

# 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.

**Response: The respondent agrees with the finding.**

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.

**Response: The respondent disagrees partially with the finding. Since, at least, 1994 (when the Charter was adopted) the County has had seven (7) elected department heads. In the last twenty years, there has been no proliferation or addition of elected department heads. The respondent contends that miscommunication and misunderstanding between department heads (elected and non-elected) can negatively affect performance standards. The County is currently reviewing its processes, procedures, and policies to enhance the working relationships among elected and non-elected officials. The respondent believes this will lead to better work efficiency, higher employee morale, and successful programs.**

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.

**Response: The respondent agrees with the finding.**

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.

**Response: The respondent agrees with the finding.**

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.

**Response: The respondent agrees with the finding.**

6. When non-elected department heads believe they report to the members of the Board of Supervisors and not the Chief Administrative Officer, the ability of the CAO to perform her duties assigned to her is compromised and inefficiently multiplied.

**Response:** The respondent disagrees partially with the finding. The Countywide Organization Chart shows that non-elected department heads do, in fact, report to the Board of Supervisors. The Chief Administrative Officer manages and coordinates the efforts of the departments in the implementation of Board policy and, therefore, should be apprised of issues that may compromise that implementation. Ultimately, all department heads are accountable to the people who are represented the Board of Supervisors, unless a department is provided for by elected office.

### **Recommendations**

1. The Charter should be amended to provide for the election of only those officials mandated by the California Constitution.

**Response:** The recommendation will not be implemented because it is not warranted. The respondent maintains that elected department officials should remain elected. Although, the California Constitution only requires that the Sheriff, Assessor, and District Attorney be elected the County has a history of electing other positions as codified in the County Charter. The respondent believes those elected officials to be responsive to the public and qualified for the positions held. The County is currently reviewing its processes, procedures, and policies to enhance the working relationships among elected and non-elected officials.

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.

**Response:** The recommendation will not be implemented because it is not warranted. While the respondent agrees that the nature of government can cause ambiguities which create difficulties, there is no apparent need to amend the County Charter. The County has engaged more actively in looking at ways to improve communication and coordination between the Board of Supervisors, elected department heads, and non-elected department heads. The respondent believes that those efforts will produce the results necessary to ameliorate any ambiguities.