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WHY WE SHOULD KEEP FLORIDA'S ELECTED CABINET

MALCOLM B. JOHNSON

In more than four decades of reporting and analyzing the news of Florida government, there have been at least three rather extended periods when, if there had been a choice between retaining the elected state Cabinet or an elected Governor, I would have abolished the governorship. I suspect I would have had the support of a substantial segment of the citizenry.

It is possible for Floridians to select a poor Governor but, with the constitutional cabinet system, it is difficult to have a bad administration. For the independently elected Cabinet officers, responsible separately to the electorate, tend to buck up and block capricious, mischievous, or autocratic abuses by the Governor and his appointed administrators.

It is this safeguard against gubernatorial absolutism that the people of Florida are being asked to surrender by abolishing the cabinet system through adoption of Revision No. 4 in the revised constitution which is subject to referendum in the November general election. That revision should be rejected.

A distinction between the "Cabinet" and the "cabinet system" as we know it in Florida should be noted. A bit of historical background may help the perspective.

If the present system is scrapped, we still will have what amounts to a "Cabinet" of variable authority. Mere orderly administration of the multiple affairs of government will dictate such an organization. But members of that Cabinet, by whatever name, will be appointed by, responsible to, and subject to ouster by the Governor. They may meet with him and advise him if he wants them to. He could consult them singly, and privately, if he preferred, and supersede their judgments by dictated orders without information or explanation to the public. He cannot do that now with independently elected Cabinet officers.

Historically, Floridians have elected their secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education. For decades, each has had assigned duties generally defined by their titles. Gradually, over the years, new powers of supervision and regulation were conferred by the legislature or by constitutional amendment on boards made up of all or some members of this constitutional group. For convenience of the members, and of parties who had business with the state, it became traditional for all these boards to meet in a sequence of open sessions every Tuesday in Tallahassee. With a coming and going of the various board staffs and action on their agendas, they could at

a sitting dispose of a wide range of often overlapping governmental affairs assigned to them by law. The Cabinet has operated like a corporation's board of directors, with the Governor presiding but exercising his authority by only one vote and (except in cases of clemency for convicted criminals) no veto.

At the same time, the Governor has exercised exclusive supervision over a broad and growing range of public business outside the authority of Cabinet boards. Also, individual Cabinet officers hold sole power in certain designated phases of government.

The term "Cabinet" was conferred only by public usage until the 1968 constitution adopted it as a formal title. Although the Cabinet thus nominally was given constitutional dignity for the first time ten years ago, other provisions of the 1968 constitution planted the seeds for deterioration of the "cabinet system." Foremost among these was a decree that all executive government should be pigeon-holed by the legislature into no more than twenty-five separate departments. This impelled the 1969 legislature, feeling the oats of a court-ordered reapportionment's overturning old lines of political power, to shuffle around the administrative powers of many boards previously made up by statutory law of the elected "cabinet officers."

By a peculiar alliance of zealous Democratic reformers in the legislature and a new Republican Governor who felt frustrated by having to share decisions with six independently elected Democratic Cabinet members, the twenty-five-department reorganization shifted considerable power from the "Cabinet boards" to the sole prerogative of the Governor or to departments to which the Governor appoints managing directors or secretaries. Foremost among these is the budgeting and spending power, which used to be assigned to the whole Cabinet sitting as a Budget Commission but now is almost the sole responsibility of the Governor with the help of a Department of Administration headed by his appointee. Also, administration of all penal, correctional, and custodial institutions was taken from the Cabinet Board of Commissioners of State Institutions and wrapped with health and welfare in a huge department headed by an appointee of the Governor, the Department of Health and Rehabilitative Services. (It is noteworthy that this combination has been so unwieldy that each legislature since its establishment has shuffled its elements seeking a more workable plan.)

We still have "Cabinet boards," though not as many nor as influential as before 1969. These boards sit with the Governor in making decisions on management of state lands and property, environmental problems, investment of multimillions of trust funds, management of state and county debts, and many less glamorous but important duties. The last two Governors, like many before them,

have found the sharing of such decisions irksome and found some obstructions to their programs by Cabinet colleagues frustrating. They have cut the regular sessions down to every other week and leave much of the decision groundwork to preliminary meetings of "Cabinet aides." With this recent history of deterioration, it is proper to ask whether the "cabinet system" any longer is worth saving. I think it is.

As long as we have independently elected Cabinet officers, future legislatures (like some in the past) will be able to reassign to boards composed of them some controversial major functions when or if a Governor begins to abuse his executive powers through incompetence or chicanery.

Moreover, the Cabinet as it operates today retains powers over clemency for criminals, investment of trust funds, the purchase, sale, and management of state property, and supervision of personnel which it would be risky to turn over to one man and a corps of officials appointed by and responsible to him.

One example: At present the Governor may free a convicted criminal only with consent of a majority of the Cabinet. If Revision No. 4 is adopted, future Governors may grant or deny clemency without advice or restraint from anybody—grant a pardon to obtain the vote of a legislator-lawyer whose client is in prison, or to repay a political favor, or to pocket a gratuity. True, the revision would retain a nominally independent parole commission. But its power to parole would be superseded by the Governor's power to grant the same clemency under the name of a "conditional pardon." The commission might be allowed to operate freely in ordinary cases, but it could become only advisory or less when extra influences were exerted on a Governor with power to act on his own. He could release convicts to the supervision of officers already transferred from the parole commission to a department directly responsible to the Governor, or to no supervision at all. Revision No. 4 thus is the route to total manipulation of criminal clemency by some future Governor who finds it politically expedient, appealing to his sympathy, or responsive to his desire for a direct payoff. It is too much power to confer on one person or clique.

You may say the same for taking management of state trust funds, bond borrowing, and public debt away from a board of independently elected officers and giving it to the Governor. The revisers acknowledge this danger by providing that such decisions shall be made by the Governor, "acting jointly with at least one officer as may be provided by law." In other words, it would be possible for him to use only the rubber stamp of one other person who could have been appointed by the Governor himself. There is too much risk therein of temptation to collusion and all manner of corrupt or

injudicious exercise of financial management.

Advocates of abolishing the cabinet system argue that there are adequate safeguards in requirements that a Governor's appointees to replace elected Cabinet officers must be confirmed by the state senate. The federal system is given as an example. But experience with "advice and consent" in Washington and in other states provides little reassurance. We know how often a President or a Governor recently elected is given the presumption of a "popular mandate" which allows his appointees to slide through the confirmation process—especially where his political party dominates the legislature, which usually is the case in Florida.

Furthermore, even if the senate properly challenges the Governor's choice, this sets up a delayed series of hearings and unsettled administrative responsibility for a period during which control passes to an entrenched bureaucracy until the one-man administration sits sufficiently secure in the driver's seat to crack the whip. With expanding unionization of that bureaucracy (and labor contracts ultimately up to a Governor who may have been elected with union support), it will be hard to avoid bureaucratic control for the whole term, much less a chaotic period at the beginning of each new administration when a Governor is trying to implant his own management and policies. Retaining the independently elected Cabinet would at least assure some continuity and coherence in the change of administrations.

Supporters of Cabinet abolition answer fears of one-man rule by saying a Governor in total charge is under sufficient restraints from the legislature and by his responsibility to the electorate. They imagine a barrier to abuse through the ideal exercise of publicly "pinpointing responsibility on one man." But what good is that pinpointing, what restraint against arbitrary and arrogant action is there, when a Governor and his appointees have been once re-elected and are running out the two-term limit under temptations to free-wheel and deal to accomplish their purposes with good or evil intentions before their authority expires?

As for legislative restraint, those of us who have watched the scene very long know there is a deliberately inherent contest in our system which from time to time allows a particularly strong Governor to control by trading for legislative votes, or an especially weak Governor to be pushed around by more aggressive legislators. It has happened, both ways, in recent Florida history. In each case it would have been worse if we had not had six independently elected Cabinet officers to stand as buffers between Governor and legislature—almost always to buttress the executive. We need to keep that buffer handy.

The only other defense against an irresponsible or malicious Governor is impeachment—and, as Thomas Jefferson asserted, impeachment is scarcely a scarecrow against a tyrannical or incompetent official. No Florida official ever has been removed by legislative impeachment, though a handful have resigned rather than face it.*

Critics of the cabinet system make much of derelictions in recent years which brought ouster of three elected Cabinet officers. It must be remembered, though, that every one of their alleged defalcations resulted entirely from exercise of individual ministerial powers—none from actions around the open table of Cabinet boards. The preventive for such abuses should be to take those separate, exclusive powers away from individuals and put them under the whole board or officers subject to it—take one-man insurance regulations away from the treasurer, for example, and put banking beyond the comptroller's exclusive power. The legislature can do this under either the present constitution or the proposed one. Can we expect fewer abuses from a comptroller, treasurer, or other Cabinet officer answerable only to a Governor who may be the crony who appointed him than we have from one answerable to the electorate and the impeachment process? That is what we are asked to do.

There is validity to an objection that Cabinet officers now can build separate, autocratic empires by unlimited tenure while serving under Governors who are allowed to succeed themselves only once. They can thereby become too powerful and develop proprietary attitudes toward their public offices. However, the Constitution Revision Commission admirably meets this objection with a clause in the general provision article (No. 1 on the November ballot) which would limit future Cabinet officers to two successive four-year terms if they are retained. Also, Revision No. 1 contains methods, now lacking, for suspending Cabinet officers during pendency of felony charges against them. Thus, a vote to retain the elective Cabinet by rejecting Revision No. 4, while limiting tenure and expanding ouster methods by ratification of No. 1, should go a long way toward repairing flaws in the present system.

* For a different view of the effectiveness of impeachment as a remedy in Florida, see Karl & Davis, *Impeachment in Florida*, 6 FLA. ST. U.L. REV. 1 (1978).—Ed.

