find them to be. Public offices, and public officeholders, should never become untouchables. Every entity of government should be reviewed periodically, and this review should be conducted with the aim of doing what is best for the people being governed, not what is best for those doing the governing. Thomas Jefferson put it this way:

I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind, as that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change. With the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as . . . society to remain ever under the regimen of their . . . ancestors.²

As a member of the Constitution Revision Commission, I participated in the debate over the proposal to abolish the elected Cabinet. Often during our consideration of the cabinet issue, commissioners and interested citizens alike admonished us not to tinker with a system "that has served us so well for more than a hundred years." We were admonished that the people would never accept a proposal to abolish the Cabinet.

These appeals were persistent but hardly persuasive. Our goal was to do what we felt was right, not what might be acceptable. The truth is, the Cabinet we have now is not the Cabinet we had a hundred years ago. It is not even the Cabinet we had sixteen years ago when I served as legal assistant to the Governor of Florida.

Florida's cabinet system—with its present status and its present powers—has been in existence for only ten years. The Cabinet and its members were first given independent constitutional status as part of the comprehensive revision approved by the people in 1968. The legislature has vested new responsibilities year after year in the

2. These words of the author of the Declaration of Independence are engraved in marble on the Jefferson Memorial in Washington, D.C.

Cabinet. In many instances, this was plainly done to weaken the office of the Governor.

A little more than a century ago, the framers of the 1868 constitution provided for a Cabinet. This was the first time the executive officers of the state government were referred to collectively as a "Cabinet" in the state constitution. But the Cabinet of 1868 was a far cry from that which we know today. It was a Cabinet patterned after the federal model. Cabinet members were not elected. They were appointed by the Governor and confirmed by the senate.³

There was no mention of a "Cabinet" in the text of the 1885 constitution. But that constitution, which remained the fundamental law of Florida for eighty-three years, established the six elected administrative offices we know today as the Florida Cabinet: a secretary of state, an attorney general, a comptroller, a commissioner of agriculture, a treasurer, and a superintendent of public instruction.⁴ These offices, however, did not constitute a Cabinet and did not function independently of the authority of the Governor. The 1885 constitution provided that the "Supreme Executive power of the State" was vested in the Governor.⁵ Equally important, the document stated that the Governor "shall be assisted" by the administrative officers named above.⁶

Florida's elective cabinet system of government developed statutorily in the years following 1885. It was after 1885 that the legislature began vesting in individual Cabinet officers additional executive duties—duties beyond those specified in the constitution. In addition, various executive responsibilities were placed under the Governor and the Cabinet officials acting collectively as ex officio boards, including the joint authority to appoint heads of various state agencies and the oversight and development of the policies of those agencies. The legislature also placed all banking regulation under the comptroller and all insurance regulation under the treasurer.

As an aside, it is worth noting that, during the course of these developments, a genuine constitutional question existed as to whether the legislative branch of Florida's government had the power to fragment executive authority as it did. After all, the 1885 constitution expressly provided that the Governor "shall take care that the laws be faithfully executed."⁷ Also, the constitution stated

3. FLA. CONST. of 1868, art. V, § 17.

4. FLA. CONST. of 1885, art. IV, § 20.

5. *Id.* § 1.

6. *Id.* § 20.

7. *Id.* § 6.

at that time that the Governor "shall transact all Executive business with the officers of the Government. . . ."⁸ How then could the legislature constitutionally circumvent the Governor and mandate by statute the division and subdivision of authority in the executive branch?⁹ The Florida Supreme Court somehow held that it could.¹⁰

The 1968 revision, however, removed any doubts which may have existed about the constitutionality of the cabinet system. As amended in that year, article IV, section 4 of our present state constitution clearly provides that "[t]here shall be a cabinet,"¹¹ and the legislature is expressly authorized to give to any individual Cabinet officer, or to one or more of them acting collectively, any executive responsibility without express limitation. Thus, we have government by committee. A collegial executive system has developed in which the Governor and the Cabinet together govern large executive departments such as those dealing with general services, state tax collection, criminal law enforcement, natural resources, public education, and highway safety and motor vehicles. In other states, these are areas in which the Governor has sole executive responsibility. In Florida, however, the Governor has but one of seven votes in most decisions relating to these broad and crucial areas of public service.

While constitutional doubts about the system were eliminated, other doubts have intensified in succeeding years as the Florida Cabinet has become more powerful, more ambitious, more divisive, and more and more frustrating to the Governor in the fulfillment of his continuing mandate to exercise the "supreme executive power" of the state.¹² The emergence of the two-party system in Florida has contributed to the combativeness of the cabinet system. Some Cabinet decisions have been based on politics alone.

Since the 1968 revision, the power of the office of Governor has been diluted greatly, and individual Cabinet offices have grown into what some have called "little governorships." Officials who once largely tended to their limited constitutional duties have now, with a broadened constitutional base, become anxious competitors in a continuing struggle for more and more power in the executive branch. Each has his own public relations men, his own speechwriters, and his own network of district offices. Indeed, much has

8. *Id.* § 5.

9. See McCollum, *The Florida Cabinet System—A Critical Analysis*, 43 FLA. B.J. 156 (1969).

10. *Whitaker v. Parsons*, 86 So. 247 (Fla. 1920).

11. FLA. CONST. art. IV, § 4.

12. *Id.* § 1.

changed in recent years.

Cabinet members are now rivals of the Governor, and this is not good. The Governor must have people in the most vital executive positions who know and believe in his policies, his ideals, and his dreams for the state. He must have people who will work with him, not checkmates pursuing their own independent ambitions and hopes for political advancement. And this is more likely in a system in which the Governor chooses his own people than in a system in which they are chosen for him.

Unless the constitution is changed, Florida will continue to have a Governor who in theory is the state's chief executive officer but who in fact has little or no authority over many executive functions for which the people should and usually do hold him accountable. Look at some of the issues which most concern the people of Florida at this time: automobile insurance, high utility rates, crime, and education. The Governor of Florida has relatively little individual authority to act in these and numerous other areas of public concern. Yet how many among nearly nine million Floridians are aware of this committee system of carrying out the duties of the executive branch of their state government?

Florida has been fortunate in recent years to have as Governor a man who has made the office of Governor much stronger and much more effective than it might have been. In a forceful message to the Constitution Revision Commission last year, in which he called for the abolition of the elected Cabinet, Governor Reubin Askew said:

Floridians expect leadership from their state government. They are demanding strong and progressive leadership—leadership capable of confronting change and shaping change to meet the diverse needs of a diverse state. The people of Florida want an active and positive and assertive government—a government which will lead the way to a better and happier life. By and large, they expect this leadership to come from the one person they hold most accountable for what happens in their state government—the governor.¹³

Some have said that the people should vote against the proposal of the Constitution Revision Commission because all executive power should not reside solely in the Governor. Adoption of the commission proposal would not have that result. In the last hours of the commission's deliberations, Commissioner Thomas Barkdull introduced and the commission adopted a proposal that would allow

13. Address by Reubin O'D. Askew to Constitution Revision Commission 4 (Sept. 1, 1977).

a sharing of executive authority in essentially fiduciary matters. Under the proposed revision, article IV, section 1(g) of the new constitution would provide that

The governor, acting jointly with at least one officer as may be provided by law, shall be responsible for:

(1) the investment and reinvestment of all trust and agency funds and for making purchases, sales or exchanges for and on behalf of such funds, subject to any limitations of a trust agreement relating to a trust fund or as provided by law;

(2) bond debt service management, approving the issuance or refunding of bonds and any other functions relating thereto as provided by law;

(3) the purchasing, selling, leasing, transferring or otherwise disposing of all state lands as provided by law.

This is only proper. In such areas, a sharing of power is appropriate. It serves as a needed check. In other areas, however, fragmentation of executive power is a hindrance and a handicap to good and efficient government.

As an example, let me call to your attention how the proposed change would operate as to just one department now under Cabinet supervision, the State Board of Education.¹⁴ This board is composed of the Governor and the Cabinet. The legislature has given this group the responsibility for defining and developing policies for our whole public education program, from kindergarten through the community colleges. The board also has coordinating responsibilities over our whole state university system.

These are imposing powers. One would think that the exercise of such powers would consume much of the time of the Governor and Cabinet. After all, nearly half of each tax dollar in state revenue in Florida is spent on education. But information presented to the Constitution Revision Commission disclosed that the Board of Education actually does virtually nothing about making policies for our education system.

While the board itself may indulge in an occasional spirited debate over the suspension of a teacher or some other obscure matter—which may give individual Cabinet members yet another opportunity to posture for the public—a review of the agenda and minutes of the Board of Education reveals that very little time is spent on matters of substance. When important decisions are made

14. See Draper, *A New Look for Public Education: The Proposed Revision of Florida's Education Governance System*, *infra* this issue.

by the board, they are made hurriedly and often without debate. For example, the annual budget for the whole education system reportedly was presented and approved in less than one minute.¹⁵

During the entire year of 1977, only two hours, twenty-six minutes, and forty-five seconds were spent on educational policy matters by the Governor and Cabinet sitting as the Board of Education.¹⁶ These few hours, minutes, and seconds were divided among such important and complex policy matters as adult education, child nutrition, equal opportunities in higher education, legislative budget requests, personnel policies in the schools, administrative procedures for the schools, vocational education, and, not the least, minimal student performance standards as measured by literacy tests throughout the state.¹⁷

Competent studies of our Florida public education programs have urged abolition of this ex officio Cabinet board. It is interesting to note that these recommendations are not new. They were made in 1929, 1947, 1967, and, most recently, in 1973.¹⁸ Public officials, with primary duties given to them individually, simply do not have time to contribute as they should to the programs placed under their collective care. The result is an avoidance of responsibility rather than a sharing of responsibility.

In the past ten years our public education programs in Florida have failed to achieve the degree of excellence that a state with the resources of Florida has the right to expect. Test programs much publicized of late show this all too sorrowfully. The flourishing of private schools in competition with our public schools is but another indication of a waning of enthusiasm for public education in Florida. There have been years in the past when the people of Florida were aroused by the PTA's, business leaders, and others to aspire to make our schools second to none in the nation. This spirit, this will to sacrifice, this acceptance of the fact that money paid for school programs is a good investment in the future of this state, seems to be missing today.

A revival of public concern for education at all levels is imperative in Florida. But we will not have such a revival so long as educational issues are lost in a crowded Cabinet agenda. An appointed Board of Education, composed of interested lay citizens, has been proposed by the Constitution Revision Commission as Revision No. 8.

15. Transcript of Board of Education meeting 13 (Dec. 20, 1977).

16. Transcripts of Board of Education meetings (Jan. 6, 1977-Dec. 20, 1977). These include agendas and transcripts of 25 of 26 meetings.

17. *Id.*

18. See Draper, *supra* note 14.

It is sorely needed to give visibility and viability to public education needs. Such a board could effectively awaken the people of Florida to the importance of greater public support.

This is but one example of why we need to abolish the elected Cabinet. The problems posed by the elected Cabinet are too many to list here. But common to all these problems is the merry-go-round of a fragmented executive branch. The merry-go-round may be exciting and colorful. But it just goes round and round. It is time for the carnival to end.

By far the most productive and important segment of Florida agriculture is our citrus. The citrus industry does much for our state and needs the help of state government. But it is not regulated by the Governor and Cabinet sitting as an executive board. It is not even regulated by the commissioner of agriculture, as one might assume that it would be. The citrus industry is regulated by a separate and expert board, the Florida Citrus Commission. The members of this commission are all appointed by the Governor. The concept of this regulatory board is much like that of the appointed Board of Education proposed by the revision commission.

At one of the commission's public hearings, a leading citrus producer was asked if he would approve of doing away with the present citrus commission and placing its functions under the Cabinet. With a show of indignation he said, "Indeed no." Asked why, he replied, in effect,

To begin with, what we have is working well. We don't know what would happen if we were put under the cabinet. But we want to keep it as it is. Citrus deserves to have the top man in the state ready to go to Washington or other places for us, meeting critical needs or important opportunities. When we need somebody out front helping, nobody can do the job the governor can. That's because everybody knows he represents the whole state.

This is true. But it is no more true of citrus than of education, or insurance, or banking, or environmental concerns, or law enforcement, or any other of all the departments now headed by the Governor and Cabinet. Surely the people are as concerned about the quality of their children's education as they are about the quality of their grapefruit. And what of insurance costs and interest rates and air pollution and crime? Should not these concerns of the people also warrant increased attention at the highest level of state government?

In 1927, Colonel Charles Lindbergh landed his single-engine plane at LeBourget Air Field near Paris after completing his solo crossing of the Atlantic. As he came down from the cockpit, weary but jubilant with victory, someone near him said, "I don't see how you could have possibly flown your plane across alone." To which the colonel is said to have replied, "Well sir, I believe it was better this way than if I had tried it with a committee."

The same can be said—and with as much conviction—about Florida's state government. It would be far better if we tried it without a committee. The office of Governor is the strongest agency the people have. That office should be exercised in the boldest and most progressive way for the people's welfare. The public interest is not served when the Governor is confined on all sides by a committee of competitors. The power of the gubernatorial office is diluted, and the potential of the Governor for fulfilling his obligations of stewardship to the people is diminished considerably.

I know there are those who say that to abolish the Cabinet would concentrate too much power in one person. There are those who claim that we need the Cabinet to check a bad Governor. But that is what the traditional separation of powers is all about. Checks and balances are provided in our state constitution in article II, section 3. The revision commission has not recommended any change in that vital section. Why should there be unnecessary internal checks within the executive branch in the form of elected Cabinet officials—checks which really serve only to inhibit the executive branch in fulfilling its constitutional responsibility to check the other two branches?

If the people elect a bad Governor, there is not very much the Cabinet can do about it. Public opinion, the legislature, and the courts can be and have been far more effective than the Cabinet in restraining a bad Governor. We should realize that the people are responsible for electing good Governors and, when they do, the Governor's efforts to do his job well should not be thwarted as they are under the present cabinet system.

I realize that the opposing side of this issue is the easiest to support. The status quo can be so much more comfortable and noncontroversial. The voters have heard much, and will hear more, about keeping government close to the people and about protecting the right of the people to elect their own officials. These are pleasing generalities, to be sure. But they ignore the reality of the cabinet system.

Perhaps most of all, the opponents of abolition profess to fear a concentration of power. This certainly is a valid concern. But concentration of power should not be feared if the normal, natural

result is improved service in the public interest. Nor should it be feared if the person who exercises that power remains answerable to the people—as the Governor would be even in the absence of an elected Cabinet.

Some assume that abolition of the elected Cabinet would encourage secrecy and shadowy doings in the executive branch of Florida's government. We are reminded that the elected Cabinet meets publicly every two weeks, though this is not required by law. An appointed Cabinet, it is said, could be hidden from the people behind closed doors in the State Capitol. While this argument may be attractive, to my mind, it is based on false assumptions.

Surely the most false of these assumptions is that the elected Cabinet members reach most of their decisions in open and accessible Cabinet meetings. This is simply not true. After all, how many decisions on bank charters are made in open meetings? How many decisions on rate increases for insurance companies are made before the scrutiny of the public eye? How many agricultural brokerage licenses are dispensed in public? These are all individual decisions made by individual Cabinet officials. These decisions are not made collectively before the television cameras every other Tuesday.

We are accustomed now to dealing in the "sunshine" in Florida. The people expect it. The press expects it. Even most of the politicians expect it. We are committed to open government and to all that open government implies. When the people vote in November, it is very likely they will reaffirm "Government in the Sunshine" in our state constitution.¹⁹ I do not know of any basis for assuming that replacing a few elected officials with appointed officials would bring an end to sunshine in state government. In fact, abolition might give us an opportunity to shed some additional light on the governmental process.

True, there is no provision in the commission proposal which would require the Governor to meet publicly with executive department heads. But there is also no provision which would prevent such open meetings. Nor should we underestimate the pressure which would surely be imposed on the Governor by the public and press alike to transact state business in the open. I would expect future Governors to meet publicly from time to time with the individual heads of the executive departments.

This could be done in scheduled weekly meetings with a rotation of department heads to allow for citizen participation, for explana-

19. See Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, *infra* this issue; Dore, *Of Rights Lost and Gained*, *infra* this issue.

tion of program plans, and for examination and reporting by the press. Such a plan could afford far greater exposure and sunshine in government than now exists. Actually, if any Governor did not take the lead in developing and expanding openness, the press itself should, and I feel certain would, demand that he do so.

The campaign against abolition is a negative campaign, founded in fear and fraught with demagoguery. Moreover, it is a campaign which assumes the worst of the people and of their chosen representatives. We should presuppose that the people will elect good Governors, not bad ones. We should assume that the Governor of Florida will conduct an open government—because the people will demand that he do so. Most of all, we should help the Governor do his job and do it well. We can only benefit from his success—whoever he may be.

The time has come to act responsibly in Florida. We must put aside our fears. We must resist demagoguery. We must look honestly at the executive branch of our state government and decide whether it is serving the needs of our people as it should. Wasteful, inefficient government has been hiding too long in this state behind the sacrosanct skirts of the elected cabinet system. With the help of the people, this can be changed in November.

