South Carolina Law Review

Volume 3 | Issue 2 Article 5

12-1950

State Reorganization in South Carolina

Robert McC. Figg Jr.

STATE REORGANIZATION IN SOUTH CAROLINA

ROBERT McC. FIGG, JR.*

In common with many State governments whose governmental framework was laid down during the general reform movement of the late 19th and early 20th century, South Carolina, under its Constitution of 1895, has an executive branch originally decentralized and diffused and made more so over the years by the addition of something like one hundred executive and administrative agencies.

As the legislature from time to time made provision for new governmental services and functions to meet the expanding needs and desires of the people of the State, it has rarely conferred the execution and administration of them upon the Governor as chief executive, or upon previously existing agencies, but has almost invariably created new and separate agencies for that purpose.

Such agencies are virtually legislative agents, and naturally more attuned to the legislative will and control than they are to that of the executive, who seldom has more than a mere formal part in the appointment of their membership. Since the General Assembly is chosen on the basis of the counties as election districts, it is obvious that there is no state-wide responsibility or accountability to the people of the State as a whole for the administration of their public affairs or the execution of their laws. This can exist only where a coordinated executive branch is directly responsible and accountable to the people for its stewardship.

One of the main trends of recent political history in the United States has been the growth in significance of the chief executive in the governments of the States. In many states the office of Governor has been revitalized on the level of both policy and administration.[1]

Elected by all the people of the State as their principal representative, he to them symbolizes the State government. Given authority, the power to direct, a clear line of command from the top to the bottom and a return line of responsibility and accountability from the bottom to the top, the Governor can then be held responsible and accountable to the people and to the General Assembly for

*A.B., College of Charleston, 1920; Columbia University Law School, 1920-22. Practice of law in Charleston, S. C. since 1922; House of Representatives of South Carolina, 1932-34. Solicitor 9th Circuit, 1935-47; Member State Reorganization Commission, 1948-50.

1. *The Administrative Organization of State Government,* COUNCIL OF STATE GOVERNMENTS, p. 11 (1950).

the conduct of the executive branch of the government.[2]

It is not so in South Carolina. The Governor is only one of a number of state officers elected state-wide, and except for *ex officio* membership on a large number of boards and commissions he possesses little or no power to control or direct the greater part of the State's executive and administrative activities. He in fact lacks "the supreme executive authority" intended by the Constitution of the State to be vested in his office. Not only this, but the office of Governor can never possess such authority unless and until the Constitution is rewritten and the executive branch of the State government is made in some measure responsible and accountable to the Governor, so that he may bear like responsibility and accountability to the people.

In a recent conference of representatives of some twenty state reorganization commissions held in Chicago, the consensus reached was summarized in part as follows:[3]

> In general it was felt that reorganization movements should result in strengthening the office of the governor; reducing the independent agencies and administrative boards and commissions and grouping them into major departments; extending the gubernatorial power of appointment and removal of department heads; and strengthening executive controls over budgeting, accounting, purchasing, state property, . . .

In its 1948 session the General Assembly of South Carolina undertook to come to grips with the problem of reassembling and coordinating the comparatively sprawling administrative structure which the executive branch of the State government through the years had become.

Legislation was enacted to provide for the reorganization of the State's executive and administrative agencies without the delays and the cumbersome legislative investigations which would attend the passage of separate legislative enactments in the case of each such agency. At the 1950 session the General Assembly received and approved Reorganization Plan No. 2, the first reorganization effected under that legislation.

In Reorganization Plan No. 2[4] submitted by the State Reorganization Commission to the Governor January 9, 1950, and transmitted by him to the Senate and to the House of Representatives as re-

2. *Cf. General Management of the Executive Branch,* REPORT OF THE HOOVER COMMISSION, p. 9 (Washington: Government Printing Office, 1949).
3. *Summary of Conference on State Government Reorganization,* COUNCIL OF STATE GOVERNMENTS, p. 9 (1949).
4. 46 S. C. STAT. AT LARGE 3605 (1950).

quired by the Reorganization Act of 1948,[5] the State Budget and Control Board was created.

This plan was approved by the two houses of the General Assembly by the adoption of a concurrent resolution in the form prescribed in Section 4 (b) of the Reorganization Act, and took effect on and after July 1, 1950, as provided by Section 4 (c) of the Act.[6]

The State Appropriation Act for the fiscal year 1950-1951[7] recognized the changes in the organization of the State government effected by the reorganization made in this plan,[8] thus placing in operation the administrative dispositions which the State Reorganization Commission directed in it.

The promulgation and adoption of Reorganization Plan No. 2 (which absorbed into it the provisions of Reorganization Plan No. 1 submitted earlier by the State Reorganization Commission to provide for central purchasing for state agencies and institutions) affords a practical illustration of the operation of the Reorganization Act of 1948, and makes current a brief examination of the legislative approach to State government reorganization employed in that Act.

The State Reorganization Commission by administrative action combined eight State agencies into one which it named the State Budget and Control Board. These agencies so combined were (1) the State Budget Commission,[9] (2) the Commissioners of the Sinking Fund,[10] (3) the Board of Phosphate Commissioners,[11] (4) the State Finance Committee,[12] (5) the Board of Claims for the State of South Carolina,[13] (6) the Commission on State House and State House Grounds,[14] (7) the Joint Committee on Printing,[15] (8) and the South Carolina Retirement System,[16] variously composed of State officers *ex officio,* legislative members, and citizens. All of these several agencies were abolished by Section 2 of the Reorganization Plan, as not having any functions to discharge upon

5. 45 S. C. STAT. AT LARGE 1643 (1948).
6. *Id.* p. 1651.
7. 46 S. C. STAT. AT LARGE 2549, 2591, 2641, 2647, 2648 (1950).
8. *Cf.* Isbrandtsen-Moller Co. v. United States, 300 U. S. 139, 57 Sup. Ct. 407, 81 L. Ed. 562 (1937); Swayne & Hoyt v. United States, 300 U. S. 297, 57 Sup. Ct. 478, 81 L. Ed. 659 (1937).
9. 46 S. C. STAT. AT LARGE 746 (1949); S. C. CODE §§ 3213, 3222, 3222-1, (1942).
10. S. C. CODE § 2138 (1942).
11. *Id.* § 2208.
12. *Id.* § 2196.
13. *Id.* § 2071.
14. *Id.* § 2242.
15. *Id.* § 2084.
16. 44 S. C. STAT. AT LARGE 223 (1945).

the taking effect of the reorganization for which the plan provided.[17]

The new Board thus created is composed of the Governor, as chairman, the State Treasurer, the Comptroller General, the chairman of the Senate Finance Committee, and the chairman of the Ways and Means Committee of the House of Representatives, all *ex officio*.

In addition to combining into one, the eight State agencies referred to, the Reorganization Plan transferred to the State Budget and Control Board the functions of each State department, institution or agency in relation to the purchase or supply of personal property for its use and purposes, including supplies, equipment, machinery, fuels, motor vehicles, and all other personal property, and directed the Board to adopt and promulgate, with power thereafter to modify, abrogate and enfore rules and regulations in reference to central purchasing, which rules and regulations are made binding upon all departments, institutions and agencies of the State.

The functions combined in and transferred to the State Budget and Control Board are set up by the reorganization into three divisions, (1) Finance, (2) Purchasing and Property, and (3) Personnel Administration. Each Division functions under a Director, subject to the supervision of the Board, the State Auditor (previously appointed by the State Budget Commission and hereafter by the Board) being *ex officio* Director of the Finance Division, and the Directors of the other divisions to be appointed by the Board for such time and compensation, not greater than that of the State Auditor, as the Board may fix.

The Finance Division embraces the work of the State Auditor, the State Budget Commission, the State Finance Committee, and the Board of Claims of the State of South Carolina. The Purchasing and Property Division embraces the work of the Commissioners of the Sinking Fund, the Board of Phosphate Commissioners, the State Electrician and Engineer, the Commission on State House and State House Grounds, the central purchasing functions, and the Property Custodian. The Division of Personnel Administration embraces the work of the retirement board known as the South Carolina Retirement System, and administration of all laws relating to personnel.

The membership of the State Budget and Control Board, three of whom are constitutional officers elected state-wide and two legislative, makes it virtually a State Council, while the governmental functions and activities grouped together and placed under its super-

17. See note 5 *supra*, at page 1646.

vision and administration constitute the Board the fiscal and administrative core of the State Government.

In approaching the task of providing for the efficient reorganization of the executive and administrative agencies of the State government the General Assembly faced the problem of delegating adequate power and authority to deal with the needs of administrative reorganization without delegating legislative powers in contravention of the State Constitution.[18]

It is well settled that, while the legislature cannot delegate its power to make law, it may empower boards and commissions to make rules and regulations for administering the law and may vest them with discretionary powers.[19] If the law itself is full and complete as it comes from the law-making body, it may be, and frequently must be, left to agents in one form or another to perform acts of executive administration which are in no sense legislative.[20] The Supreme Court has approved and adopted the principle, stated to be the true distinction, expressed in a leading case[21] as follows:

> The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation.

Acting under this principle, the General Assembly enacted the Reorganization Act of 1948,[22] patterned in large measure upon the Act of Congress then in effect providing for the reorganization of the executive agencies of the federal government,[23] with the State Reorganization Commission created as an administrative agency to make the studies and perform the reorganizational functions which the Congressional legislation provided should be done by the President.

The Act declares it to be in the public interest that the executive and administrative agencies and functions of the State government

18. S. C. CONST. Art. I, § 14; Art. III, § 1.
19. State v. Ross, 185 S. C. 472, 194 S. E. 439, 441 (1937).
20. State ex rel Port Royal Mining Co. v. Hagood, 30 S. C. 519, 524, 525, 9 S. E. 686 (1888). See Note 3 L. R. A. 841.
21. *Id.* p. 524, quoting from *Lockes's Appeal,* 72 Pa. St. 491.
22. See note 5.
23. Reorganization Act of 1945, 5 U.S.C.A. §§ 133y-133y-16; *cf.* 5 U.S.C.A. §§ 133z-133z-15.

be reorganized to increase the efficiency of their operations, to promote economy, and to reduce the cost of government. It then prohibits as being against public policy any overlapping of executive or administrative agencies or their functions, any duplication of effort and activities of such agencies, any diffusion of responsibility between one or more agencies for the direction of effort and activities and the discharge of functions of the State government, the separate existence and status of multiple or numerous agencies and functions having the same or related major purposes, the existence under different heads of agencies having the same or similar functions, and the existence of agencies or functions not necessary to the efficient conduct of the State government's operations.

The State Reorganization Commission is created to examine, and from time to time re-examine, each of the executive and administrative agencies, and their organization and functions, and to make a factual determination as to whether they comply with the provisions of the Act, and if not, in any case, the Commission is directed to prepare reorganization plans to make the transfers, consolidations, coordinations, combinations and abolitions found necessary to bring about such compliance.

By its terms the Act does not affect the judicial or legislative power of the State, or the existence of any office or agency or the functions thereof created by the Constitution, or any authority which has revenue bonds outstanding.

Reorganization plans may provide for (1) the transfer of the whole or any part of an agency covered by the Act, or the whole or any part of its functions, to the jurisdiction and control of any other agency; or (2) the consolidation, coordination or combination of the whole or any part of an agency or its functions with the whole or any part of another agency or its functions; or (3) the reorganization of any agency or its functions within itself; or (4) the abolition of all or any part of the functions of any agency; or (5) the abolition of any agency which does not have, or upon the taking effect of a reorganization plan will not have, any functions.

It is to be noted that the Act further provides that:

> No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of, abolishing or transferring, or changing the name of, a department, office or officer created by the Constitution, or any function thereof prescribed or given by the Constitution, or any function thereof prescribed or authorized by law for its existence, or beyond the time when it would have terminated if the reorganization had not been

made, or continuing any function beyond the period authorized by law for its exercise, or beyond the time when it would have terminated if the reorganization had not been made, or beyond the time when the agency in which it was vested before the reorganization would have terminated if the reorganization had not been made; or authorizing any agency to exercise any function which is not expressly authorized by law at the time the plan is transmitted by the Commission to the Governor; or imposing, in connection with the exercise of any quasi-judicial or quasi-legislative function possessed by an agency, any greater limitation upon the exercise of independent judgment and discretion to the full extent authorized by law in carrying out of such function than existed with respect to the exercise of such function by the agency in which it was vested prior to the taking effect of such reorganization; or increasing the term of any office beyond that provided by law for such office. In the case of departments, offices or officers created by the Constitution, nothing in this Act contained shall prevent the transfer from such department, office or officer of the whole or any part of any functions thereof which were given to, or conferred or devolved upon, any such department, office or officer by legislation not required to be enacted by the Constitution.

The Commission may not, of course, affect the general statutory law of the State, and provision is made for the continuance of litigation pending by or against agencies dealt with in reorganization plans.

The Act specifically provides that it constitutes an amendment to the general or special legislation whereby the several agencies and functions covered by its provisions were created or conferred, as the case may be, so that each such agency and function shall be subject to transfer, consolidation, coordination, combination or abolition in the manner and by the procedure which it provides.

When the Commission prepares a reorganization plan under the mandate of the Act, it is required to request the comments and recommendations thereof of the head of any agency affected by it, and the plan is then submitted to the Governor, together with such comments and recommendations and its findings. The plan, with the accompanying declarations and his own approval or disapproval, is then transmitted by the Governor to the Senate and House of Representatives, where the whole matter is immediately printed and made available to the members thereof. It may not be considered earlier than five legislative days nor after the expiration of forty legislative days from the date of such transmission.

The Act provides for the approval of a reorganization plan by the General Assembly by the adoption by each house of a concurrent resolution in the form prescribed by the Act. Such approval by the General Assembly is not legislative action having the force of law by that body, requiring three readings in each house,[24] but is a condition precedent to the effectiveness of a reorganization plan[25] whereby the General Assembly has reserved to itself something akin to a veto power over the Commission's actions.[26] Legislative priority is given to approval resolutions in their consideration by each house, the ayes and nays must be taken and entered in the journals, and the Act provides that such resolutions shall be without reference to committees. These provisions are an exercise of the Constitutional rule making power of the respective houses of the General Assembly.[27]

The Act provides that the action of the Commission in preparing and transmitting plans to the Governor, and the action of the Governor in transmitting the same to the General Assembly, and the taking effect of a plan after approval shall not be subject to court review, nor shall *mandamus* or injunction lie in any such case. This provision deals only with the mechanics provided for in the Act for the formulation, approval and filing of reorganization plans, and not with the substance of any plan or the validity of the action of the Commission, the Governor or the General Assembly; it does not seek to limit the power or jurisdiction of the courts to pass upon the validity of reorganization plans in a direct attack made by anyone having a justiciable interest, and hence is a merely procedural provision.

The Reorganization Act, complete when it left the General Assembly, and laying down the standards upon which its administration by the Commission depends, is capable of bringing about a considerable measure of governmental reorganization in the State's governmental structure. While far from perfect, it is an ambitious start toward the desirable but distant goal.

But this goal cannot be fully attained until steps have been taken to make the executive branch of the State government an integrated

24. S. C. CONST. Art. III, § 18.
25. *Cf.* Gaud v. Walker, 214 S. C. 451, 53 S. E. 2d 316 (1949), and State v. Moorer, 152 S. C. 455, 150 S. E. 269 (1929), *appeal dismissed and certiorari denied,* 281 U. S. 691, 50 Sup. Ct. 238, 74 L. Ed. 1120, illustrating the use of conditions precedent to the effectiveness of legislation.
26. In the Congressional reorganization legislation, *supra* note 20, a like result is reached by a provision that either house of the Congress may disapprove a reorganization plan by resolution to that effect.
27. *Cf.* State *ex rel* Coleman v. Lewis, 181 S. C. 10, 186 S. E. 625 (1936).

Figg: State Reorganization in South Carolina

entity under "the supreme executive authority" of the Governor, in the language of the Constitution. No amount of shuffling or regrouping of agencies and functions will serve to bring about such integration unless the line of command and concomitant responsibility implicit in the constitutional description of the office of the chief executive has been brought into being.

Reorganization under the existing legislation can go only part of the way toward promoting efficient administrative government in South Carolina. Constitutional changes will have to occur if the chief executive's "supreme executive authority" is to be released from the vacuum in which it exists under the State's present governmental set-up.