

EL DORADO COUNTY 2015-2016 GRAND JURY REPORT



21ST CENTURY COUNTY CHARTER

CASE 15-04 • JUNE 2, 2016

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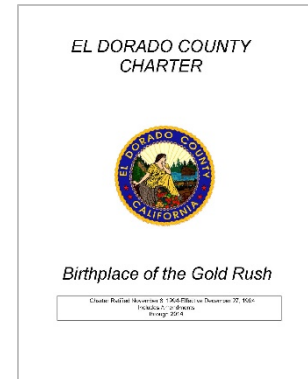
21ST CENTURY COUNTY CHARTER

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El Dorado County is one of 14 current charter counties in California. The remaining 44 are general law counties. While charter counties have a limited degree of *home rule* authority they do not have any extra authority over local regulations, revenue raising abilities or budgetary decisions.

BACKGROUND

The California Constitution (Article XI, §3) authorizes, but does not require, a county to adopt a charter by a simple majority vote of its electors. El Dorado County adopted its charter in 1994. That charter provides for a five-member board of supervisors and seven elected officials. Three of the elected officials are required by the state constitution; the other four were added by the charter.



METHODOLOGY

- The current El Dorado County Charter was reviewed.
- County administrators were interviewed.

DISCUSSION

Only one in four California counties currently operate with a charter. Several others have had charters, but have returned to general law. If having a charter provides significant advantages over being a general law county, why aren't there more charter counties? While 24 percent of counties have a charter, a different perspective reveals that because the charter counties include the most populous counties, more than 70 percent of Californians have a charter. A more reasonable question might be: Does El Dorado County fully realize the benefits of having a charter?

"General law counties adhere to state law as to the number and duties of county elected officials."¹ However, the limited home rule authority of charter counties "...may provide for the election, compensation, terms, removal, and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who must be elected), compensation, terms, and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices."¹

The board of supervisors is authorized² to propose amendments to the charter to be voted on at any general election. The present charter was carefully reviewed and specific areas where improvement could be realized were found. The grand jury recommends that the board of supervisors consider several amendments.

¹ CSAC website: "County Structure & Powers"

² El Dorado County Charter Section 102.

TERM OF OFFICES

The El Dorado County Charter currently provides term limits for members of the board of supervisors but not for other elected county officials. The current Treasurer/Tax Collector has served for over thirty consecutive years; the Auditor/Controller and Recorder have each served more than twenty years. In general law counties there are no term limits for supervisors or other elected county officials.

Adding supervisor term limits to the charter may have helped rid the county of deleterious dynasties at a time when it was difficult for potential candidates to get the name recognition necessary to effectively campaign against incumbents. Conversely, however, it may also preclude good, effective leaders from continuing to serve the county. Institutional knowledge gained by serving in this position helps an elected official perform in his or her elected position to their full potential. Experience is a highly desirable asset for any effective county supervisor to possess.

Finding

F1. Term limits for county supervisors should be removed from the charter.

Recommendation

R1. The grand jury recommends amending section 202 of the charter:

202. Term of Offices

The term of office of supervisor is four years. ~~Board members shall be limited to two consecutive terms. No person elected supervisor may serve as such for more than two successive four year terms. Any person elected to the office of supervisor to complete in excess of two years of a four year term shall be deemed, for the purpose of this section, to have served one full term upon the expiration of that term. No person having served two successive four year terms may serve as a supervisor until at least four years after the expiration of the second successive term in office. Any supervisor who resigns with less than two full years remaining until the expiration of the term shall be deemed, for the purpose of this section, to have served a full four year term. The above shall not disqualify any person from running for election to the Board of Supervisors for any term or terms which are not successive. The term of office commences at noon on the first Monday after the January 1st succeeding their election.~~

The supervisor for each of the First, Second and Third Districts shall be elected in ~~1996~~ even numbered years when Presidential elections occur. The supervisor for each of the Fourth and Fifth Districts shall be elected in ~~1994~~ even numbered years when Presidential elections do not occur.

FILLING OF VACANCIES

Charter section 203 currently calls for a supervisor vacancy to be filled by election. When a vacancy occurs more than 120 days or less than 90 days before the next scheduled election for that district, a special election is mandated. In general law counties, the governor fills any vacancies within 90 days. If the governor fails to act the board of supervisors can either fill the vacancy by appointment, hold a special election or leave the seat vacant until the next regular election.

Finding

F2. Special elections are very expensive; it would be more expeditious and much less costly to allow the board of supervisors to appoint a replacement who meets all the qualifications necessary to run for the seat, for the remainder of the term or until the next regular countywide election, whichever comes first.

Recommendation

R2. The grand jury recommends amending section 203 of the charter:

203. Filling of Vacancies

Whenever a vacancy occurs in the office of supervisor, the unexpired term shall be filled by appointment within 90 days of a person qualified to run for the office by an affirmative vote of at least three supervisors. Appointment will be for the remainder of the term or the next countywide election, whichever occurs first. ~~election. If the vacancy occurs more than 90 days but less than 180 days before a scheduled primary, general, or special election, involving the district in which the vacancy has occurred, then the election to fill the vacancy shall be consolidated with the scheduled election. If the vacancy occurs more than 180 or less than 90 days before a scheduled primary, general, or special election involving the district in which the vacancy has occurred, then the vacancy shall be filled at a special election called by the Board of Supervisors to take place not less than 90 nor more than 180 days after the vacancy occurs. The special election shall be conducted in accordance with the provisions of general state law regarding special elections. The candidate with the highest number of votes shall be elected to fill the unexpired term.~~

In the event that there are not enough remaining board members to constitute a quorum or the board is unable to reach consensus of at least three supervisors within 90 days, general law shall apply.

RECALL

In counties without a charter elected officials can only be removed by specific statutory means. Chief among those is the recall process. The current charter only prescribes recall, however, the recall process can be cumbersome, costly and virtually impossible to effect. This is an area where having a charter provides a significant benefit to county constituents, but we have not availed ourselves of the opportunity.

There are times when the misconduct of an elected official is egregious enough that speedy action is necessary (e.g. if the official is putting county employees or county revenues in peril). The charter should allow an alternative method whereby the board of supervisors can remove any elected official, including a supervisor, from office. The method should be simple and straightforward without allowing capricious removal. It should absolutely not allow interference with independent constitutional and statutory functions of any office.

The Constitution provides that county charters shall specify the "compensation, terms and removal" of all elected officials. In *Penrod v. San Bernardino* 126 CA 4th 185, the court determined that this language included the authority for the board to adopt an ordinance to remove elected officials as long as it did not interfere with those officials' constitutional duties.

Finding

F3. The charter should contain a provision for the board of supervisors to adopt an ordinance setting forth procedures to remove any elected official for significant misconduct.

Recommendation

R3. The grand jury recommends amending section 209 of the charter:

209. Recall and Removal from Office

Any supervisor is subject to removal from office by recall.

Any County elected official may be removed from office in the manner provided by state law. In addition, any elected official can be removed by a four-fifths vote of the Board of Supervisors as set forth by ordinance. Any such removal must be for good cause. The board must first serve upon such officer a written statement of alleged grounds for such removal, and give the officer a reasonable opportunity to be heard. The authority shall not be used to interfere with the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the Sheriff or District Attorney, or the independent and constitutionally and statutorily designated authority of any of the other elected officials.

COMPENSATION

In 1970, the voters amended the California Constitution Article XI §1(b) to provide that "...each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum." (emphasis added)

The entirety of the current charter section 204 reads: *"Compensation of supervisors shall be fixed by ordinance."* The charter should be amended to ensure the transparency and voter approval mechanism set forth in the constitution by setting forth the basic parameters of the compensation ordinance.

The current ordinance is Number 4675, El Dorado County Ordinance Code §2.15.030. – Salaries of the Board of Supervisors.

Paragraph A. (4) expressly sets the current monthly salary of a supervisor at \$6,406.25. Paragraph B. provides that supervisors receive *"...the same benefits provided by the County to the elected County department heads with the exception of longevity pay, to the extent authorized by law."* In addition, salary and benefits *"...of Supervisors shall increase in the same proportion as the increases in the salary and benefits to elected department heads..."* effective at the same time.

The charter currently does not contain any guidance about the contents of the board compensation ordinance. It does not restate the constitutional requirement that it be subject to referendum. The ordinance, which includes potential future increases, vaguely described, does not give the taxpayers a realistic opportunity to voice their opinions at the ballot box about the board's salary decisions for themselves.

Compensation that is reliant upon another position in any way, obscures transparency that supervisors are setting their own salary and benefits. The board's decisions about their salaries must be clear, not obscured by being tied to future increases to other positions, particularly positions where the board controls the future increases.

Finding

F4. The charter should mandate that the supervisor compensation ordinance explicitly declare the salary, benefits and other compensation for the board of supervisors and should not contain any obscure future increases that are tied to the salaries and benefits of other officials, especially officials whose salaries are set by the board.

Recommendation

R4. The grand jury recommends amending section 204 of the charter:

204. Compensation

Compensation of supervisors shall be fixed by ordinance. Salary, benefits and any other compensation must be clearly set forth within the ordinance and not be subject to future change by changes to other officials' salaries or benefits over which the board of supervisors has any influence.

ELECTED DEPARTMENT HEADS

Section 210 b.(2) of the charter allows the board of supervisors to consolidate, segregate, assign or transfer the powers and duties of any elective offices to the extent authorized by general law and not in conflict with the charter. Section 402 only address removal. It needs to be amended to remove conflict with section 210 b.(2).

Finding

F5. A potential conflict exists within the provisions of charter sections 210 b.(2) and 402. That conflict should be clarified.

Recommendation

R5. The grand jury recommends amending section 402 of the charter:

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 or their powers and duties have been consolidated, segregated, assigned or transferred in accordance with Section 210 b.(2) of this charter.

DUTIES OF THE CHIEF ADMINISTRATIVE OFFICER

This provision does not currently mandate that the Chief Administrative Officer must adhere to *state law*. This simple addition to the charter will add clarity and eliminate doubt.

Finding

F6. The charter does not require the Chief Administrative Officer to adhere to state law.

Recommendation

R6. The grand jury recommends amending section 304 of the charter:

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 state law, 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:

The remainder of Section 304 remains unchanged

CLASSIFIED AND UNCLASSIFIED EMPLOYEES

The County Administrative Officer should be identified as an unclassified employee. Currently, the County Administrative Officer appears to be neither classified or unclassified.

Finding

F7. The language of section 502.1 gives the board of supervisors "...the right for good cause and after written notice to affected parties, to make "de minimis" changes which amend the foregoing list.", of unclassified positions.

Recommendation

R7. The grand jury recommends amending section 502.1 of the charter:

502.1 Classified and Unclassified Employees

The classified service consists of all positions in which employees have achieved civil service status except those positions designated as unclassified below.

The unclassified service consists of:

- a. County Administrative Officer;
- ~~a~~b. elected county officers;
- ~~b~~c. appointed department heads;
- ~~c~~d. all appointed boards, committees and commissions;
- ~~d~~e. all persons serving without compensation (compensation does not include incidental fees and expenses);
- ~~e~~f. casual patient and inmates at county institutions;
- ~~f~~g. the following administrative personnel charged with making policy decisions: Deputy Director of Welfare; Undersheriff; The Undersheriff shall have the right to return to a former classified position in accord with county ordinance;
- ~~g~~h. any person holding a confidential position to each member of the Board of Supervisors;
- ~~h~~i. persons employed to render professional, scientific, technical or expert services on a temporary basis for a specific project;
- ~~i~~j. persons covered under State Merit Systems;
- ~~j~~k. persons employed as independent contractors pursuant to contracts, as authorized by the Board of Supervisors.
- ~~k~~l. persons otherwise excluded by operation of law.

The Board of Supervisors shall have the right for good cause and after written notice to affected parties, to make "de minimis" changes which amend the foregoing list.

FINDINGS

- F8. Section 102 of the El Dorado County Charter authorizes the board of supervisors to propose amendments to the existing charter at any time without the need of a Charter Review Committee.
- F9. The board of supervisors should do a comprehensive review of the authority granted to charter counties to determine if there are benefits to being a charter county that El Dorado County could take advantage of.

RECOMMENDATIONS

- R8. The El Dorado County Board of Supervisors should place some or all of the recommended charter changes, R1 through R7, outlined above, on the next or future general or special countywide election.
- R9. The grand jury recommends that the board of supervisors have staff examine the other 13 charters to see if there are additional benefits that El Dorado County could realize.

REQUEST FOR RESPONSES

Responses to both findings and recommendations in this report are required by law in accordance with California Penal Code §933 and §933.05 from the El Dorado County Board of Supervisors before August 31, 2016

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

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.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.