

TESTIMONY

Before the

LITTLE HOOVER COMMISSION

Related to the

CALIFORNIA PERFORMANCE REVIEW

**The Role Of Boards And Commissions
And**

Special Comments Related to the State's Real Estate Functions

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BACKGROUND AND PERSPECTIVE

My comments today reflect my perspective not only as a former and current state commissioner, but also as a long-term part-time appointee to the Real Estate Services Group at the State's Department of General Services. I served in that capacity for approximately nine years until July of this year. Governor Wilson originally appointed me. In recent years in that post, I was a member of the Asset Planning and Enhancement Branch which focuses on the development and sale of high-value, state owned surplus real estate. During the course of the California Performance Review (CPR), this function received a great deal of attention, So, I will briefly touch on some of these issues during my testimony.

In addition, my observations come from my consulting practice in corporate and institutional real estate, which includes several major public agencies including the Counties of Los Angeles and San Bernardino, the Los Angeles Unified School District, and the City of Los Angeles. I also briefly served on a publicly traded (NASDAQ) corporate board of directors, and have headed real estate and facilities for two Fortune 500 companies.

In preparation for this testimony I have reviewed sizeable portions of the California Performance Review and carefully read selected portions that pertain to boards and commissions. The content of is excellent and very thoughtful. I was particularly impressed with the quality and simplicity of the writing, and happily noted the plea for all government entities to take heed. I look forward to reading the reports in more depth.

GENERAL COMMENTS

Let me begin by saying that the suggested realignment of agencies and government functions makes great sense. However, careful treatment of the board and commission component of this proposed reorganization is critical to its success. In general, I believe that the need for empowered, highly skilled, essentially volunteer citizen-member boards in key areas may be greater than ever. The emphasis here is on "empowered", "highly skilled", "volunteer", "citizen", and "key areas".

While I agree with many of the CPR's specific recommendations to eliminate extraneous boards and commissions, those that remain must be given greater authority and responsibility. There is little value in rubber stamp administrative, or advisory commissions. They simply frustrate staff and members, both of whom spend significant time preparing for meetings, only to realize that their efforts, deliberations, and recommendations have little impact on their departments' operations or on the public.

More specifically, the CPR is quite right in calling for a streamlining of professional licensing activities where exams and precise experience requirements are codified and formally administered.

On the other hand, consolidating venerable commissions such as Transportation, Water, Public Works and others into a “super authority” may create even greater distance between the public and its government. When the stakes are so high, care must be taken not to fall prey to the “law of unintended consequences” and/or to “throw the baby out with the bathwater”.

Why are Boards and Commissions so Important at This Time?

- **Volunteer citizen experts may become increasingly essential to help fill the civil servant retirement gap.**

The CPR notes that at least 34% of the State’s workforce will retire in five years. Presumably many of these people are highly experienced and difficult to replace. (On the other hand, maybe this is a good and humane way to reduce the costs of the State’s workforce). In any case...

- **The CPR notes how difficult it is to recruit the best and the brightest for career government service.**

Despite the CPR’s excellent and well-intentioned recommendations to reform personnel systems, enhance recruitment efforts, and improve training, the civil service system and its structural constraints will always deter a substantial number of the “best and brightest” from pursuing career civil service positions.

Expert citizen commissioners on the other hand, can be drawn from the private sector and other institutional (non-governmental) sources to help supplement these inherent gaps. But again, for these outside commissioners to be effective and enthusiastic, they must be well credentialed, have the authority to act, receive support from their departments, and be thoroughly oriented before taking office.

- **Professional bureaucrats, no matter how well intentioned or technically proficient, cannot bring the perspective, balance, and entrepreneurial mindset that private sector citizens add.**

I believe that the CPR’s most serious flaw is the emphasis that is placed on transferring so much power and authority back to the bureaucracy. This approach seriously erodes the valuable “checks and balances” that direct citizen participation brings to the process.

The Report says that the presence of boards reduces public accountability. Yet, for example an appeal remedy that sends an appellant to an administrative law judge rather than a hearing before a commission of “peers” seems to be counter productive. Perhaps the CPR participants thought about this dilemma, but failed to address it in the Report.

COMPENSATION

You have asked for my thoughts on compensation. Compensation for commission members consists of both psychic and financial remuneration.

Before addressing the financial side of the equation, it's important to understand why I believe most individuals seek appointments to state commissions since most of the boards carry little or no salary. In fact, many commissioners find themselves paying for expenses which cannot be reimbursed by the State. It's also important to understand why people either resign or don't seek appointments to begin with. If an effective commission system is to be put in place, the same attention called for in the CPR for seeking the best and brightest for career positions must be also applied to recruiting outstanding board members. This approach should enhance the current political process, but not eliminate its best features.

On the positive side there is...

- First and foremost the desire of civic-minded individuals to contribute their skills and experience to help make a positive difference in the well being of the State, its citizens and its visitors.
- The desire to participate in government without the necessity of having to give up careers, move and become state employees
- The intellectual satisfaction of being able to learn about subjects and issues that they would not otherwise encounter.
- The ability to directly participate in the political process that does not require running for elective office.
- The visibility, access, and credibility that goes with appointment to a prestigious government board.

On the negative side is...

- The assumption (mostly correct) that in order to be appointed, one must have made significant contributions to election campaigns, be in the appropriate political party, and personally know an elected official or highly placed appointee.
- That with the above conditions in place, the arduous application, disclosure, and vetting process often-times seems not to be worth it to an individual who is otherwise well qualified and enthusiastic about participating in the governmental process

- That many commissions have little power and/or are at best “tolerated” by the departmental staff. Thus, even those commissions that are only advisory in nature often have difficulty adding value to their departments.
- That those commissions with real authority often function as rubber stamps leaving members bored and frustrated.
- That the commissions that should have greater authority and oversight are precluded by either code and/or staff from exercising meaningful oversight and direction. My experience at Parks and Recreation was a clear example of this situation.
- The cost in time and lost income that commissioners often absorb in order to prepare for and attend meetings.

As to monetary compensation, I believe that if the State’s remaining board and commission model becomes more akin to corporate and institutional board service, then board members should be compensated in a manner that reflects the time, effort and level of responsibility they expend.

Although board members should view their service as essentially pro bono, they should nonetheless receive a reasonable compensation based on the time necessary to properly prepare for and attend meetings. In the scheme of things, the State’s cost of non full-time boards and commissions, including staff costs and direct expenses is well worth the price for the expertise, wisdom, oversight, and citizen participation that well-selected commissioners can provide. **In fact, the amount of money spent on consultants that might be hired as substitutions for this expertise could far exceed the cost of dedicated commissioners.** As to specifics, it would seem reasonable to think in terms of meeting fees of between \$400-600 per meeting plus travel expenses. This amount is far less than corporate board fees but high enough to demand quality performance and regular attendance.

In my view, the notion of full-time, salaried commissioners must be thoroughly re-examined, but not necessarily eliminated. For example, if an Infrastructure Authority is established, its members may be required to devote full-time to the Authority. In that case, they should be compensated at a high level. In other cases, where “non-working” commission appointments carry full-time salaries, they should be eliminated or re-evaluated in terms of a new compensation system, as suggested above.

SPECIFIC COMMENTS

Now let me turn to a few specific remarks about my experiences on the State Park and Recreation Commission, the California Health Facilities Financing Authority, and at the Department of General Services.

State Park and Recreation Commission

I note that the CPR recommends that the Parks and Recreation Commission remain in place with some additional responsibilities. This makes sense, but does not go nearly far enough in expanding the role and authority of the Commission.

State Parks and Recreation facilities (including the museums and historic places) draw far more visitors per year than Disneyland and Disneyworld combined. Yet the staff and the Public Resources Code fail to recognize the opportunity and obligation to exploit the business and tourism aspects of the system. Parks and Recreation does a very poor job in this respect. They do an excellent job in their stewardship function to preserve the State's most beautiful and valuable resources. But, they cannot or will not manage with a broader vision, one that is neither in conflict environmentally or philosophically.

For years, our commission tried to enhance revenues and the quality of the system through the discreet use of partnerships, sponsorships and creative operating leases and concessions. We also tried to establish a variety of functions aimed at better financial management and better coordination with entities such as tourism and General Service's real estate branch. For the most part, I believe we were unsuccessful.

Despite my frustrations, there were many times when our public hearings process was critical to providing guidance and policy direction to the Department. This would not have occurred had the public input mechanism not been in place. Notwithstanding, I thoroughly enjoyed my seven years on the Commission and would welcome the opportunity to return.

California Health Facilities Financing Authority (CHFFA)

The role and responsibility of this Authority could not be more different than Parks and Recreation. In fact, I was rather surprised when Governor Davis asked me to take this appointment. Unlike Parks, this board is in some ways a rubber stamp that routinely approves large and complex financings for health facilities. However, without our existence, the due diligence necessary to get past the fiduciary hurdles would not, in my view, be sufficient to satisfy demanding investors if decisions were made solely at the staff level. By the time borrowers get to our board, the "I's" and "T's" have been dotted and crossed several times. The staff work has and must be scrupulous in order to meet the standards of the public bond markets. Staff does a great job

Although our Authority is not part of the Executive Branch and therefore not the subject of the CPR, the issues related to our role and necessity appear to be similar.

In the coming years, CHFFA will become more active as the result of the recent passage of Proposition 61. This ballot measure provides public grants to pediatric hospitals through the use of general obligation bonds CHFFA will administer this program and authorize the grants.

Real Estate Services-General Services Department

During my nine years at General Services, I worked on numerous real estate and facilities transactions. For the most part, my colleagues were highly sophisticated, well educated, and dedicated to doing the right thing for their internal clients and the people of the State of California. Many had come from long stints in the private sector.

Unfortunately, they represent thousands of excellent professionals trapped in a bureaucratic setting that stifles an entrepreneurial approach. These skills and way of doing business is particularly essential to the success of a real estate and facilities program. The State has no choice but to operate within the competitive private sector framework. They need the tools and latitude to get the most for their “taxpayer-stockholders”. They do not have them now. The CPR makes many positive recommendations in this respect. Of particular interest to me include:

- **The transfer of most real estate and facilities functions to a new infrastructure entity is a positive step as long it:**
 - Results in substantially less territoriality among the old land holding entities such as Cal Trans and the State Lands Commission
 - Allows a pro-active surplus real estate and development program to flourish
- **Eliminating Public Agency Preference in surplus property disposition at less than market rates.**

However, there are situations where public/public joint ventures can be very positive. An outstanding example of this approach is the current arrangement between the State and the Chaffey Community College District at the Chino Institution for Men. In that case, the presence of a new college campus is an important amenity for the private developer who is buying a portion of the surplus site for large-scale private residential community development.

- **Reducing State Leasing Costs by Streamlining the Process**

Early in my appointment to General Services, I prepared a lengthy report detailing the problems with the State’s approach to leasing. We found that the State’s essentially arrogant and insensitive attitude toward landlord business constraints almost invariably led to higher rents and less desirable space. The State’s unwillingness to agree to common and well-accepted commercial terms was a clear impediment to making good deals. Evidently little progress has been made in rectifying the situation.

My other major recommendations would include:

- **Allowing for the engagement of outside professionals in a more nimble and flexible manner.**

The State, in its mandate to get the most for its surplus properties, must be able to act and think like prospective buyers. Stated differently, the State must be a “player” and avail itself of the same talent pool as the private sector. Negotiations and transactions require a level playing field. The consulting amounts are relatively small, but the State’s bidding process is excruciating when time is of the essence in a dynamic market.

- **Find a way to minimize the role of “politics” in the equation.**

The best example of legislative and political obstruction in maximizing real estate values is San Quentin. Here is a situation where we have an aging correctional facility that is extremely costly to maintain and operate. Inmates have some of the most beautiful views in the San Francisco Bay region. It’s obvious that the State could and should relocate San Quentin to less desirable real estate. Returning the property to the private sector for residential mixed-use development would result in a spectacular return, including a deduction for prison relocation costs. Even “slow growth” Marin County prefers high quality private sector development to the prison.

The problem seems to be with the death row appeals lawyers who don’t want to have to drive too far from their posh offices in San Francisco to visit their “clients”. These same lawyers seem to have many friends in the Legislature

THE NEXT STEPS

The CPR is an excellent assessment of what is to be done. Now the difficult task of how to get it done and where to pick the battles begins. Two thoughts occur to me.

During this process, I would suggest that that at every step along the way, the implementers ask, “Is this really worth doing? How much time, money, and political energy are we willing to expend? What are the true costs and benefits, ...both tangible and intangible? Additionally, it’s essential to address the hurdles of the State’s regulatory nightmare. Equally, it will be essential to distinguish between what is really law and what is simply custom, policy, or folklore. In some cases, I believe it will be more difficult to change custom and folklore than codes.

Secondly, I think it essential to improve the staff attitudes with respect to commissions and boards. Among other things is the necessity to properly prepare agendas and create succinct decision-oriented background materials. The days where staff has disdain for its boards and operates by

employing “mushroom” management practices (i.e. “keep them in the dark and under the manure”) must end. The focus must be on partnership and sharing.

My comments here today are focused primarily on the issues and areas that you requested during my testimony before the Commission. I thank you for your attention and would welcome the opportunity to be of further assistance as you work toward making state government more efficient and responsive to the people of California.

Thank you.