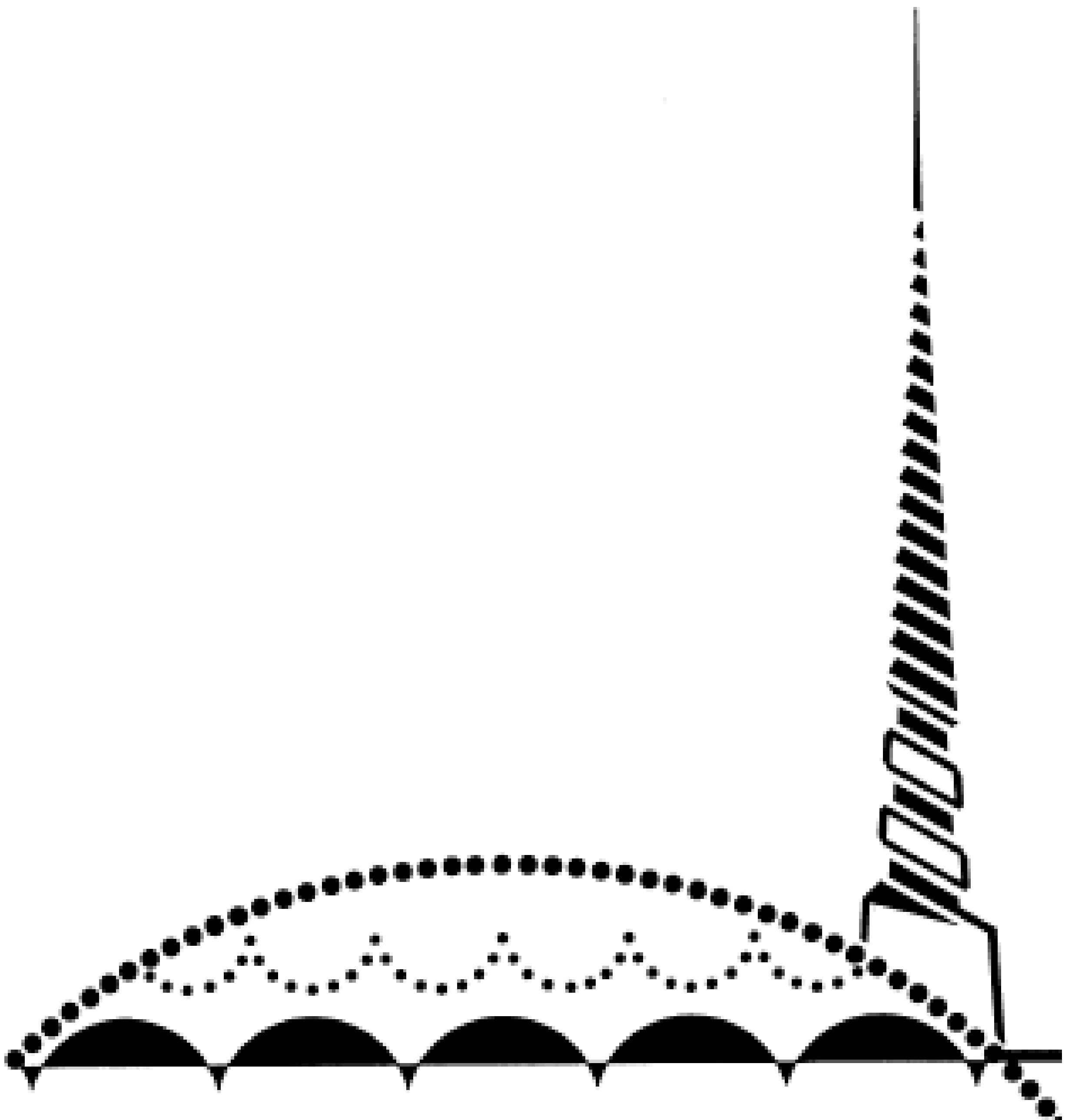
2008-2009 MARIN COUNTY CIVIL GRAND JURY

Establishing a Director of Finance
Evaluating Measure B

September 26, 2008



SUMMARY

Marin County voters on November 4, 2008 will be asked to approve Measure B. The measure would consolidate the currently elected offices of Auditor-Controller and Treasurer-Tax Collector and place those functions under the direction of a Director of Finance to be appointed by the Board of Supervisors. The measure would require an annual independent audit of the merged finance department and would provide that the Director of Finance could only be removed after a public hearing and an affirmative vote of at least four of the five members of the Board of Supervisors. The measure also would replace the currently elected office of Public Administrator with an appointed one.

Under California Penal Code Section 928, the Grand Jury is empowered to investigate the needs of all county offices, "including the abolition or creation of offices" and "the method or system of performing the duties of the several offices." This report provides the Grand Jury's review of the consolidation of finance offices under the proposed office of Director of Finance.

For the most part, Measure B raises two questions. First, is there merit in consolidating the offices of Auditor-Controller and Treasurer-Tax Collector under a single Director of Finance? Second, if so, should the new Director of Finance be elected by the public or appointed by the Board of Supervisors?

Virtually everyone the Grand Jury interviewed indicates that consolidation of financial functions, when done carefully, offers advantages. Counties that have combined the functions report improved efficiencies, better service and increased cross-training and promotional opportunities for staff. There was at least some saving of taxpayer money in combining the jobs of the two top finance officers.

The Grand Jury is persuaded that consolidation of the offices of Auditor-Controller and Treasurer-Tax Collector under a Director of Finance makes sense. Consolidation more closely aligns the position with the county's 2001 Strategic Plan and its 2004 Managing for Results objectives. The county has spent upwards of $20 million to bring all financial services functions into a new computer system. The system would work more efficiently under a single office of Director of Finance than under the currently bifurcated finance offices.

The more difficult issue is whether the new Director of Finance should be an elected office or an appointed one. While there are strong arguments on both sides, the Grand Jury concludes that appointment of the new Director of Finance is more likely to produce

the most qualified candidate available. To accomplish the alignment of financial functions, the county needs to retain the most qualified executive it can find. Not only must the new Director of Finance have extensive public accounting or equivalent experience and a thorough understanding of government processes, he or she also must have a solid grounding in the technological tools available to make financial management more efficient and cost effective. By making the post appointive instead of elective, the county can search for candidates who best meet the requirements of Marin's complex financial organization.

Those who support appointment of a Director of Finance say that pragmatism dictates their position, particularly in Marin, with its high housing costs, since state law requires that an elected county office must be held by a legal resident of that county. The pool of candidates with a high level of both financial experience and government experience is small. Veteran financial executives inform the Grand Jury that there are only about 10 highly qualified candidates in the Bay Area. These candidates generally are not politicians and many are reluctant to spend thousands of dollars and take the risk of running for elective office.

Those who favor an elective office stress that the office should be independent of the Board of Supervisors in conducting its financial watchdog function, and the perception of independence is stronger when an individual is elected by the public. They argue that certain government officials, especially those responsible for financial matters, should have the independence and accountability that comes with being elected. Moreover, the finance director is responsible for managing the funds of dozens of agencies and special districts, including school districts, which are not under the jurisdiction of county supervisors. Those agencies and districts may be wary of financial guidance by an individual whose boss is the county Board of Supervisors rather than the general electorate.

Those on both sides of this question stress that, whether elected or appointed, the independence of a Director of Finance depends primarily on the integrity of the individual who fills the post.

The Grand Jury also concludes that the ability to act independently is important for the position of the top financial officer of the county. The Director of Finance must be able to resist undue pressure from his or her superiors. Measure B seeks to address that concern by providing that an annual independent audit be conducted and that the Director of Finance can be removed only with a public hearing and a four-fifths vote of the Board of Supervisors. The Grand Jury believes that the Board of Supervisors should shore up its guarantee of independence for the office by agreeing to offer a long-term contract to the new Director of Finance, just as it does today for the offices of Retirement Administrator and County Counsel. An elected finance officer in effect has a four-year contract for the job (until the next election). A similar long-term contract for an appointed finance officer would carry with it much the same sort of job guarantee that encourages independent action.

BACKGROUND

On August 5, 2008, the Board of Supervisors adopted a formal resolution determining, among other things, that the effective and accurate financial management of the county is critical to ensuring financial integrity, promoting accountability in government and maintaining public trust. Consequently, it was determined that the following proposal be submitted to the voters at the general election to be held on November 4, 2008:

> "Shall the County of Marin establish an appointed director of finance consolidating the offices of auditor, controller, tax collector, and treasurer, and create an appointed public administrator, with the provision that an annual independent audit be conducted and that the director of finance can only be removed with a public hearing and 4/5 vote of the Board of Supervisors."

To take effect, the plan must be approved by a majority of those voting in the election and, if approved, would become effective at the completion of the current elective officials' terms, the latest of which would occur in 2010.

METHODOLOGY

The Grand Jury gathered information over an eight-week period, conducting numerous interviews with senior officials and staff at various Marin County agencies and departments as well as officials in five other counties that have consolidated or considered consolidation of their financial management structures. It also reviewed interim findings of an outside management consulting firm retained by the county to examine Marin's financial management organization. Individuals representing organizations that oppose the proposed change also were interviewed. Additionally, the Grand Jury reviewed applicable statutes, websites describing organization structures of a number of California counties, academic treatises discussing elected versus appointed government offices, and the Marin County 2001 Strategic Plan and its 2004 update, Managing for Results.

DISCUSSION

What Do These Offices Do?

Auditor-Controller

The Auditor-Controller is the county's chief accounting officer, responsible for bookkeeping functions for the county's $470 million budget. The Auditor-Controller administers the county's major financial, budgetary, payroll, fixed assets, and tax apportionment systems. The office prescribes and supervises the forms and methods of keeping the accounts of all offices and institutions under the control of the Board of Supervisors. It does the same for 105 other entities, including special districts and school districts, whose funds are kept in the county treasury. In all, the Auditor-Controller administers 466 funds with an average total value over the last two years of $562 million. The office also directs internal audits of all these entities as needed, and it administers the payroll and benefit functions of five special districts.

It is estimated that one-third of the Auditor-Controller staff's time is spent providing services to special districts, with the remaining two-thirds of time spent on county business.

The office has 37 employees and is located in the Marin Civic Center. The current Auditor-Controller, Richard Arrow, has been in office since 1987. In May 2008, he announced plans to retire on December 31, 2008, leaving two years remaining on the four-year term that he won without opposition in 2006.

Treasurer-Tax Collector

The Treasurer-Tax Collector wears many hats. He is also the County Clerk, Registrar of Voters and Public Administrator.

The Treasurer is responsible for the receipt, investment, banking and accounting of more than $800 million on behalf of the county, school districts, colleges and special districts. The Tax Collector is responsible for billing and collection of taxes for the county and other agencies, including schools, cities and special districts. The Central Collection Unit of the office provides billing and collection services for county agencies.

The County Clerk processes, files and indexes documents for births, deaths, marriage licenses, domestic partnerships, fictitious business names, notary certificates, environmental impact reports, business licenses and various permits. The Registrar of Voters is responsible for registering voters, maintaining voter registration files and conducting federal, state, county and school elections. The Registrar also verifies initiative, referendum and recall petitions. The Board of Supervisors is studying what reorganization would be appropriate for these functions if Measure B passes. The Grand Jury has verified, however, that the status of the County Clerk and Registrar of Voters as elective offices would remain unchanged by Measure B.

The Public Administrator is required to administer the estates of those who die with no known heirs, no will, and no named executor, or when there is no qualified person willing to assume such responsibility. The office also acts as administrator of estates when named in a will as executor or when heirs ask that the office act as administrator. The Public Administrator provides for interment of a deceased person when there are no known relatives and makes a search for heirs. If Measure B is passed, the Public Administrator office will be separated out of the Treasurer-Tax Collector office and become an appointive office. Converting the Public Administrator to an appointive office is authorized by Government Code Section 24009 with approval of a majority of the voters who vote on the proposition. The Board of Supervisors is studying where to locate the Public Administrator office if Measure B is approved.

The Treasurer-Tax Collector office, as now constituted, has 43 employees and is located in the Marin Civic Center. The current Treasurer-Tax Collector, Michael Smith, has stated that he does not intend to seek reelection at the end of his term in 2010.

Legal Support for Consolidation

California Government Code Section 26980 provides that, with approval of the voters, any county may establish the office of a Director of Finance. Such a director shall either be elected by the public or appointed by the Board of Supervisors based on the measure approved by the electorate. The Code further requires that if such a position is established, it shall "…be consolidated with the offices of auditor, controller, tax collector, and treasurer and the director of finance shall have all the powers and duties as the board of supervisors may provide." The Government Code also requires an annual independent audit of the office of Director of Finance.

The offices of Auditor-Controller, Treasurer-Tax Collector and Director of Finance are subject to minimum requirements under the California Government Code. The Director of Finance must meet the requirements of one of the first two offices and, generally, be one of the following: (a) an authorized public accountant, or (b) have a bachelor's degree in accounting and five years experience in senior fiscal management, or (c) be certified by the Institute of Internal Auditors as a professional internal auditor and have at least 16 college semester units in accounting, auditing or finance, or (d) served as a county auditor, chief deputy county auditor or chief assistant county auditor for no less than three years.

The Pros and Cons

Arguments in Favor of Consolidation

Those who support consolidation of the offices of Auditor-Controller and Treasurer-Tax Collector under a Director of Finance say there are numerous advantages to the plan. Among them:

- **More efficient service**. Proponents say that combining the offices will focus fiscal management resources in a larger unified team, integrating related financial functions and providing better backup. Counties that have consolidated report that their combined financial teams have streamlined processes and procedures, resulting in greater efficiencies.

- **More career opportunities**. A consolidated department will permit more flexibility in promotions, lateral movement, and cross-training of staff. This flexibility may be important in the next few years when most county departments, including the Auditor-Controller and Treasurer-Tax Collector, expect a large number of retirements. Effective cross-training can prevent knowledge gaps from developing in certain areas.

- **Savings**. There are no staff reductions required by this proposal. Nevertheless, proponents believe that combining the offices will provide for greater efficiencies and reduce costs. It is estimated that savings could be about $100,000 per year, primarily from the lower salary cost of having a single finance chief. However, the Grand Jury was told that initial savings, even if realized, would most likely be offset by increased costs in implementing the proposal.

Arguments Opposed to Consolidation

Those who oppose consolidation of these financial offices under a new Director of Finance are skeptical that sufficient efficiencies can be achieved to justify the cost and disruption of consolidation. They point out that several of the departments of the Auditor-Controller and Treasurer-Tax Collector are highly specialized and are unlikely to gain interdependence with merged partners. Examples of these are the Investment Division and Central Collections Division of the Treasurer-Tax Collector and the Accounting Division and Audit Division of the Auditor-Controller.

Arguments in Favor of Appointment Rather Than Election

- **Better alignment**. Proponents say that an appointed office would make it easier for Marin County to achieve the internal alignment that is the objective of the Marin County Strategic Plan adopted in 2001. The Strategic Plan was developed over an 18-month period in 1999-2000 and sets forth the plans and goals of the Board of Supervisors for the organization and operation of county government.

- **Broader recruitment**. Converting from an elected system of recruitment where candidates must be Marin residents under Government Code Section 24001 would permit recruitment beyond Marin County, expanding the number of qualified candidates. An appointed job may also be more attractive to finance technicians who don’t relish raising money and running for office. This is important because there is limited availability of skilled financial executives with solid government accounting experience at the appropriate level.

- **The timing is right**. The current Auditor-Controller intends to retire at the end of 2008, and the current Treasurer-Tax Collector does not intend to seek re-election at the end of his current term in 2010. Consolidation would not become final until both of these offices are vacant. If approved by the voters, planning for the consolidation of these offices under a Director of Finance would take place gradually over a two-year period without the difficulties of a more hurried effort.

- **Assuring independence**. The consolidation plan provides that the votes of four of the five supervisors, together with a public hearing, would be required to fire the new Director of Finance. Although not required by Measure B, county officials have also stated that a financial audit advisory committee consisting of county supervisors, county staff and residents, would be established to review the department’s annual audit.

Arguments in Favor of Election Rather Than Appointment

- **Citizen oversight**. Opponents of the plan to appoint rather than elect the county's top financial officer note that Marin County citizens historically have voted for an Auditor-Controller and for a Treasurer-Tax Collector. Critics of the plan say that substituting an appointive office removes those functions from direct responsiveness to the public.

- **Competing client needs**. Both the Auditor-Controller and the Treasurer-Tax Collector provide critical financial services for agencies that are not under the jurisdiction of the Board of Supervisors, such as special districts and school districts. Because they are elected rather than appointed, these officers can serve their various clients independently, without direction by the Board of Supervisors. A representative of one important Marin County special district that is serviced by the existing departments expressed to the Grand Jury a strong preference for an elected rather than appointed Director of Finance, citing independence and accountability of the office as determinative. But two other special district representatives interviewed expressed no preference on whether the position should be elected or appointed.

- **Perceived loss of independence**. As elected officials, the Auditor-Controller and the Treasurer-Tax Collector are independent of the Board of Supervisors and serve watchdog functions on supervisor activity. For example, in 2000 the Auditor-Controller took away a supervisor's county credit card that had been used for personal expenses, and he established formal regulations for future credit card use.

- **Resisting secrecy**. A previous Auditor-Controller rejected requests by certain supervisors to keep their expense account information secret. Instead, he released information on their salaries, pensions and the amounts they were billing taxpayers for meals, travel and conferences. Opponents ask whether a finance officer hired by the Board of Supervisors would be likely to take such independent action against one or more of the supervisors who hired him or her.

- **Responsiveness**. Several academic studies suggest that, in general, elected officials are more independent and responsive to the public than appointed officials.

The Experience of Other Counties

Historically, most but not all counties in California have had elected offices of Auditor, Controller, Treasurer and Tax Collector. The notable exceptions include Los Angeles and San Francisco, whose county charters establish one or both of these offices as appointed. Today, county auditors serve ex officio as county controllers. Over time, almost all California counties have consolidated the Treasurer-Tax Collector offices. In Marin, the Treasurer-Tax Collector offices were consolidated in the 1950s.

California law has been modified over time to allow counties to consolidate the offices of Auditor-Controller and Treasurer-Tax Collector into a single office, Director of Finance. At least nine counties to date have consolidated these offices: Fresno, Glenn, Kings, Mono, Sacramento, Santa Clara, Sonoma, Tulare and Yolo. The Director of Finance is elected in Fresno, Sonoma, Tulare and Yolo counties and appointed by the respective Boards of Supervisors in Glenn, Kings, Mono, Sacramento and Santa Clara counties.

Those counties that have consolidated the positions, whether elective or appointed, appear pleased with their experience, citing increased efficiency, improved employee performance and some reduction in costs. Even those counties that have chosen not to consolidate, due to circumstances unique to those counties, acknowledge that benefits can accrue in consolidation of the functions of an Auditor-Controller and Treasurer-Tax Collector.

Officials in consolidated counties cite the benefits of combining complementary functions relating to property tax, debt service and investment. They also believe they have become more customer oriented. Several cite particular attention to special districts whose finances the department manages. In general, a Director of Finance meets with special districts several times a year. One finance chief emphasized that special districts are encouraged to attend financial planning sessions, and employees working on those accounts are expected to be "advocates" for their clients rather than spokespersons for the county.

Consolidation has provided improved staff morale in some of the consolidated counties. More promotional opportunities are available due to cross-training of employees for different functions within an expanded department. Some officials also point to more rapid decision making with only one department head to consult.

The issue of independence and accountability of an appointed Director of Finance is addressed in several different ways in those counties with this structure. Some counties permit the appointed Director of Finance to make direct presentations to the Board of Supervisors.

Many of those consulted agree that two factors can go a long way toward ensuring that an appointed Director of Finance is independent: a long-term contract and a provision that a super-majority vote by the Board of Supervisors is required to terminate the contract. Others, however, acknowledge that being elected rather than appointed gives the official greater freedom to resist pressure from elected and non-elected officials alike. Elected officials, for example, may be more willing to challenge revenue assumptions and reserve allocations, as well as credit card charges for personal items.

Weighing the Options

The Grand Jury has struggled with the wording of Measure B because it does not ask whether the new finance director should be elected or appointed. Instead, voters are asked to say yes or no to authorizing the Board of Supervisors to consolidate the two financial offices under an appointed Director of Finance. This means a person who believes that consolidation is desirable but the office should remain elective must vote against the measure. The wording of the measure conforms to Government Code Section 26980(b) and is similar to the wording of other counties that have placed the matter on the ballot.

Based on the experiences of other counties, this Grand Jury is persuaded that consolidation makes sense. It promises to improve efficiency of the various finance functions, provide better service to the public, improve cross-training and promotional opportunities, and result in at least some savings. Counties that have consolidated their financial functions recommend that there be clear divisions of authority within the department, with experienced deputies heading each major function. Marin County officers told us that this is the model they intend to follow. If Measure B is approved, the reorganization of the department would take place gradually, over a period of two years, until the terms of both the current Auditor-Controller and Treasurer-Tax Collector have been completed. If done cooperatively, this could help avoid personnel problems that another county encountered when it sought to reorganize functions after the consolidation took place.

The issue of whether a new office of Director of Finance should be elective or appointive is more complex, with strong arguments on both sides.

Those who favor an elective office stress that the office should be independent in conducting its financial watchdog function. One elected finance officer in a nearby county told us that he is on equal footing when he disagrees with the county administrator on budget matters, and he can take his concerns directly to the Board of Supervisors. Moreover, the finance director in a county such as Marin has fiscal responsibilities to special districts and school districts that do not report to the Board of Supervisors. Elected finance chiefs tell us that they can serve these other "clients" with a greater amount of independence than one who is appointed by the Board of Supervisors.

The requirement that the official selected be a Marin resident may complicate recruitment, but the requirement reportedly is not insurmountable. In a nearby county, the Board of Supervisors conducted a year-long nationwide search for a successor finance officer who would be subject to election. They recruited their candidate in another state, persuaded that person to move to the county and serve an interim term as assistant to the elected finance officer. When, as planned, the finance officer retired in midterm, the assistant would then be appointed to that post, after which the candidate presumably could run in the subsequent election as an incumbent.

Other county officials, however, argue that pragmatism dictates appointment of a Director of Finance, particularly in a county such as Marin that requires that the office be held by one who is a legal resident of the county. The pool of applicants with both the financial experience and government experience required or desirable for the job is not large. By appointing the finance director, a county can conduct a nationwide search for the best available person.

The ideal candidate would be a person with demonstrated technical skills and a history of leadership in managing a large modern department. If the top candidate resides outside Marin, it would be easier to persuade that person to come to Marin if the individual would not have to both move here and invest thousands of dollars in running for office. As we were told many times, having to run for office often discourages those skilled in finance but unskilled in politics. This probably accounts for the fact that most elected finance officers, once elected, are generally unopposed in subsequent elections. ("To the public," said one finance officer, "we're all bean-counters.") Those we interviewed who favor appointing the finance director say that the independence of the office can be fortified with a long-term contract and a requirement that termination cannot occur without at least a four-fifths majority vote of the Board of Supervisors. Many add that the key is the personal integrity of the individual selected.

In 2001 Marin County adopted a Strategic Plan intended among other things to streamline and automate the financial management functions of county government. Toward that goal, the county has spent upwards of $20 million to bring all financial services functions into a new computer system. To accomplish the alignment of financial functions, the county needs to retain the most qualified executive it can find. Not only must the new Director of Finance have extensive public accounting or equivalent experience and a thorough understanding of government processes, he or she also must have a solid grounding in the technological tools available to make financial management more efficient and cost effective.

The Grand Jury concludes that appointment of the new Director of Finance is more likely to produce the most qualified candidate available.

The Grand Jury also believes that the ability to act independently is important for the position of top financial officer. Accordingly, the Grand Jury believes that the Board of Supervisors should shore up its guarantee of independence for an appointed office of Director of Finance. Measure B already promises that a public hearing and a four-fifths majority vote of the Board will be required before an appointed Director of Finance can be dismissed, as well as a new independent audit of county financial dealings. The Grand Jury believes that the Board of Supervisors should offer a long-term contract to the new Director of Finance, just as is done today for the County Counsel and the Retirement Administrator. An elected finance officer in effect has a four-year contract for the job (until the next election). A similar long-term contract for an appointed finance officer would carry with it much the same sort of job guarantee that encourages independent action.

CONCLUSIONS

Under California Penal Code Section 928, the Grand Jury is empowered to investigate proposals to abolish or create county offices and the method of performing the duties of the several offices. If approved, Measure B would eliminate the current elective offices of Auditor-Controller and Treasurer-Tax Collector and combine the duties of those offices under a new Director of Finance to be appointed by the Board of Supervisors.

Based on the experience of other counties, the Grand Jury is persuaded that consolidating the offices of Auditor-Controller and Treasurer-Tax Collector will provide improved efficiencies, better service to the public and other agencies, increased promotional opportunities for staff, and at least some savings.

The Grand Jury concludes that appointment of the new Director of Finance, rather than election of that officer, is more likely to produce the most qualified candidate available and would provide a better fit for the county's Strategic Plan.

The Marin County Civil Grand Jury concludes that the independence of a new Director of Finance, in addition to the four-fifths majority and public hearing required for termination and an independent annual audit, would be further assured by a long-term employment contract.

RESPONSES

This is an informational report only. Responses are not required.

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