

# EL DORADO COUNTY GRAND JURY 2013-2014

## *THE EL DORADO COUNTY CHARTER: A PRESCRIPTION FOR DYSFUNCTION*

Case Number GJ-13-20

### REASON FOR REPORT

Early in its term, the Grand Jury began to see a thread of dysfunction running through El Dorado County government. The Grand Jury heard repeated testimony of three practices, which would seriously jeopardize efficiency in any organization and are especially troublesome in an organization with the complexity, varied duties and size of El Dorado County government:

1. Elected officials can refuse to cooperate with both the Board of Supervisors and the County's Chief Administrative Officer.
2. Department heads both elected and appointed, went around the CAO directly to the Board of Supervisors in support of their own positions to the detriment of the County as a whole.
3. Individual members of the Board of Supervisors interfered in the day to day administration of the County.

These practices cost the County significant dollar amounts in ongoing inefficiency as well as in failed programs and purchases. The Grand Jury soon realized that these failures stem not just from the individuals who hold these positions but are supported and encouraged by the County Charter.

The Board of Supervisors is **the** governing body for the county, is responsible for defining the vision for the county and implementing that vision through the budget, ordinances and policies. However, provisions of the County Charter allow other elected officials to distract the Board's attention while obstructing their efforts.

*These observations lead the Grand Jury to conclude:*

- The proliferation of elected officials in El Dorado County compromises the performance of the CAO and the Board of Supervisors. *The Charter should be amended to provide for the election of only those officials whose election is mandated by the California Constitution, the Sheriff, District Attorney and Assessor; and*
- Confusion between the roles of the Board of Supervisors and the CAO has hindered the ability of the Board of Supervisors to create and implement its vision for the future of El Dorado County. *The Charter should be amended to clearly provide (1) that the Board of Supervisors is the governing board of the County responsible for all policy decisions, and (2) the CAO serves at the Board's pleasure and is responsible for implementing the Board's policies.*

These observations and recommendations are fully set out in this report.

## ACTIONS

- The Grand Jury began its term by meeting with each member of the Board of Supervisors, a former member of the Board of Supervisors, the Chief Administrative Officer and each of the elected department heads individually in informal sessions during which the official was asked to share his or her insight into the challenges facing El Dorado County. Most of these officials were forthcoming and shared valuable insights gained from years of experience in the county.
- At the same time, the Grand Jury reviewed a large number of complaints from citizens and citizen advocacy groups alleging numerous shortcomings and failures by county officials. Numerous officials, staff and county citizens were also interviewed.
- The Grand Jury reviewed the El Dorado County Charter.
- The Grand Jury reviewed previous year's Grand Jury reports concerning the same or related topics and findings.
- The Grand Jury researched organizational practices in other California counties and interviewed a representative sampling of county administrators.
- The Grand Jury reviewed the findings of an outside management consulting firm retained by the County to survey and examine El Dorado County overall workplace and culture.

## THE EL DORADO COUNTY CHARTER

The California Constitution authorizes but does not require a county to adopt a charter by majority vote of its electors. The Constitution requires that a charter provide for a governing body of 5 or more members, an elected sheriff, an elected district attorney and an elected assessor as well as other officers who may be either elected or appointed.

El Dorado County adopted a Charter in 1994. That Charter provides for a 5 member Board of Supervisors and the three elected officials required by the state Constitution. However, the El Dorado County Charter requires that four additional officials be elected: the Auditor/Controller, Recorder/Clerk, Surveyor and Treasurer/Tax Collector.

The Charter provides term limits for members of the Board of Supervisors but no term limits for the other elected officials. A member of the Board of Supervisors is termed out after eight years while the current Treasurer/Tax Collector has served since 1985 and the Auditor/Controller and Recorder have each served for almost twenty years. Finally, although not a provision of the Charter, the members of the Board of Supervisors are paid as less-than-full time employees with salaries less than half that of some other elected officials.

The Charter requires the Board of Supervisors to hire a Chief Administrative Officer, who serves at the Board's pleasure, to be the Chief Executive Officer for the County. *However, the Charter includes conflicting provisions which seem to assign responsibilities necessary to an effective CEO to the Board itself.*

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

The proliferation of elected officials in El Dorado County pose a particular problem for the Board of Supervisors and the County.

Elected officials may feel no allegiance to the policies set by the Board. Their longevity in office and higher salaries may remove any motivation to cooperate with the Board. Indeed, it has been alleged that the Auditor/Controller has deliberately obstructed Board initiatives in order to cast himself as the white knight crusading against the failures by others.

These elected officials assert they are elected by and their only duty is to the electors. Certainly every elected official has an obligation to serve the electorate. However, the electorate has no valid basis for evaluating the performance of officials performing the specialized and sometimes esoteric duties of these offices. How is the electorate to know whether the Controller is rooting out fraud when he holds up a claim from a vendor or whether he is deliberately trying to discredit the department for whom the vendor worked. An elected official may seek publicity for himself by challenging a decision made by the Board or CAO presenting himself as acting to protect the best interests of the county when in fact his interest is his reelection.

Recently the imbalance and potential for abuse of power by elected officials has been brought to the public's attention following the County's Workplace Climate Assessment Survey and ensuing significant criticism of the Auditor/Controller. Whether or not the criticisms directed at the Auditor/Controller are true, they demonstrate clearly the potential for abuse that arises from the structural imbalance between the Board of Supervisors, Chief Administrative Officer and elected officials.

Although the Grand Jury did not investigate the allegations made against the Auditor/Controller following the County's Workplace Climate Assessment, the Grand Jury did receive substantial testimony from a number of witnesses in several different investigations reporting similar experiences: that the Auditor/Controller refuses to cooperate with the CAO in implementing the Board of Supervisors' initiatives; that he refuses to engage in constructive problem solving; and that his behavior results in minor issues or questions escalating into serious disputes. Specific allegations made were that the Auditor/Controller will not address problems by telephone, forbids his employees to speak to both staff and department heads, refuses to respond at all to any communication from certain employees and officials, that he is defamatory, disrespectful and disparaging.

DEPARTMENT HEADS, BOTH ELECTED AND APPOINTED, WENT AROUND THE CAO DIRECTLY TO THE BOARD OF SUPERVISORS IN SUPPORT OF THEIR OWN POSITIONS TO THE DETRIMENT OF THE COUNTY AS A WHOLE.

The Annual Budget adopted each year by the Board of Supervisors is the most important policy decision they will make that year. How will the County spend its money? Which programs will be given priority over what other programs? Where will additional dollars be spent? Where will staff and services be added? Where will these be reduced? The Budget reflects the Board's vision more than any other document.

The Chief Administrative Officer's responsibility for implementing the policies and accomplishing the goals established by the Board include responsibility to recommend and administer the budget. To do this, she must make difficult recommendations balancing one public need against another. Her ability to serve the Board by implementing its decisions is undermined when individual Board members allow themselves to be lobbied for additional staff and budget. But it is not only the CAO's work that is undermined, the work of the Board is undermined as well. When a department head, elected or appointed, tells the Board it should ignore the Budget and augment that department's programs, the Board is being told that its policies are meaningless and its role as policy maker is meaningless.

When Board members believe their role as policy maker is meaningless because policies can be changed on whim or not followed at all they may step out of their role of policy maker and step into the role properly assigned to the CAO.

INSTEAD OF ACTING AS A POLICY MAKING BODY, INDIVIDUAL MEMBERS OF THE BOARD OF SUPERVISORS INTERFERED IN THE DAY TO DAY ADMINISTRATION OF THE COUNTY

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 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.

This management structure is adhered to by most large organizations, both corporate and public. It is reflected in the Charter which requires that direction, recommendation and instructions to employees, department heads and officers be by formal board action. The CAO is then responsible to insure that those formal actions are implemented by staff.

The County is responsible for a multitude of functions ranging from zoning and development to providing foster care for children to public health and safety and myriad more. It has a budget of almost \$400 million and employs 1,850 people. In an organization of any size, but especially in an organization of this size and complexity, *failure to have clearly defined roles and responsibilities hinders communication and efficiency*. Board members cannot know the needs of the day to day operations of County administration. Any direction they give to staff is given without knowledge of the full impact of that direction. Staff are confused about the role of their immediate supervisor and department head. They do not know to whom to go with their own questions. Confusion reigns and morale suffers. Unfortunately some Board members do not understand this simple management principle and believe it is acceptable for them to give direction and criticism directly to staff.

Instances reported to the Grand Jury include a former supervisor sitting with a clerical employee and directing the paper flow on her desk, a department head refusing to reveal a professional staff analysis to the Board apparently for fear the Board would not like the analysis, a supervisor telling a constituent he would “give a kick in the ass” to an employee about whom the constituent was complaining.

In El Dorado County this had led to a general belief among staff that they must be sensitive to the unspoken, unwritten and uncodified “will of the Board.” They are afraid if they do not follow that unspoken will they will suffer consequences. They are afraid to follow the direction of the Board as reflected in its duly adopted ordinances and policies if they believe it is inconsistent with that enigmatic will. They are reluctant to take any responsibility, delay work within their areas of expertise rather than move forward and fail to share their professional analysis with the Board for fear of running afoul of some shrouded Board will. The Grand Jury repeatedly heard concern that on any given Tuesday department heads could be fired without notice.

The Board’s interference with day to day administration hinders the CAO’s ability to recruit and retain the highly qualified staff necessary to implement the Board’s vision for the County and renders the Board unable to accomplish its critical goals.

Ambiguity in the Charter which defines the CAO as the Chief Executive Officer for the County but includes among the Board’s duties those appropriately belonging to the CEO. The Charter should be amended to clearly define an effective management structure.

## FINDINGS

1. The Board of Supervisors is the policy making body for El Dorado County.
2. The proliferation of elected officials in El Dorado County compromises the performance of both the CAO and the Board of Supervisors itself resulting in ongoing inefficiency, loss of employee morale and failed programs and purchases.
3. When individual members of the Board of Supervisors focus on the day-to-day administration of County functions they are unable to focus on necessary long range planning.
4. Failure of the members of the Board of Supervisors to focus on their responsibility for the County’s vision and major policies brings disrespect for those policies and confusion for the staff and public.
5. Involvement by individual members of the Board of Supervisors in the day-to-day administration of County functions results in chaos, confusion, and poor morale among employees.
6. When non-elected department heads believe they report to the members of the Board of Supervisors and not to the Chief Administrative Officer, the ability of the CAO to perform the duties assigned to her is compromised and inefficiency is multiplied.

## RECOMMENDATIONS

1. The Charter should be amended to provide for the election of only those officials mandated by the California Constitution.
2. The Charter should be amended to clearly define and eliminate any ambiguity in the delineation of functions between the Board of Supervisors and the Chief Administrative Officer. The Board of Supervisors is the governing board of the County with responsibility for all policy decisions including adopting the budget for the County. The Chief Administrative Officer serves at the pleasure of the Board and is responsible for implementing the Board's policies. All county employees should be hired by and report to the CAO.

ATTACHMENT [ [Adobe Reader is required to view attachment](#) ]

### **Draft of the recommended changes to the Charter**

## 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 Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file 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](mailto:courtadmin@eldoradocourt.org)

# The 2013/14 Grand Jury recommends the El Dorado County Charter be amended as follows:

## ***Section 204 should be amended to read:***

### ***204. Duties.***

Except as provided for in subsection (c) herein below, the Board of Supervisors shall have all the powers and shall perform all the duties vested in it by the Constitution, general law, and this charter.

a. The Board shall:

- (1) Adopt a statement of the goals of the county reflecting the quality and direction of the activities of county government for the enhancement of human and physical resources of the county. At least annually, prior to the end of the first quarter of the calendar year, the Board shall review the adopted goals and modify them as necessary.
- (2) Appoint or remove the Chief Administrative Officer. At least once each year, the Board shall review and evaluate the Chief Administrative Officer's performance. ~~The Board shall (1) review, and (2) accept, reject or modify all performance evaluations performed by the Chief Administrative Officer pursuant to section 304(h) of this charter.~~
- (3) Appoint or remove members of boards and commissions. Except as otherwise provided for herein, or by superseding federal or state law, the members of all county boards and commissions shall serve at the pleasure of the Board of Supervisors. ~~Except as otherwise provided for herein, non-elected department heads shall serve at the pleasure of the Board of Supervisors. Appoint, suspend, or remove all department heads except those for whose election or appointment this charter makes other provision. Appointments shall be made on the basis of executive and administrative qualifications as determined by screening and selection procedures comparable to those used for classified management personnel.~~
- (4) Adopt the annual budget.
- (5) Provide for the number, ~~powers and duties~~ of all appointed officers and employees.
- (6) Establish by ordinance or resolution the compensation of other officers and employees.
- (7) Provide for publication of the powers, duties, procedures and rules of operation of all county offices and departments and for public access to such publications.
- (8) Take such measures as may be necessary to implement this charter.
- (9) Adopt a uniform format that, as a minimum, shall provide for responses to findings and recommendations of reports of the Grand Jury pursuant to Section 933 et seq. of the Penal Code.
- (10) Adopt a policy as to financial participation paid by the county for its officers and employees in noncounty organizations, and require public disclosure of the cost to the county of such participation.
- (11) At least once each year, the Board shall review and evaluate the County Counsel's performance.
- (12) The Board of Supervisors shall adopt a policy and procedures for wide distribution of the Grand Jury Final Report and the Board of Supervisors Response to the Final Report

(b)The Board may:

- (1) ~~Create, abolish, consolidate, segregate, assign or transfer the powers and duties of any appointive office, department, division, board or commission to the extent not in conflict with this charter.~~

- (2) Consolidate, segregate, assign or transfer the powers and duties of any elective office or division thereof to the extent authorized by general law and not in conflict with this charter.
- (3) Appoint, suspend and remove a Clerk of the Board of Supervisors.
- (4) Require periodic or special report of expenditures and costs of operation, examine all records and accounts and inquire into the conduct of any office, commission, department or other entity to which the county contributes funds.
- (5) ~~Require the attendance of any officer or employee of the county at~~ Direct the Chief Administrative Officer to attend or assign specific staff to attend any meeting of the Board for the purpose of information, advice and assistance.
- (6) Enter into contracts for the performance of work when the Board of Supervisors, or other awarding authority designated in accordance with statutory authority, finds that independent contractors can more economically and feasibly perform work than County employees, or that specially skills are not expressly identified in County classifications, or that the ongoing aggregate of work to be performed is not sufficient to warrant addition of permanent staff.

Notwithstanding the provisions of this section, the County may enter into any contract or agreement in cases of emergency; or with or among any other governmental entities or agencies; or contracts which, by legislative authority, mandate the service be performed by independent contractors; or contracts necessary to protect against conflicts of interest or ensure independent, unbiased findings.

The Board of Supervisors shall adopt an ordinance specifying criteria for entering into such contracts, and specify when competitive bidding procedures for the award of such contracts shall be required.

c. Increases to current benefit assessments on real property, or the imposition of any benefit assessment not previously imposed on real property shall not be effective unless and until approved by a majority of the voters voting in the geographic area in which the assessment will be imposed. A continuation of a previous benefit assessment in the same or lower amount is not covered by this section. This requirement does not apply to special taxes, any assessments imposed by a special district, or any assessments required to pay bonded indebtedness. The voting requirements shall only apply to County benefit assessments on real property, and shall not apply to taxes imposed by any special district. The requirements of this section shall not apply to any increase to any current benefit assessment, nor to the imposition of any new benefit assessment, which is subject to the property owner balloting and majority protest procedures established by Section 4 of Article XIII D of the California Constitution.

The Board, commencing with the fiscal year 1996-1997, shall annually budget and allocate from the County General Fund for the operation of the County library system, an amount equal to 80% of annually collected assessments for those zones receiving a majority voter approval on November 7, 1995. Such amounts shall be in addition to the debt service incurred for the Cameron Park Branch Library.

This provision shall be effective only for a period of ten (10) years and shall thereafter be repealed without further amendment of this Charter.

***Section 211 should be amended to read:  
211. Communications with Employees***

Board of Supervisors' directions, recommendations or instructions to boards, commissions, ~~department heads, or officers elected~~ officials shall be by formal Board action. This section does not limit an individual Supervisor's right to obtain information or request advice or assistance in accordance with normal operating policies.



**Section 304 should be amended to read:**

**304. Duties**

The Chief Administrative Officer shall be responsible to the Board of Supervisors for the proper and efficient administration of such of the affairs of the county ~~as are or hereafter may be placed in the charge of the Chief Administrative Officer, or under the jurisdiction or control of the Chief Administrative Officer,~~ pursuant to the provisions of this Charter, or of any ordinance, resolution or order of the Board of Supervisors. In addition to other powers and duties herein provided, the Chief Administrative Officer shall have the duty and power to:

- a. ~~Coordinate~~Direct the work of all offices and departments, both elective and appointive, and devise ways and means to achieve efficiency and economy in all county operations.
- b. Formulate and present to the Board plans to implement policies and accomplish goals established by the Board.
- c. Recommend an annual budget after reviewing requests of all departments and agencies for which the Board is responsible or which request county funds.
- d. Have responsibility for the administration of the budget after its adoption by the Board.
- e. Provide for in-depth analysis and review of all county programs on a regular basis in such a manner that the Board may make policy decisions.
- f. Provide and implement systems of adequate checks and controls to safeguard county money and property.
- g. Work with all other government entities, federal, state, regional and local, in the best interest of the entire county.
- h. On at least an annual basis, review and appraise the performance of all appointed department heads, except County Counsel, and submit the appraisal to the Board of Supervisors.
- i. Coordinate the review and publication of a county long-range fiscal plan and the annual statement of goals as adopted by the Board of Supervisors.

**Section 401 should be amended to read:**

**401. Powers and Duties**

The Chief Administrative Officer shall appoint, suspend, or remove all department heads except those for whose election or appointment this charter makes other provision. Appointments shall be made on the basis of executive and administrative qualifications as determined by screening and selection procedures comparable to those used for classified management personnel.

Department heads, boards and commissions shall have all the powers and shall perform all the duties vested in them by this charter, by ordinance, and by general law when not in conflict with this charter or with ordinances adopted pursuant to this charter. All elected department heads and officers of the county, ~~both elected and appointed,~~ shall cooperate with the Chief Administrative Officer so that the Chief Administrative Officer may achieve complete coordination of all county activities.

**Section 402 shall be amended to read:**

**402. Elected Department Heads.**

The following department heads shall be elected:

- a. Assessor
- b. ~~Auditor/Controller~~
- c. District Attorney
- d. ~~Recorder/Clerk~~
- e. Sheriff/Coroner/Public Administrator
- f. ~~Surveyor~~

g. ~~Treasurer/Tax Collector~~

The term of office of all elected officers is four years. The elected officers shall serve until their successors are qualified unless sooner removed as provided by this charter.

***Section 404 is amended to read:***

***404. Appointed Department Heads.***

The position of department head shall be designated by ordinance ~~the Chief Administrative Officer~~. Department heads serve at the pleasure of ~~their appointing authority, the Board of Supervisors~~ the Chief Administrative Officer. Department heads shall have and may delegate the power to appoint, supervise, suspend and remove all persons employed in their departments subject to the provisions of Article V of this charter.