

FILLING VACANT ELECTIVE OFFICES
IN LOS ANGELES COUNTY

Report by the Task Force on Filling Vacant Elective Offices

LOS ANGELES COUNTY
ECONOMY AND EFFICIENCY COMMISSION

November 1975

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PREFACE

On July 29, 1975, on motion of Supervisor Edelman, the Board of Supervisors asked the Economy and Efficiency Commission to report within 90 days on the advisability of revising the County Charter to provide for special elections when vacancies occur in County elective offices. The Board also asked our commission to report on the cost of special elections, the scheduling of special elections relative to regular elections, and the legal steps necessary to amend the charter at the earliest possible time.

In accordance with our usual practice, the commission chairman appointed a task force to conduct the study. The task force herewith submits its report.

The task force wishes to thank the Registrar-Recorder and the County Counsel and their staffs for their cooperation in supplying pertinent information during the course of the study. The conclusions and recommendations, however, are solely the responsibility of the task force.

This section summarizes the task force findings and presents its recommendations. Subsequent sections of the report explain our reasoning in greater detail.

Introduction

At present, the County Charter specifies that the Governor appoints to fill vacancies on the Board of Supervisors; the Board of Supervisors appoints to fill vacancies of Assessor, District Attorney, and Sheriff.

In the statement preceding his motion requesting our study, Supervisor Edelman said:

"While certainly the appointment does not preclude qualified and dedicated men and women from filling vacant offices, and indeed many appointees have served with distinction, the appointive system nevertheless denies to the people their basic right to decide who will serve them. Elections are the cornerstone of American democracy; appointments are the antithesis of an open political system."

The Economy and Efficiency Commission endorses this statement. One basic premise of our form of government is that duly elected representatives of the voting public are the ideal custodians of offices which the public has declared elective. An appointment process is deficient in terms of guaranteeing the requisite representation of constituents.

On the other hand, we observe that an appointment process, when conducted responsibly, can have excellent results. We have watched the recent process of selecting a District Attorney. We believe the Board conducted a highly responsible and intensive search to select the most qualified and representative candidate under extremely competitive circumstances.

Special Elections

Our task force has gathered and analyzed the relevant information covering possible alternatives to the current system as specified in the Charter, including the use of special elections. This information includes the cost and scheduling of special elections, historical data on appointments to elective offices in Los Angeles County since 1930, experience with special elections in the City and County of Los Angeles, and procedures used in other California counties.

In addition, the task force has reviewed its findings and conclusions with current holders of the elective offices, other County officials, and representatives of civic organizations. (See Appendix F for a list of those interviewed.)

In all cases, the task force findings indicate that the use of special elections results in no improvement to justify their high costs and the difficulties they would create.

1. Special elections are not likely to result in a representative selection. Voter turn-out in special elections in recent years has averaged 33%, in contrast to the average turn-out for general elections, 67%. Consequently, the chances are high that only a minority of the voters will participate in a special election.

In addition, those candidates with readily available campaign financing and organization would have a significant advantage in a special election because of the short lead time (three to four months) necessarily involved in a special election. Special elections are highly vulnerable to special interests that are in a position to take advantage of this situation.

There is no reason to prefer filling vacancies by unrepresentative elections over filling them through the best efforts of the elected representa

tives of the people. Special elections provide the appearance of democratic procedure but not necessarily the substance.

2. Special elections would delay filling the office by at least four months and could result in delays of as much as 14 months, if we assume that a primary and run-off are required. The duration of delay between four and 14 months depends on when the office is vacated in relation to the next feasible election.

Any election requires a minimum lead time of three months to prepare, print and distribute sample ballots, verify registration files, recruit and train election personnel, equip and staff polling places, and qualify candidates. If a run-off can be held within one month of the primary, the office will be vacant four months.

During even numbered years, however, the Registrar-Recorder must conduct County-wide elections for the June primary and November general elections. Because of the preparation requirements before these elections, as well as the cleanup requirements after, the Registrar-Recorder cannot conduct special elections in even years without great risk to the regular election process.

In odd years, the County conducts school district elections in March and special district elections in November. Again, in May of odd years, it provides supporting services to any jurisdiction which holds an election and, if requested, conducts such elections. In these years the County can hold special elections if they do not occur 30 days before or after a scheduled election. If there is a conflict with a scheduled election, the County can consolidate the election for the vacancy with the scheduled election.

These limitations result in the following delay pattern in every two year cycle. If a vacancy occurs between September of an odd year and February of an even year, the first opportunity to place the office on the ballot is in the June primary. The next feasible date for a

run-off, if necessary, would be November. Thus, the delay would range from eight to fourteen months, assuming a run-off is necessary. If the vacancy occurs between March and June of an even year, the next primary would occur in November and the next

feasible run-off would occur in January. The delay in this case would range from six to eight months. Finally, if the vacancy occurs between July of an even year and August of an odd year, the delay would range from four to eleven months.

The task force believes that such delays would cause intolerable damage to the morale and operations of critically important County departments and, in the case of Board vacancies, unnecessarily disenfranchise one-fifth of the County's citizens.

It is true that delays could be reduced by electing the candidate with a plurality of votes in a single election. In this case, the minimum delay would be three months and the maximum would be nine months. However, a candidate can win such elections with a small minority of votes, especially if the field of candidates is large. The result would be further deterioration in representation of the public.

3. No matter when they are held, special elections to fill vacant County offices would be extremely costly. Assuming a primary and a run-off, according to conservative estimates based on the County's experience with the State-wide special election in 1973, the cost of filling a vacant County-wide office by special election will range from \$4.8 million, if half the regular election precincts are used, to \$7.9 million if all are used. For supervisory offices, the comparable cost is approximately \$1 million to \$1.6 million. (See Appendix E for a description of the costs.)

In contrast, no additional cost would result from placing a vacant office on the ballot in the June primary and November general elections in even

years. If, however, these were the only elections used to fill vacancies, the delay would range from eight months to as high as 28 months, depending upon when the vacancy occurs.

The Appointment Process

For these reasons, the task force recommends an appointment process for filling vacant elective offices until the next general election. We believe, however, that the current appointment procedure can be improved. We recommend that: 1) the Board of Supervisors be assigned the appointing authority to fill vacant supervisory offices, and 2) an alternate method be provided for filling vacancies in all elective offices in the event that the Board does not act in a timely manner.

The voters elect the Board of Supervisors to govern Los Angeles County. It is the Board, therefore, which should be held accountable for filling vacant elective offices, including supervisory offices. It is much more representative than the Governor, a partisan official, whose State-wide constituency is likely to be wholly incomparable to that in a supervisory district. The task force concludes that the Board of Supervisors is the appropriate appointing authority for all County elective offices.

In addition, we believe that some provision is needed to insure that elective offices do not remain vacant if the Board of Supervisors cannot reach agreement. We are therefore recommending that if the Board cannot reach agreement in 60 days, the Governor will then make the appointment for supervisory offices, and the next in command will automatically succeed in the County-wide offices. We believe this period will give the Board sufficient time to receive applications, screen and interview candidates, and arrive at a decision.

In reviewing possible alternatives to the present system, the task force rejected giving the Board of Supervisors the option to decide in each instance whether to appoint or call for a special election. Such an option, the task force concluded, would place the Board in an untenable position. Whatever the circumstances, if the Board chose to appoint, it would be accused of serving its own interests at the expense of the people,

regardless of the validity of its decision. Thus, the pressures and competition associated with the appointment process would be magnified.

In addition, an appointee, regardless of his or her leadership ability and other qualifications, would be open to continuous challenge on the grounds that an election had been avoided. The resulting injury to the credibility of the appointee would directly correspond to the degree of criticism leveled at the Board. For these reasons, it would be extremely difficult for the Board to choose an appointment, rather than a special election, if given the option.

Recommendations

We recommend that the Board of Supervisors place amendments to Sections 8 and 16 of the County Charter on the ballot for June, 1976.

1. Board Vacancies (Section 8) - The amendment should provide that whenever a vacancy occurs on the Board of Supervisors, the Board shall fill the vacancy and the appointee shall hold office until the election and qualification of his or her successor. If the Board fails to make an appointment within 60 days of the occurrence of the vacancy, then the Governor shall fill the vacancy. If fewer than three supervisors are available to act during the 60 day period, the Governor shall make the appointment without regard for the 60 day appointment period.

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As in the present charter, a supervisor will be elected in the next general elections either for the unexpired term or for the full term depending on whether the office is regularly scheduled for election at that time.

In addition, the amendment should provide for the case in which a candidate receives a majority in the primary election, thus making a run-off unnecessary. The charter now does not provide for this case except to stipulate that terms of office begin in December following the November general election. Thus, if the appointed officeholder

is defeated in June by a candidate who receives a majority vote, the present charter would allow the appointee to remain in office for six more months against the expressed will of the people. The charter should be changed to allow a candidate who wins a June election by majority vote to take office as soon as possible after certification of election results. Normally this period should not exceed six weeks.

2. Vacancies of County-wide Offices (Section 16) - The amendment should provide that whenever a vacancy occurs in an elective County office other than a member of the Board of Supervisors, the Board shall fill the vacancy and the appointee shall hold office until the election and qualification of his or her successor. If the Board fails to make an appointment within 60 days of the occurrence of the vacancy, the person then holding the next highest executive position in the department will automatically fill the vacancy. If fewer than three supervisors are available to act during the 60 day period, then the person holding the next highest executive position in the department will immediately assume office.

As with supervisorial elections, present charter provisions should be continued covering filling vacancies for either an unexpired or full term. In addition, if a candidate receives a majority vote in the primary, the amendment

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should provide for filling the office as soon as possible after certification of the election results.

3. Standardized Appointment Procedures - The amendment should also prescribe that the Board should establish by ordinance standardized selection procedures to promote a consistent and orderly appointment process. These procedures should include, but not be limited to, advertising the vacancy, prescribing uniform application forms and requirements, initial screening criteria, interview protocol, candidate evaluation criteria, and selection guidelines.

We should note in this context that establishment of consistent procedures will be particularly important because of new State legislation which becomes effective January, 1976. The new law requires the Board of Supervisors to conduct all discussions, interviews, and voting in public in making appointments to elective offices.

4. Legal Steps - If the Board of Supervisors adopts the recommendations above, the following steps will be necessary to place charter amendments on the ballot during the June, 1976 primary.

- 1) The Board must adopt a resolution calling for a charter amendment election and consolidating it with the June primary. The resolution must contain the exact wording of the proposed amendment. This step must be concluded by March 26, 1976.
- 2) Interested parties must submit arguments for or against the County proposition by March 30, 1976.
- 3) The Board of Supervisors must introduce by April 5, 1976, an ordinance calling the election.
- 4) Interested parties must submit rebuttal arguments by April 9, 1976.
- 5) The Board of Supervisors must adopt the ordinance by April 10, 1976, calling the election and consolidating it with the June primary.

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II. THE CURRENT SYSTEM

Election Procedures and Vacancies

Under the current charter, elections for County offices are consolidated with gubernatorial and presidential elections. The District Attorney and Supervisors for Districts 2, 4, and 5 are elected in presidential years (e.g., 1976), and the Assessor, Sheriff, and Supervisors for Districts 1 and 3 are elected in gubernatorial years (e.g., 1974). Each election consists of a June primary and, where necessary, a November run-off. The terms of office are four years and commence in December of the election year.

Additional elections are held when a vacancy occurs in any County office during the first two years of a regular term for that office. In that case, an election for the unexpired term is held during the next regularly scheduled general election. For example, the last Assessor's election was held in 1974, and the next is scheduled for 1978. Had the Assessor's office become vacant in 1974 or 1975, an Assessor would be elected for the unexpired 1976-78 term during the 1976 elections. The Assessor would again be on the 1978 ballot for the regular Assessor's term of 1978-1982.

When a vacancy occurs in time for the general election in November, but too late for the primary in June, the person with a plurality of votes in November wins the position. Using our previous example, if the Assessor's office is vacated between March 1 and August 1, 1976, it will appear on the November 1976 ballot for the unexpired 1976-1978 term, and a new Assessor will be elected. In that case, it would not be possible to include the Assessor in the June primary since the requirements for filing and distributing sample ballots could not be met. The November election would be final. It should be

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noted that although this case is not specifically provided for in the charter, it has been established through case law.

When a vacancy occurs too late for inclusion in the next November ballot, it is included on the ballot for the next scheduled primary. Again, using the same example, if the Assessor's office is vacated after August 1, 1976, it cannot be included in the November 1976 ballot. A new Assessor would be elected for the 1978-1982 term in the 1978 elections.

As a result of these charter provisions and the State Elections Code requirements for lead time, a vacated County elective office can remain vacant or be filled by an appointee for a minimum of four months (if it occurs three months before a regular general election). or a maximum of 28 months (if it occurs too late for inclusion in the

next general election). For example, a vacancy occurring in the Assessor's office before August 1, 1976, would be filled at the November 1976 election for the term commencing early in December 1976 (4 months). A vacancy occurring after August 1, 1976, would be filled in the 1978 elections for the term commencing early in December 1978 (28 months).

For the interim periods, vacancies are filled by appointment. As we noted, the County Charter specifies that the Governor appoints replacements for supervisory offices; the Board of Supervisors appoints replacements for the County-wide offices - Assessor, District Attorney, and Sheriff. In addition, State law provides that when a vacancy occurs in a County-wide office, the next highest-ranking executive in the department is automatically responsible for the duties of the position until the vacancy is filled.

Deficiencies in the Current System

The current system is deficient in several respects.

First, although the people have the final say, an appointee may serve in an elective position for as long as 28 months in certain circumstances. In

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the opinion of many observers, any period in office gives the incumbent an advantage in the next election. The longer he or she is in office, the more name recognition and publicity the incumbent receives. In addition, incumbency usually strengthens the ability to attract campaign financing.

This point is supported by historical data. Since 1930, eight Supervisors, four District Attorneys, and two Sheriffs were initially appointed and subsequently ran for office. Of those who sought election, all except one were elected at least once and most were elected several times. (See Appendix C.)

Recent election reforms may diminish the advantage of the incumbent somewhat. The incumbent will no longer have the advantage of first ballot position. In addition, the incumbent and the other candidates will be required to disclose all sources of support.

This should tend to equalize the ability of the incumbent and other candidates to attract campaign financing.

While there is no evidence that these reforms will completely eliminate any advantage that the incumbent has, we believe that they are likely to diminish it somewhat.

In the current system, an alternative to allowing some appointee the advantage of incumbency is to leave the office vacant. In the case of supervisors, this would disenfranchise one-fifth of the County's population for as long as 28 months. In the case of the County-wide offices, it would leave a major County department without effective leadership for a similar period. Neither situation would be tolerable.

A second major deficiency in the current system is that the Governor appoints replacements for Supervisors. The task force does not believe that the Governor is the most representative official for this purpose. As a State official, the Governor has a constituency that is likely to be wholly incomparable to that of the Supervisor. The Governor's State-wide constituency

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includes citizens of many rural counties, as well as citizens of urban areas with forms of government and political make-up that are different from Los Angeles

More important, the Governor is a partisan official. As such, he or she will be bound to consider partisan factors when appointing a supervisor and will almost surely appoint someone whose political philosophy, if not party membership, is close to that of his or her political party.

The latter point is supported by historical evidence. Of nine supervisors appointed by governors since 1930, only two belonged to a different party from the governor's. (See Appendix C.)

Third, the present charter specifies that in all cases the newly elected official takes office in December following the November general election. If, however, an appointed

officeholder is defeated in the June primary by a candidate who receives a majority vote, the present charter would allow the appointee to remain in office for six more months against the expressed will of the people.

These three deficiencies of the current system have a common characteristic. They temporarily diminish the extent to which the officeholder is representative of the constituents of his or her office. Clearly, in a democratic society, the election process is the acceptable way to promote representative government.

In addition to these deficiencies in representation, the present system also lacks an established set of procedures conforming to generally accepted executive selection practice. While we pointed out in Section I that we believe that the appointment of the District Attorney was responsibly conducted, the absence of formal procedures could in the future cause serious problems and unnecessary delays.

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In the following sections we discuss the potential of election and appointment alternatives to correct the deficiencies of the present system.

III. ELECTION ALTERNATIVES

As we indicated in Section I, the task force has concluded that special elections are not a cost effective means of correcting the deficiencies of the current system. This section contains further explanation of our conclusion in terms of representation of the public, legal and logistical feasibility, and cost.

Representation

Elections to fill vacant offices are appealing because they appear to correct a major deficiency of the appointment process - that is, that the voters are not represented directly.

However, as we noted in Section I, elections are not always representative. The most representative election requires that one candidate receive a majority of the votes.

If there are initially more than two candidates, this requirement will most likely result in two elections - a primary and a run-off - unless one candidate receives a majority in the primary. Otherwise, the winner (by plurality in the primary) will represent only a minority of those voting.

Special elections tend to be particularly non-representative because a small percentage of the voters turn out to vote. Available voter turnout data is difficult to apply universally because elections differ in the issues involved and in the voters' perception of their importance. Nevertheless, there is a clear indication in the data that turnout for local special elections compares unfavorably with that for scheduled general elections. The following table contains some recent examples.

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Comparison of Voter Turnout (%)

General vs. Special Elections

<u>Election</u>	<u>% Turnout</u>
1970 June Primary (Gubernatorial)	61
1970 November General (Gubernatorial)	75
1970 June, 24th Congressional-Consolidated	64
1970 June, 24th Congressional-Special Runoff	40
1972 June Primary (Presidential)	69
1972 November General (Presidential)	80
1972 April, 49th Assembly-Special Primary	23
1972 June, 49th Assembly-Consolidated Runoff	69
1974 June Primary (Gubernatorial)	52
1974 November General (Gubernatorial)	63
1974 December, 21st Senatorial - Special Primary	23
1975 March, 29th Senatorial - Special Primary	42
1975 April, 29th Senatorial - Special Runoff	35

The data illustrate the differences between special elections and elections for the same position consolidated with general elections. For example, a representative for the 24th Congressional District was elected in 1970. The primary was consolidated with the gubernatorial primaries in June, 1970, and over 60% of those registered voted; the runoff was a special election and drew a turnout of 40%. The difference - over 20% - represents the loss of voters that resulted from holding a special election. Similarly, in 1972, turnout for the primary special election for the 49th Assembly District was 23%, while the turnout for the runoff during the Presidential primary improved to 69% - a difference of 46%. The average turnout for special elections during the 1970-75 period on non-scheduled dates was 33%, in contrast to the average turnout for general elections of 67% and to the average turnout for special elections consolidated with general elections, also 67%.

While not included in the list above, the average turnout for all special elections since 1963 was 35%. Experience with special elections in the City of Los Angeles is consistent with the County data. (See Appendix D.)

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Thus, special elections do not necessarily represent an improvement over appointment in terms of representation. While it may be argued that an election at least gives the people an opportunity to vote, it is also true that appointment by duly elected representatives of the people provides an opportunity for public input and will be at least as representative as election by a minority.

Scheduling special elections could also diminish representation by giving an advantage to candidates with ready access to campaign funds and organization. In recent elections the reported direct campaign costs for County-wide office has ranged from \$150,000 to as high as \$560,000 for the primary alone. The reported cost of supervisorial primary campaigns has ranged from \$33,000 to \$420,000. Candidates with their own financial means, and candidates with readily available sources of financial backing would be able to raise such funds in the three months available for special elections. Other qualified candidates who might need more time to organize and raise campaign funds would be put to a severe disadvantage under these circumstances.

The task force concludes that representational advantages to be gained from special elections to fill vacancies are, at best, marginal.

Legal Factors

The County Charter establishes the method of filling vacancies in Los Angeles. In addition, State law governs the schedules and types of elections that may be held. Consequently, charter revision would require supplemental State legislation to enable the County to conduct elections at times not specified by law. (See Appendix A for County Counsel opinion on this subject.)

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Current State law specifies that elections may be held only in March, June, and November of even numbered years and March, May and November of odd numbered years. Charter cities are exempt.

In Los Angeles County, elections are scheduled for each of the available dates. In even numbered years the County conducts elections for general law cities in March and the County-wide gubernatorial or presidential elections in June and November. In odd numbered years, charter cities and school districts hold elections in March, and special districts hold elections in November. Some charter cities, which are exempt from State law, also hold elections in April. Finally, the law specifies that May of odd years is an open date, during which any jurisdiction may hold an election.

Although the County does not directly conduct all municipal and district elections, the County Registrar of Voters is required legally to provide supporting services to local jurisdictions when they conduct elections.

It is also important to note that the County cannot legally refuse a request of any jurisdiction within the County to consolidate its local issues with a County ballot. The

reverse is not true: a city or special district may refuse to incorporate a County issue into a local ballot.

The consequences of the legal situation are that the County could, with no change of law, consolidate County-wide or supervisorial elections with the six scheduled elections in any two year period, or, alternatively, seek to change the law and conduct special elections at any time.

Logistical Factors

The task force consulted the Registrar-Recorder to determine the feasibility of holding special elections or elections to be consolidated with municipal or district elections.

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Elections in Los Angeles are complex and intricate undertakings. The needs of 78 cities, over 90 school districts and numerous legislative and special districts must be considered. As we noted in Section I, any election requires a minimum lead time of three months. Sample ballots must be prepared, printed, and distributed - now in both English and Spanish. Registration files must be brought up to date and validated. Polling places must be located, prepared and equipped. Precinct personnel must be recruited and trained. Candidates must qualify and file.

Thus, when preparing for an election, the County allocates election resources - personnel and equipment - to precincts. During an election and on election night, the County deploys transportation, communication, and security forces, as well as monitoring personnel. After an election, the County recalls all the equipment, validates returns statistically, processes complaints, and updates the basic records.

Because of the preparation requirements before an election, and the cleanup requirements after, the Registrar-Recorder states that no major election should occur within 30 days of another. In addition, he points out, because of the complexity of the ballot and the extent of election operations in gubernatorial and presidential years, it

would be completely impractical to schedule a special election during the 180 day period preceding a June primary in an even year and between the primary and the November general election.

These requirements, to provide sufficient lead time and to avoid conflict with scheduled elections, limit the possibility of holding special elections to a few periods.

The task force concludes that no special elections for County offices should be held in even years. The only feasible modification of the current election process would be to schedule consolidated County elections in March,

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May, and November of odd years and special elections in January, July, August, or September, also in odd years.

As a consequence of these limitations, as we emphasized in Section I, holding special elections or consolidated elections would result in vacancies ranging from four to fourteen months, assuming a primary and run-off, and three months to nine, assuming a single election.

Costs

Special elections would cost the taxpayers a substantial amount of money. The cost of elections consolidated with scheduled municipal and district elections would not differ materially from the costs of special elections. In order to consolidate with these elections, the County would have to declare a County election and incorporate the other elections into it.

Based on the County's experience with special elections in 1973, adjusted for inflation, the minimum cost of a single special County-wide election is \$2.1 million. The minimum cost of a special supervisorial election is 205 of that figure, or \$425,000. (See Appendix E.)

The most likely costs are much higher. The minimum is based on a single issue ballot. It is much more likely, however, that local jurisdictions would request additional ballot positions. In this case, the Registrar would use more elaborate ballots and equipment. The minimum cost also does not account for the new requirement to print bilingual ballots, which will increase costs. These premiums would increase the cost estimates for single special elections by a total of 15% to \$2.4 million for County-wide elections and \$488,000 for supervisorial elections.

These estimates of minimum cost are based on a two to one consolidation of precincts. The consolidation policy for any election is established by the

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Board of Supervisors. If the Board, for the convenience of voters and the encouragement of voter turnout, decided that all precincts should be used, the cost of a single election would increase to approximately \$3.9 million for a County-wide election and \$790,000 for a supervisorial election.

Finally, as we pointed out earlier, two elections will probably be necessary to ensure a majority result. This would double the cost.

Therefore, the most probable cost of a special election to fill a vacancy of the Assessor, District Attorney, or Sheriff would be \$7.9 million. An election to fill a vacancy in the Board of Supervisors would cost \$1.6 million. Consolidation of precincts could reduce these costs to \$4.9 million for County-wide offices and \$980,000 for supervisorial districts.

These costs are summarized in the following table:

Single County-wide, ½ Precincts	\$2.4 million
Single County-wide, all Precincts	\$3.9 million
Double County-wide, ½ Precincts	\$4.9 million
Double County-wide, all Precincts	\$7.9 million
Single Supervisorial, ½ Precincts	\$ 488,000

Single Supervisorial, all Precincts	\$ 790,000
Double Supervisorial, ½ Precincts	\$ 980,000
Double Supervisorial, all Precincts	\$1,600,000

These cost figures are estimates of the cost to the County. Since regularly scheduled municipal and district elections occur in any event, it is reasonable to ask whether consolidating an election for a vacant office with these elections would result in any additional costs to taxpayers without regard for the jurisdiction bearing the costs.

Additional costs would result from consolidating an election to fill a vacancy with scheduled local elections. County-wide and supervisorial elections would require the addition of those jurisdictions which would not have been included in the scheduled election. For example, in November, 1975, the

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special district elections would involve, at most, 250,000 voters. A Countywide election would involve three million voters. Adding 2,750,000, or 92% of three million voters, would be nearly equivalent to holding a special election. The cost of sample ballots, polling places and equipment, and precinct personnel for the additional voters would amount to 92% of the cost of a special election or approximately \$2.2 million.

The additional cost of a supervisorial election would depend on the district involved and the specific circumstances of consolidation; thus, no estimate of the additional cost of consolidation is available for this case. We should note that the current requirement to include, on County ballots, those issues requested by local jurisdictions within the County, would lead to further complication and additional expense. For example, an election of a supervisor in the First District could escalate to extend over 41 overlapping jurisdictions, reaching into all the other supervisorial districts. The additional voter and precinct costs would be approximately double the cost of the election in the supervisorial district alone.

Additional costs to the taxpayer, without regard for the jurisdiction bearing the costs, would also result because only one of the two elections required to fill a vacancy could be consolidated with scheduled municipal, school, or special district elections. Otherwise, the office would remain vacant for the entire period between scheduled

elections. This would lead to vacancies of at least five months - three months minimum lead time for the first election and a minimum two months between elections. Otherwise, the run-off election would have to be a special election and would add \$3.9 million for a County-wide office and \$790,000 for a supervisorial district to the total cost of elections to the taxpayer.

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The task force concludes that the potential benefits of filling vacant elective offices through special elections do not justify their costs and difficulty and would not correct the deficiencies of the current appointment process.

For these reasons, as we stated in Section I, the task force recommends an appointment process with modifications to the current system to strengthen representation and promote prompt and orderly action. The task force also considered other appointment alternatives. These are discussed in the next section.

IV. APPOINTMENT ALTERNATIVES

In Section II we described four principal deficiencies in the present appointment system. These are 1) incumbency advantage, 2) appointment of supervisors by the Governor, 3) continuance of appointee in office for six months when defeated in a primary, and 4) the lack of standardized appointment procedures.

Our recommendations in Section I are designed to correct these deficiencies as much as possible. We therefore recommended appointment to vacant supervisory offices by the Board of Supervisors, installation as soon as possible if a candidate receives a majority vote in a primary election, and establishment by ordinance of standardized appointment procedures.

In this section we discuss additional appointment alternatives which the task force considered.

Caretaker Appointments

The current system provides that an appointee will fill a vacancy from the time that it occurs until the next general election. As a result, as we have noted, a new appointee may fill the office for a minimum of four months to a maximum of 28 months before he or she must stand for election. While recent election reforms may diminish the advantages of incumbency, they will not eliminate the visibility and name recognition that an incumbent enjoys.

Supervisor Edelman emphasized this advantage in making his motion requesting our study. "In total," he said, "17 or 42 percent of the 40 elective County officers who have served the people in the last 45 years were not initially chosen by the people, but were first appointed to office in a process in which the people have no hand."

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Recognizing this consequence of the current system, the task force searched for alternatives which would effectively neutralize the incumbency advantage. We concluded that short of special elections - which among other problems give advantages at least equivalent to incumbency to candidates with readily available campaign funds - there is only one alternative. This is the appointment of a "caretaker," who would be prohibited by the charter or by written agreement from seeking election to continue in office.

Our analysis of the caretaker concept, however, convinces us that it is not a desirable alternative both for legal and practical reasons. According to County Counsel, caretaker agreements are not enforceable, and a charter provision limiting the eligibility of an elector would raise constitutional questions and therefore be subject to lengthy court challenges. (See Appendix A.)

In addition to the legal problems, appointment of a caretaker has serious practical difficulties. A qualified caretaker might be difficult to find. He or she would have to have the competence, experience, and appropriate credentials to perform effectively in the office and at the same time have no interest in keeping it. It is doubtful that a person with no motivation or expectation of continuing in political office would vigorously fulfill its requirements, particularly those associated with political leadership.

Finally, if a capable person is found and serves the office well, then it would be a disservice to the public to prevent him or her from serving subsequent terms.

Therefore, the task force rejected the alternative of either a mandatory or optional charter provision specifying appointment of a caretaker. This does not preclude the Board of Supervisors from using a caretaker agreement as a condition of appointment, if

in the Board's best judgement the caretaker device seems appropriate in a specific instance. Such an agreement, if broken,

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would tend to neutralize the incumbent's advantage, since opposing candidates could charge bad faith or lack of integrity.

Candidate Screening Commissions or Firms

In the current system, the evaluation of candidates' qualifications is left entirely to the appointing authority. The appointing authority has the option of using the services of a select commission or of an executive search firm to identify and screen candidates.

The dominant factors in the current process are political. Use of a commission or firm to produce a slate of qualified candidates would be designed to shift the emphasis in the process from political considerations to the relative competence of the candidates.

The task force rejected the alternative of a mandatory or optional charter provision specifying the use of a commission or firm. The offices in question are elective; therefore non-partisan political considerations may be highly relevant in the appointment process. Removing political considerations is not necessarily desirable. Even if it were, use of a commission or firm would merely transfer such considerations to the process of selecting the people who would do the screening and produce the slate of candidates.

Finally, such a device would further remove the selection process from voters by placing an additional selective and decision-making body between them and their elected representatives.

Again, however, as with the caretaker, the Board still has the option of using a commission or firm and under certain circumstances may choose to use this device.

Automatic Succession

Several authorities proposed amending the charter to provide that the second-in-command in the department automatically assume a County-wide position when it is left vacant. The proposal would not apply to supervisorial offices.

A system of automatic succession would have several advantages. The continuity of executive leadership so necessary to effective department operations would be preserved, and the unavoidable delays associated with any appointive or elective process would be eliminated. It could be assumed that the major departmental policies and operating philosophy of the former executive, elected by the people to office, would also be preserved, since the second-in-command would have been involved in their formulation.

The task force has concluded, however, that the disadvantages of such a system outweigh the advantages.

Department personnel, including the second-in-command, are often contenders for the Board appointment. There is nothing in the current system to prevent their appointment. Continuity of leadership is ensured, to some extent by State law, which provides that the second-in-command (the Chief Deputy Assessor, the Chief Deputy District Attorney, and the Undersheriff) automatically assumes the duties of the position when a vacancy occurs. In making an appointment, the Board is in a position to ensure continuity of leadership unless there are substantive reasons to do otherwise.

The concept of automatic succession assumes that 1) the office will be vacated by death and 2) the former office holder had appointed a second-in-command who could effectively assume the position. It must be recognized that offices are also vacated by retirement for health or other reason, by resignation to take another office, or by removal for cause, including conviction of a crime.

While a second-in-command may not have had any involvement in a former office holder's criminal activity and may be qualified for the position, the concept of automatic succession would allow no option in the presence of doubt.

Perhaps most important, automatic succession could lead to unhealthy political alliances or the manipulation of succession to office. For example, by resigning before an election, a former executive could establish an obligation by the second in command, who would run in the next election as an incumbent. If the executive had resigned to take another political office or to go into private industry, the relationship between the two could result in a serious conflict of interest.

It may be desirable for several additional reasons not to appoint the second-in-command. The Board, in touch with the people, may sense a change in the public will regarding the conduct of the office. In this case, a change in top management policies and procedures may more closely reflect the public will than automatic succession. The option to make such changes when indicated should be left to the Board of Supervisors.

Again, the second-in-command may not be qualified for the top position. For example, the former executive may have appointed a person with specialized technical expertise to complement the executive's own more generalized qualifications. In this case, automatic succession would not result in continuity of leadership and could result in the installation of a person not really suited for the job.

To conclude, the Board of Supervisors, as the elected representatives of the people, provides the most representative means of determining who should succeed to a vacated County-wide office.

APPENDIX A

COUNTY OF LOS ANGELES

OFFICE OF THE COUNTY COUNSEL
648 HALL OF ADMINISTRATION

LOS ANGELES, CALIFORNIA 90012

October 16, 1975

JOHN H. LARSON, COUNTY COUNSEL

DONALD K. BYRNE, CHIEF-DEPUTY

974-1835

Dr. Robert J. Downey, Chairman
Economy and Efficiency Commission
163 Hall of Administration
Los Angeles, CA 90012

Attention: John Campbell Staff Specialist

Re: Vacancies in Elected County Offices

Dear Dr. Downey:

By letter of September 25, which contemplates possible changes in the Los Angeles County Charter on the subject of vacancies in the various County elective offices, you have requested the opinion of this office on the following questions:

1. Would a revision of State law be required to implement a Charter change to allow special elections to fill vacancies in the County elective offices?
2. Are there changes to State law, now before the Legislature, which would be sufficient to enable the County to implement such a Charter change? If no current bills would be sufficient, then what additional modification of State law will be needed? (SB 751, AB 61, and AB 155 have been introduced.)
3. Are caretaker agreements enforceable?

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Dr. Downey

October 16, 1975

4. Would you view a Charter provision, declaring an interim appointee ineligible in the next election for the same office, as unconstitutional or as otherwise questionable on legal grounds?
5. What authority does the Board of Supervisors now have to appoint a select commission or hire an executive search firm to assist them in selecting candidates for Assessor, District Attorney, and Sheriff?
6. What authority does the Board of Supervisors now have to make a temporary, interim appointment to an elective office?
7. What authority does the Board of Supervisors now have to leave an elective office vacant? Does anyone automatically assume the position?

In our opinion:

1. A special election may not be held on any but the three regularly established election days without a revision of State law.
2. There presently are no bills before the Legislature that could be sufficient to enable the County to implement a Charter change and none are needed. The mode of filling a vacancy is specified presently in our Charter. Any Charter revision would necessarily also specify the new mode of filling such vacancies.
3. Caretaker agreements are not enforceable.
4. A Charter provision that prohibits an appointee from running for a full term or an unexpired term for the same office would be without constitutional authority and therefore of doubtful validity.

5. The Board of Supervisors now has full authority to appoint commissions and to hire experts to advise them on any appointments the Board must make. Final authority to appoint remains in the Board.
6. The Board has no authority to make an interim or temporary appointment to the three elected offices in this County.
7. The Board is required by Section 16 of the Charter to fill a vacancy occurring in any of the three elective offices of the County within a reasonable time. We assume they will perform this duty according to law. In any event, the office must come up for election at the next general election.

ANALYSIS

1. The Charter of this County provides:

"Sec. 8. Whenever a vacancy occurs in the Board of Supervisors the Governor shall fill such vacancy, and the appointee shall hold office until the election and qualification of his successor. In such case, a Supervisor shall be elected at the next general election, to fill the vacancy for the unexpired term, unless such term expires on the first Monday in December succeeding said election."

"Sec. 16. Whenever a vacancy occurs in an elective County office other than a member of the Board of Supervisors, the Board shall fill such vacancy, and the appointee shall hold office until the election and qualification of his successor. In such case, there shall be elected at the next general election an officer to fill such vacancy for the unexpired term, unless such term expires on the first Monday in December succeeding said election.1'

These two Charter sections provide the authority and mode for filling vacancies in the elected County offices. The authority for these sections is found in the California Constitution Article XI, § 3, and the permissible limits of the sections are in Article XI, § 4. Within the permissible limits a Charter supersedes State statutes on the subject, and, conversely, any Charter provision broader than the permissible limits would be superseded by State law.

The specific language of Article XI, 5 4 is:

"County charters shall provide for:

(c) Other officers, their election or appointment, compensation, terms and removal.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein."

In our opinion the permissible limits of the Charter provisions above are the mode of filling vacancies on the Board and the mode of filling vacancies of the other elected officers, i.e., whether by appointment (and by whom) or by election. Once the mode is selected, the general law of the State must apply.

Elections Code § 2504 limits the holding of elections to three specified dates per year. In order to hold a special election on any date other than the three specified, a change would be required in State law.

2. A change in the mode of filling a vacancy in any of the County elective offices must be accomplished by changing the Charter provisions. No bills presently before the Legislature could have any effect on the mode of filling vacancies in any Los Angeles

County elective office. If a special election at a time other than the three established election days is desired, then the State law revision would have to be coordinated with the Charter revision.

3. The right of an incumbent of a public office does not depend on any contract in the sense of an agreement or bargain between him and the public. A public office is not a contract, nor the same thing as a contract, and appointment or election to a public office does not establish a contractual relation between the person appointed or elected and the appointing power or the public. Dodge V. Board of Education (1937) 302 U.s. 74; Markinan v. County of Los Angeles (1973) 35 CA3d 132.

Any agreement by a prospective appointee to refrain from becoming a candidate at the election for the full or the unexpired term would be without consideration and therefore unenforceable.

Although we are unable to locate any appellate court case directly on this point, we are of the opinion that such an agreement, without statutory or constitutional authority, is against public policy and therefore unenforceable. Statutory and constitutional provisions providing for an officer's disability to succeed himself are strictly construed in favor of the right of the people to exercise their freedom of choice in the selection of officers. Ervin v. Collins (1956, Florida) 85 SO2d 852, See Annotation at 59 ALR 2d 716.

4. As stated earlier the Charter may include only those provisions which the California Constitution specifically requires or allows it to include. The qualifications of a candidate or the placing of restrictions on a candidate for elective County office are not among the competent provisions. Therefore it is not permissible for the Los Angeles County Charter to speak to the qualifications of candidates or to place restrictions on candidates for County elective offices.

Constitutional provisions imposing a disability in regard to successive terms or limiting absolutely the number of terms for constitutional officers have generally been upheld. The XXII Amendment to the United States Constitution contains such a limitation on the Presidency. Statutory limitations of eligibility appear to have found less favor with the courts. See Annotation 59 ALR 2d 716.

5. The Board of Supervisors is specifically granted the power to appoint persons to fill vacancies in the three elected County offices. In our opinion it is necessarily implied from such a grant that the Board may retain experts to advise or make recommendations and to search for qualified individuals. The final selection, of course, must be an act of the Board itself.

6. The modes of filling vacancies in the elected County offices are provided in Charter sections 8 and 16. No provision is made for an interim appointment except in the sense and to the extent that in the event of a vacancy the office must come up at the next general election whether or not the original holder would have had to stand at that election.

Government Code § 26542 provides if there is a vacancy in the office of District Attorney that the duties of such office may be temporarily discharged by the chief deputy or assistant next in authority with like authority and subject to the same obligations until the office is filled in the manner provided by law. Government Code § 24105 makes similar provision for other County offices.

7. The Charter provides that the Board shall fill vacancies in the County elective offices and the Governor shall fill vacancies on the Board.

The law assumes that all officials will perform their duties within a reasonable period of time. A court will not attempt to control the exercise of discretion of a government official. Anderson v. Phillips (1975) 13 C3d 733.

Very truly yours,

JOHN H. LARSON
County Counsel

By EDWARD G. POZORSKI
Deputy County Counsel

APPROVED AND RELEASED:

JOHN H. LARSON
County Counsel

EGP:jp

General Law Counties

The procedure for filling vacant elective offices in general law counties is specified by Sections 25060, 25061, 25062, 25304, and 25304.5 of the Government Code.

1. The Governor appoints a replacement to fill a supervisory vacancy until the next general election. If the vacancy occurs in the first two years of the term, the election is for the unexpired term. If the vacancy occurs in the last two years the election is for the full term.
2. The Board of Supervisors appoints a replacement to fill a vacancy in another elective office until the next general election. As with a supervisory vacancy, the election is for the unexpired or full term, depending on when the vacancy occurs.

Charter Counties

The task force surveyed procedures in eight of the ten charter counties in California. We excluded two small rural counties. These eight counties use different methods to fill vacant elective offices.

Board Vacancies

Only one, Fresno County, uses special elections to fill vacancies on the Board of Supervisors, when the vacancy occurs one year or more before the end of the term. The candidate with a plurality of votes in a single election wins the position. If less than one year remains in the term, the Board of Supervisors must make an appointment to fill the vacancy by unanimous vote. If the Board fails to reach a decision within 30 days, the Governor makes the appointment.

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San Francisco differs from the rest as a consolidated City-County. In San Francisco the Mayor appoints to fill vacancies on the Board of Supervisors and other non-mayoral offices.

Of the remaining six charter counties which we surveyed, two use the same procedure as Los Angeles for filling vacancies on the Board of Supervisors. In four of the six, the Board itself makes the appointment but must act within 30 days or the authority reverts to the Governor. In one of these four, Sacramento, the Board must make the appointment by unanimous vote.

Other Vacancies

Of all the counties, six use the same procedure as Los Angeles to fill vacancies of County-wide elective offices. In two counties, San Mateo and Fresno, the appointee serves the full unexpired term rather than until the next general election. In San Francisco the Board of Supervisors appoints to fill a vacancy in the Mayor's position.

Possible Changes

Alameda, Sacramento, and Santa Clara Counties have been considering charter revisions which will affect their methods of filling vacancies. Alameda County may revoke the charter entirely, thus becoming a general law county.

Sacramento may provide for an election to fill a vacancy on the Board at the next scheduled election date - whether general, municipal, or district. Two elections would be required to ensure a majority. In the interim before the final election, the Board would appoint a caretaker.

Santa Clara may provide for a special election to fill a Board vacancy at the next scheduled election date. One election, by plurality, would be final. In the interim before the election, the Board, or the Governor after 30 days, would fill the vacancy by appointment.

Prior to 1963, the City Charter required the City Council to appoint a replacement to fill vacant Council seats and vacancies of the Mayor's, Controller's, and City Attorney's offices.

In April, 1963, the electorate amended the Charter to give the Council an option to call a special election to fill it until the next regular election in the case of a vacancy lasting more than 90 days. The candidate with a plurality of the votes cast would win, and ties would be broken by Council decision. No provision was made to allow special elections in case of vacancies in the Mayor's, Controller's, or City Attorney's offices.

In March, 1973, the electorate amended the Charter to give the Council the option to call special elections to fill vacancies in these offices. Again, a plurality would win, and the Council would break ties.

In May, 1975, the electorate amended the Charter to require a runoff election for all offices if no one candidate receives a majority of the vote, and, in addition, to permit a City officer elected to fill a vacancy to serve the full balance of the unexpired term or the next full term without undertaking a second election.

In each case, the amendment was placed on the ballot by the City Council on the recommendation of its Charter and Administrative Code Committee.

Since the initial revision in 1963, the Council has favored special elections to fill vacancies. The City's experience with special elections has been consistent with our other data - the elections are costly, attract a minority of the voters, and are sometimes difficult to schedule. The table below contains data illustrating these points.

Election Date	Council Seat	Current Member	Turnout %	Cost \$000	No. of Precincts	No. of Votes Cast (000)
12/69	6	Russell	30	35	124	23
9/73	10	Cunningham	38	36	99	24
6/74	8	Farrell	27	57	192	18
3/74	14	Snyder	49	53	152	26
Recall						

It should be noted that turnout is also affected by the significance of the issue - for example, the recall election turnout in 1974 was better than the citywide turnout usually is in non-mayoral years (about 32%). In mayoral years, however, the city's voter turnout is higher - 76% in 1969, and 64% in 1963.

APPENDIX E

COST OF SPECIAL ELECTIONS

The estimates are based on actual current costs, when available, and on the County's experience with the 1973 special State-wide election adjusted for inflation by 15% for employee salaries, 25% for services and supplies, and 33% for postal rates. Note that doubling the number of precincts doubles the cost of some estimates and does not affect others.

<u>Item</u>	<u>Consolidated Precincts 2:1</u>	<u>All Precincts</u>
Salaries and Benefits	\$ 567,600	\$1,135,200
Services and Supplies		
Election Officers	404,000	808,000
Polling Place Rent	79,210	158,420
Booth Delivery, Truck Rental	50,710	101,420
Postage	318,550	318,550
Printing Sample Ballots	87,540	87,540
Publication of Legal Notices	17,000	34,000
Ballot Preparation	134,780	162,000
Supplies	95,750	191,500
Miscellaneous	4,080	8,160
Total, Services and Supplies	\$1,191,620	\$1,869,590
County Department Services (for data processing, election day preparation, and election night operations)		
	<u>363,630</u>	<u>434,400</u>
TOTAL COST, ONE ELECTION	\$2,122,850	\$3,439,190
TOTAL + 15%, ONE ELECTION (for ballots in two languages and adding local ballot issues)		
	\$2,441,280	\$3,955,068
TOTAL, TWO ELECTIONS	\$4,882,560	\$7,910,137

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APPENDIX F

PERSONS INTERVIEWED

Elected Officials - Los Angeles County

Edmund D. Edelman	Supervisor, Third District
Kenneth Hahn	Supervisor, Second District
James A. Hayes	Supervisor, Fourth District
Peter J. Pitchess	Sheriff
Peter F. Schabarum	Supervisor, First District
John K. Van de Kamp	District Attorney
Philip E. Watson	Assessor

Los Angeles County Employees

Richard B. Baird Assistant	Chief Administrative Officer
Charles Campbell	Chief Deputy Registrar-Recorder
Harry L. Hufford	Chief Administrative Officer
Leonard Panish	Registrar-Recorder
Edward Pozorski	Deputy County Counsel
Richard L. Siler	Assistant Chief Deputy, Administration, Department of the Registrar-Recorder
George S. Vertelney	Director, Campaign Reporting Unit, Department of the Registrar-Recorder

Others

John C. Bollens, Ph.D.	Professor, Department of Political Science, University of California at Los Angeles
Margaret Paterson Carr	Foreman, 1975-76 Grand Jury, County of Los Angeles
Si Comar	Foreman Pro-Tem, 1975-76 Grand Jury County of Los Angeles
Deane Dana	-41- Vice Chairman, Los Angeles County Election Commission
Hal J. Flammer	Secretary, 1975-76 Grand Jury, County of Los Angeles
J. Roy Holland	Regional Director - Local Affairs,

California Taxpayers Association

Mel Horton

Executive Vice President, The Property
Owners Tax Association of California

Donald B. Kaufman

Chairman, Los Angeles County Election
Commission

Walter C. Peterson, Jr.

Elections Supervisor, City of Los Angeles

Kurt W. Simon

Chairman, Governmental Operations
Committee, 1975-76 Grand Jury, County of
Los Angeles

State and Local Government Committee, Los Angeles Area Chamber of Commerce,
Willard Z. Carr, Jr., Chairman