

STRONG GOVERNORS AND HIGHER EDUCATION

A Survey and Analysis

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I. Introduction

In the U.S. federal system of government, it is widely recognized that the primary, but not exclusive, role with respect to higher education lies at the state rather than the national level. The 10th Amendment to the Constitution specified that all powers not assigned to the national government nor prohibited to the states were reserved to the states or the people. Since education is nowhere mentioned in the Constitution, it, by definition, has become a matter of primary state jurisdiction. Of course, the federal government, notwithstanding its lack of primary status, has also come to play an important role *vis-à-vis* higher education, but that is a topic for a different paper.

When the first 13 states were still colonies, several already had private colleges within their borders and these institutions (e.g. Harvard, Yale, Princeton, William and Mary, which later became public) were governed by variations of boards of trustees. Later, after independence, some of the states created state universities and it is significant that in doing so, they did not place the institutions under direct state line control, such as that used for highways and prisons. Instead, they turned to the private sector experience with boards of trustees, usually appointed by the governors with staggered terms, to reinforce the notion that there should be an “arms-length” relationship between partisan state power and the governance of public higher education.

The early governors were generally much weaker than the stronger executives we see in many states today. The colonies had just revolted against the tyranny of the British Crown, and they were not anxious to create powerful executives to replace it. Thus, most governors had two-year terms, were not eligible for re-election, and some did not have veto powers. As time passed and states expanded functions to meet emerging needs, often new multi-member commissions were created to respond. While the governors normally had powers of appointment, the staggered terms of members usually prevented the governor from immediate control of the policy area in question.

The huge growth in the federal government to confront conditions associated with the industrial revolution and several wars was paralleled by growth at the state level. Many states created little “Hoover Commissions” to try to streamline the burgeoning dimensions of state government. These commissions often recommended various ways to strengthen the position of the governor: two-year terms became four-year; the bans on re-election were removed; veto powers were extended, in some cases all the way to line-item veto; and the numbers of multi-member citizen commissions were reduced, with some of their functions transferred into direct executive branch control.

Again, it is significant that in these moves to modernize state governments, the states did not move higher education under more direct executive branch control. Instead, the process of lay trustee governance was assumed to reconcile the potentially conflicting demands of both autonomy and accountability. Trustees were supposed both to assure the outside world that the institutions were being competently governed and to protect those institutions from inappropriate external intrusions. However, when public higher education expanded to include

land-grant institutions, then teachers colleges, then community colleges and even in the case of some states, the inclusion of private sector institutions in some forms of state policy or finance, the multiple boards of trustees began to clash with each other in pursuing the interests of the particular institution(s) they governed. Governors and legislators increasingly found that they needed help in sorting out state priorities and the broader public interest. Hence, 48 of the 50 states have sooner or later created some form of statewide board of higher education, usually composed of lay members with staggered terms appointed by the governor.

These state boards are of two major types: coordinating boards or consolidated governing boards. The coordinating boards' responsibilities range from advisory to regulatory. They plan and coordinate higher education, but do not govern it. The governance still occurs with the various lay boards of trustees for the institutions, either as single institutions or multi-campus systems. Consolidated governing boards, in contrast, not only plan and coordinate, but also literally govern the public institutions under their jurisdiction. In all cases this consists of all public four-year institutions, and in some cases, it also includes the two-year public community colleges. But the consolidated governing board, a statewide board, should not be confused with possible multi-campus boards existing under coordinating boards in some states.

There has been something of a polite debate as to whether both types of state boards operate in a "no-man's land" between state government and higher education or whether a given type leans more one direction than another. There is general, though not universal, agreement among scholars of state systems that the consolidated governing board pattern, even while professing a concern to serve the broader public interest, more often than not identifies primarily with its fiduciary responsibilities to govern the public sector institutions under its jurisdiction. Thus, Glenny, Millett and Berdahl all point to this type of board as, understandably, usually seeking first the interests of its institutions. In contrast with this agreement, Millett (1984) has differed from Glenny and Berdahl saying coordinating agencies identify first with state interests. Glenny (1959) and Berdahl (1971) have acknowledged that the confluence of history, state structures, politics and personalities may point to that link in a given state at a given time, but both have argued that the ideal ought to be a coordinating board trying to balance both state and institutional interests, thus not being under direct gubernatorial control.

II This Study

The questions addressed by this study include the two following:

- 1) whether the governor should be given the power to appoint not only the lay members of the state boards, but also the chief executive officer (CEO) of such boards; and
- 2) whether, in addition, state board CEOs, however appointed, should sit either with the governor's cabinet, or some other state government councils that include most senior members of the executive branch agencies.

There are allegedly potential gains in that a governor who has appointed not only some of the lay members of a state board, but also their CEO might be more receptive to accepting advice coming from that board and even more supportive financially. Potential downsides are that the CEO might be caught in conflicting situations if s/he hears one set of orders from the governor and another from a majority of the lay board, not necessarily appointed by the current governor. For the board CEO to sit with the Executive Cabinet or some other senior body could obviously increase the visibility of higher education issues across a wider variety of state perspectives, but it might also further increase the power of the governor and lessen the appearance of the board's theoretical independence.

In our home state of Maryland, which has a coordinating board, the Governor does appoint the CEO (henceforth called SHEEOs, state higher education executive officers) and this person does sit in the Governor's Cabinet as his/her Secretary of Higher Education. Because this is a fairly unique practice (only 3 of the 28 coordinating board states do it; and none of the 20 consolidated governing board states does it), we sought to discover what is allegedly gained and allegedly lost by virtue of such practices. To do this, we grounded the research in a case study of the Maryland scene since the restructuring of the coordinating board in 1988. Thus, we interviewed, off-the-record, about 20 key actors on the Maryland scene, and analyzed their estimates of the gains and losses of the Maryland's strong governor role in higher education. This is presented in Section III below. To obtain a broader set of perspectives on the same issues, we sent out a confidential questionnaire (in Appendix A) to SHEEO officers around the country. We were pleased to receive 32 replies and Section IV below will report on their judgments. A Conclusion will complete the paper, synthesizing the results from Maryland and the SHEEOs.

III The Maryland Scene*

There are some voices in Maryland who, in the face of the above facts, have asked: Why appoint lay members with staggered terms if the majority judgment could be disregarded by the SHEEO who may feel more responsive to the powerful Governor who appointed him/her?

Others, however, have replied that there were distinct advantages in both having the SHEEO appointed by the Governor and sitting with the Governor's Cabinet. Higher education funding in Maryland did quite well over the past ten years, perhaps because the first two governors since 1988 believed their influence was effective deep inside higher education and because the Maryland governor has the strongest budget powers of any governor in the country.

A powerful voice backing a strong Governor's role came earlier from Terry Sanford, former Governor of North Carolina, former President of Duke University and later U.S. Senator from that state. Gov. Sanford in **Storm over the States** (1967) voiced worry that so-called independent boards in areas like education and health were in danger of being "captured" by the

* The information in this section is based on the many confidential interviews undertaken by the author. In nearly all cases, two or more respondents have verified the elements mentioned.

professionals operating in those areas, and that these professionals did not always have the broader public interest in mind when making policy. He believed that the Governor was usually in a better position to define and protect the public interest and noted that “more universities have suffered from political indifference than have ever been upset by political interference” (p.200). In his view a Governor who had more political influence with the independent boards would be more likely to throw financial and policy support to their recommendations.

To return to the Maryland scene in 1988, the Sanford argument certainly seemed to be persuasive over the past decade. Donald Schaefer was a “can-do” Mayor of Baltimore who became a “can-do” Governor of Maryland. He reputedly got things done, and done quickly, by a managerial style that brooked no excuses for delay. Thus, when he heard from shop owners in Ocean City, a beach resort, that they were inconvenienced by their many young college student summer employees having to leave their jobs at the end of August to return to their colleges’ Fall Semester, Governor Schaefer contacted Dr. Sheldon Knorr, SHEEO officer of the State Board for Higher Education, and asked him to get the Maryland public colleges and universities to alter their Fall Semester schedules so as to start later. He was not a happy Governor when told by Sheldon Knorr that neither he, Knorr, nor the State Board had the power to make those changes.

Thus, it was no surprise subsequently to hear that when legislation was passed that merged the six state college system with the five campus university system, the Governor received the power to appoint the SHEEO officer of the newly-created Maryland Commission of Higher Education (MHEC), another coordinating board. True that the lay members of MHEC (now, of course, all appointed by this Governor, albeit with staggered terms later) had the right to conduct a national search and submit a list of three names to the Governor. But the Governor could return the list and ask for a new one, until he got one with a name that he desired. In this case, he was happy with the original list but wanted Hank Butta, a politically-powerful Baltimore businessman appointed to MHEC and serving as Chair of the Search Committee, to tell him, the Governor, which of the three names Butta personally favored. Butta felt that he should not do this, and, as a compromise, each both wrote down his choice and then they revealed to each other later that they favored the same nominee.

The person thus selected was Dr. Shaila Aery, the SHEEO from Missouri, who then joined the Governor’s Cabinet as Secretary of Higher Education. Mr. Butta was subsequently appointed as MHEC Chair and this leadership pair created a powerful agency in Annapolis at the very time that the newly-merged University of Maryland System (now called the University System of Maryland-USM) was undergoing considerable internal turmoil. Dr. Johnny Toll, the President of the former five campus University system, became the first Chancellor of the merged USM. However, Peter O’Malley, appointed as Chair of the new USM Board of Regents, got a hand-picked board from Governor Schaefer and soon persuaded them to remove Dr. Toll for allegedly too much micromanagement of the enlarged system. Then, ironically, O’Malley himself blundered over a higher education issue and felt obligated to resign. This left the newly-formed University System of Maryland with both an Acting Chancellor and a benign, but less politically-powerful, Board of Regents Chair, a configuration obviously tilting the power balance toward MHEC with a Governor-appointed SHEEO and a strong Chair. Millet’s

diagnosis that coordinating boards lean more to state interests than those of the institutions seemed to have been confirmed.

Governor Schaefer had promised that if the merger went through, he would use his strong budget powers to allocate more state tax funds to higher education. This he proceeded to do, and while some institutions complained that, in terms of process, they were being treated with less consideration than under the preceding State Board of Higher Education, their increasing budgets from the state seemed to console them.

Since Governor Schaefer had appointed all the members of the new MHEC, it is not surprising that Dr. Aery later reported no significant issues on which she felt pulled one way by her lay members, and another by her role as Secretary of Higher Education, appointed by the Governor and sitting in his cabinet. In fact, she later indicated that her cabinet membership had permitted her to ask the Governor a serious question when later budget years pointed to a need for state cuts in some areas: "Governor," she is reported to have asked, "which campus(es) do you want to close?" Faced with that possibility from a trusted senior adviser that he himself had appointed, the Governor reduced the cuts.

But if the Schaefer/Aery close relationship resulted in some upsides for Maryland higher education, there were also some downsides: in addition to sporadic institutional discontent about the alleged lack of meaningful consultation, as reported above, a more serious problem emerged when the Governor's second term expired and a new Governor, Parris Glendening, took office. Gov. Glendening, like Schaefer, was a Democrat, but one of a different policy orientation; and as a former University of Maryland, College Park professor, he made explicit commitments to be an "education" governor. Thus, even though at least some existing members of MHEC wanted Shaila Aery to stay on as SHEEO (and only they can legally dismiss her), the new Governor disinvited Dr. Aery from his Cabinet and she got the message and resigned. That raises the larger question whether SHEEOs around the country should feel obligated to resign when new governors come in. Certainly public college presidents do not; and one wonders if SHEEO offices, whether or not appointed by the Governor, are so partisan that they should?

Faced with the desired SHEEO vacancy, the Governor appointed a few new lay members to MHEC and sent word that he wanted Pat Florestano, his former dissertation student at College Park, and later a senior administrator with the University System of Maryland, as one of the names on the MHEC nominations to him. This reportedly generated resentment among at least some members of the search committee, but to their pleasant surprise, Dr. Florestano interviewed so well for the position, showing both an in-depth knowledge of Maryland higher education problems and also an apparent greater willingness to listen more carefully to the institutions, that they did include her name on their list and the Governor then appointed her as SHEEO and Secretary of Higher Education in his Cabinet.

The Glendening/Florestano team also worked closely together, but with this difference: both knew Maryland higher education very well and had strong ideas about it in a way that Gov. Schaefer had not and that Shaila Aery had taken time to learn. This meant, however, that the Governor was even more ready than his predecessor to use the strong powers of the Maryland Governor to pursue his personal objectives in higher education. Since these objectives included supporting substantial increases in state funds for higher education, the

institutions accepted this Governor's leadership, however uneasily, and also commended SHEEO Florestano for allegedly being more willing to listen.

However, since Dr. Florestano, unlike Dr. Aery, faced an MHEC with members appointed by more than one governor, she did later find a few issues where, reportedly, her board pulled her in one direction and her responsibilities to the Governor pulled her in another. The most prominent occurred when Senator Barbara Hoffman (D-Baltimore) introduced a bill to give the higher education sector a guaranteed and gradually increasing share of the annual state budget up to around 15 percent. Since large parts of the state budget were already mandated to other areas (chief among which was K-12 education), this was an effort to lessen the vulnerability of higher education as a prime target of budget reductions in the remaining discretionary areas. Surprisingly, while some elements of the higher education community welcomed this initiative for obvious reasons, we were told that the University System of Maryland leadership hesitated to back it strongly, for fear of offending the Governor. Most of the MHEC board, however, favored it. Not surprisingly, the Governor, advised by his Budget and Fiscal Planning officer, resisted any efforts to lessen his discretion over these remaining areas. Thus, when Dr. Florestano was asked to testify on the bill before a legislative committee, her discomfort was evident to many and after some apparent trepidation, she came out strongly in favor of the bill. As she left the hearing, there was waiting a member of the Governor's staff to inform her that the Governor did not mind if she supported it, particularly since an agreement had been reached to change the binding percentages to "guidelines."

A final issue which emerged during Dr. Florestano's period as SHEEO had to do with legislation which was proposed to implement the recommendations of a Larson Task Force, created in 1998 ten years after the creation of the USM merger, to see how the enlarged system was working and how it related to MHEC. The Commission, composed of prestigious members of the legislature and from higher education, recommended: a) enhanced state funding for USM; b) less regulated USM use of such funds; and c) most relevant for this paper, reduced MHEC powers over USM, with a three year window during which any USM institution could offer any new academic program that was compatible with its role and mission and not costing the state any new funds. MHEC's program review powers were reduced, with less time to make decisions and no power to judge proposed program quality. Although the Governor backed Senate Bill 682, implementing the Larson Report, Dr. Florestano both wrote a dissent as part of the Larson Report and offered testimony opposing those portions that materially weakened MHEC. One doesn't know what transpired between the Governor and the SHEEO during this period, but their disagreement was evident.

During Glendenning's second term, Dr. Florestano resigned as SHEEO and was replaced by Karen Johnson, a lawyer from the Governor's Office who had earlier handled liaison with MHEC. This move from the Governor's Office to SHEEO made even more apparent the strong executive influence over the operations of MHEC. At least two issues surfaced during this time, reflecting the Governor's power. First, although many states provide indirect state aid to private institutions through programs like state student aid, Maryland is one of the seven or eight states that gives direct state appropriations to private institutions deemed "eligible", meaning that they are not pervasively sectarian in violation of the separation of church and state. While Catholic institutions such as Loyola and Notre Dame had been judged qualified, Columbia Union College, a Seventh Day Adventist institution, had been thought too pervasively sectarian to receive state aid. Columbia Union sued MHEC to join the list of

eligible recipients and although MHEC, with counsel from the State Attorney General's Office, prevailed in the Federal District Court, the Circuit Court in Richmond, on appeal, favored Columbia Union's case. It was sent back to the District Court which this time ruled in favor of Columbia Union. An apparent majority of MHEC members approved the Attorney General's draft brief, appealing this ruling, but the word came down from the Governor's Office to drop the suit and MHEC did so. This was reputedly fueled by legal predictions that, although the state's case might have seemed to some as stronger on the merits, the politics of the Circuit Court membership pointed to a failure on appeal. Thus, evidently the Governor believed it better to cut the losses in time and effort. What might have been the MHEC decision if the lay members had chosen their own SHEEO can only be speculated, but we heard some accounts of disappointed members who believed the matter should have been pursued on principle.

Second, when some USM institutions took advantage of the opportunities presented by Senate Bill 682 to offer a variety of new academic programs, some of these from UM, Baltimore County (UMBC) and Towson University aroused opposition from Morgan State University, an Historically Black institution in Baltimore, outside of the USM. MHEC, recognizing its reduced role to approve the programs in question, supported them. By coincidence the federal Office of Civil Rights, which had yet to grant Maryland final approval for its desegregation efforts, held meetings in the state at this time and ruled that some of the new proposed programs did in fact threaten some existing programs at Morgan. In the face of that potential fight, UMBC altered its proposed electrical engineering program into a computer science one, but Towson persisted in an appeal. The OCR Expert Witness, at a MHEC meeting, offered the opinion that Towson's proposed programs did duplicate the existing ones at Morgan and that in the interests of protecting the predominantly black institution, the Towson programs should be opposed. The Governor who had earlier strongly backed the electrical engineering program at UMBC was reportedly uneasy with these various confrontations and with an eye for the power of the several contending factions (including the Black Caucus in the legislature), he urged the SHEEO, Johnson, and MHEC to do everything educationally defensible to accommodate OCR's concerns. It may or may not have been a coincidence that, during this time, the Governor used his power to name the MHEC Chair each year to change from a Caucasian to an African-American Chair. After ruling that Towson could proceed with the particular programs only if it reached agreement with Morgan on offering a joint degree (which has not happened), MHEC engaged in further negotiations with OCR and finally reached a formal agreement for the conditions under which Maryland would be granted full OCR clearance. We heard no evidence that any institutions seriously opposed the OCR agreement, but the Governor's strong pressure seemed to have played an important role in the deliberations and again, the fact that he had appointed the SHEEO seemed to have strengthened his role.

A Governor-supported bill to extend collective bargaining to non-academic staff in Maryland public higher education had a somewhat different process. Here the Governor had received strong backing from the state teachers' union and he was strongly committed to the bill's passage. The higher education institutions on the whole opposed it but evidently not so vigorously that they could get the Maryland Higher Education Commission to reflect their views. Instead, MHEC apparently by-passed the issue, and it became law without either its support or its opposition. One doesn't know whether a Commission whose SHEEO was not chosen by the Governor would have felt in a stronger position to oppose the legislation.

With the election of Robert Ehrlich, Republican, to the Governorship in November 2002, the relationship between the executive office and the SHEEO took on new dimensions. Karen Johnson stayed on briefly, but then resigned. Ehrlich inherited not only a decade or so of increased state support for higher education, but also a state budget, like those in many other states, that was headed for deep deficits. Huge cuts were going to be necessary, absent both legislative approval of the Governor's support for slot machines in the state and new taxes which he, on principle, opposed. Higher education's budget was the most vulnerable in the non-mandated, discretionary sections of the budget, and it took a disproportionately heavy cut. In the meantime, Gov. Ehrlich appointed four new members of MHEC, but held off on naming the new SHEEO (after a false start which had violated requirements for the appointment process), knowing that this officer would face a majority of the Commission named by his predecessors. Thus, the next SHEEO might conceivably face even stronger conflicting pressures between his appointing Governor and a majority of MHEC members not necessarily in sympathy with the Governor's higher education policies.

Governor Ehrlich subsequently appointed first as Interim Secretary of Higher Education, Dr. Cal Burnett, former President of Coppin State. Dr. Burnett was later designated for appointment as full secretary, but this happened too late for Senate confirmation, so his legislative approval will be carried over to the next session. With a majority of his MHEC members appointed by the two Governors before the present incumbent, Dr. Burnett will have to choose his way carefully to serve both his role as the Governor's Secretary of Higher Education and as MHEC's CEO. responsible to a majority of that board.

IV Survey Results from SHEEOs in 31 States

A. Consolidated Governing Board States (16 of 20)

Recall the earlier observation that most major scholars of state systems agreed with Millet's argument that consolidated governing boards tended, more often than not, to identify first with the institutions that they had the responsibility to govern and only secondarily with the so-called broader state interest. It is not surprising then to note that 11 of the 16 boards in this category reported no involvement of the Governor in the selection of their chief executive (SHEEO), while three boards indicated an informal role and two a formal single vote for the Governor as ex officio member of the consolidated board. In no case did the Governor actually appoint the SHEEO. The situation was more mixed, however, regarding SHEEO participation in the Governor's Cabinet. Seven states reported a flat "No"; five states indicated that the patterns were mixed, depending on the current governor; and four SHEEOs noted that they participated not in the Cabinet but rather in some form of broader Executive branch meetings or even retreats.

When asked their opinion of the gains and losses of Gubernatorial appointment of SHEEOs and their membership in the Executive Cabinet, none of the respondents favored switching to gubernatorial appointment, but most did agree on the value of some board contact with Executive branch agencies.

Reflecting the strongest opposition to appointment by the Governor were two widely separated states which each reported much earlier problems with their governors intervening

very crassly in higher education matters to such an extent that regional accrediting agencies in each case withdrew accreditation from the affected institution and ultimately got strong state corrective actions. One such SHEEO observed:

The institution lost its accreditation as a result. Since then, the board has diligently maintained the necessity to do its job without political meddling. I see the two ideas as a step backward into the dangers of political meddling. Good old communication is the key to an understanding, not structure.

The other related state was no more ready for closer involvement with the Governor's office:

I think having the SHEEO beholden to the governor would be a terrible loss in our circumstances. X has a most unfortunate historical incident involving gubernatorial interference with boards and presidents that inspired our current arrangement. I and my counterparts in K-12 and community college system have breakfast monthly with the governor, which seems to work well.

A comment from another state makes explicit the view that when the statewide board is a governing rather than a coordinating one, the relationship with the Governor should lean toward independence:

When the SHEEO role is governance, it is valuable to maintain independence in the formal relationship with the Governor. However, it is almost always beneficial to have an effective working relationship with the Governor, i.e., one of mutual respect and credibility.

A variation on this argument came from another state which stressed that statewide boards that are elected also have a special need:

With an elected governing board, it is probably best that the Chancellor not sit on the Governor's cabinet. Although a positive and cooperative relationship with the Governor is essential for success, the Chancellor would not want the appearance or reality of working "for" the Governor. If one worked for a Board appointed by the Governor, sitting on the Governor's Cabinet would appear to be essential.

From a state where the Governor does appoint the board comes a dissenting opinion:

I think that having gubernatorial consultation but not appointment of the SHEEO is essential if the university is to remain "non-partisan" in an increasingly partisan setting. The SHEEO should not be in the Cabinet for the same reason-- either there is a university governing board (to whom the president is accountable) or not, but the allegiance and reporting authority cannot be effectively split. (The respondent had earlier noted that there was just such a split for the Vo-Tech board in that state.)

A differing point of view comes from another SHEEO who opposes gubernatorial appointment of his office, but welcomes the opportunity for participation in the Cabinet if the Cabinet is a well-used agency:

I would not favor Gubernatorial appointment in a situation where the SHEEO is the line officer for the State Board of Higher Education to the (public) university presidents. There is extreme value in a close relationship with the Governor and the other agency heads. Whether any of that works through the Governor's Cabinet depends on how the Governor uses the Cabinet.

A similar “No/Yes” position comes from a SHEEO who strongly opposes appointment by the Governor but just as strongly favors participation in the Cabinet:

I think having the governor involved in the appointment of SHEEO will lead to a politicization of the role. It may work for the term of a specific governor, but it will lead to changes of the SHEEO with every administration, thus, losing the value of continuity in leadership and program agenda which will work against a policy area that requires multiple efforts over considerable time to implement any kind of change. Sitting in the Cabinet I think is a positive linkage of higher education to the agenda of the rest of state government. Too often higher education is in a separate world--this would help link it. In my perfect world the SHEEO would be appointed independently of the governor but would work closely with the administration as part of team.

Two state SHEEOs spoke of participation in groups broader than the Cabinet:

While I do not sit on the Governor's Cabinet, the Superintendent for Public Education (K-12) and the Commissioner of Higher Education are invited to attend the Governor's Cabinet Council meetings. This is a broader group representing government agencies or quasi-government agencies. The Cabinet Council is one way of keeping informed on issues impacting all of state government.

I do not sit on the Governor's Cabinet. The X is an instrumentality of the state and not a state agency. Because of my background, I was asked by the Governor and agreed to be a member of the Governor's Council of Economic Advisors.

Finally, we end with a thoughtful quote from a SHEEO who has worked in both coordinating board and consolidated governing board states:

I think the Governor should have a significant role in the selection of the chancellor, especially in a coordinating board state. A governing board, maybe even more important with multiple sector boards, should be more tightly linked to their board. However, in any situation, if the chancellor is part of the cabinet, then the Governor should be involved. This reflects the reality of having to work with the Governor and his

staff, as well as with the legislature and institutions.

Having said that, it is necessary that the SHEEO must be able to act independent of the Governor, especially in these tough fiscal times. As you know, this job is a balancing act that cannot be dominated by one of the players interests. That is what makes it so much fun.

The reality is that the local culture and legal structure for governance will determine the formal roles of the parties. What is critical is understanding the informal structure and never underestimating the ability of any of the parties to initiate change in structure or leadership. Not unlike, the demands on presidents of major universities or complex industries.

B. Coordinating Board States (15 of 28)

Here the pattern is somewhat more mixed, as three of the 28 coordinating boards do have their SHEEOs appointed by the Governor (in Colorado and Maryland, by law, and in Arkansas, de facto) and six have their SHEEOs sitting with the Governor's Cabinet, three by statute and three by invitation.

Asked their opinions about the possible gains and losses of having gubernatorial appointment of SHEEOs and of having SHEEOs sitting with the Governor's Cabinet, coordinating board heads mostly (all but three) backed independence from gubernatorial appointment, but favored some form of senior liaison with executive agency heads. Several SHEEOs mentioned sitting in with non-Cabinet executive meetings and all of these supported such contacts as beneficial to higher education.

Replies favorable to appointment by the Governor came, not surprisingly, from the three states where that practice is in place: From Colorado came this observation: "I think it is a positive for higher ed. as we have a very loud voice at the Governor's table as issues are being discussed and solutions crafted."

Also positive was this reply from Arkansas:

Governor Mike Huckabee has been particularly vigilant in his two SHEEO appointments (the first in 1997 of Lu Hardin) of recommending individuals with significant higher education experience, basing those on recommendations from presidents, chancellors and business leaders. So I believe his appointment and Cabinet-level position to be a gain.

Finally, from Maryland where a party change in the occupant of the Governor's Office had just occurred came this more mixed response:

There are pros and cons to Gubernatorial appointment of the SHEEO. Certainly one would expect a higher level of access for a Governor-appointed SHEEO that may not exist if a Board appoints the SHEEO. There is clearly great value in

having the SHEEO sit on the Governor's Cabinet, both in terms of the perception of the position and in terms of access to key information concerning budget, etc. The downside to Gubernatorial appointment is that it can create split allegiances -- being a member of the Governor's Cabinet is a privilege and a responsibility. As long as the SHEEO's board is always in sync with the Governor, then the SHEEO's life is pretty easy. If the SHEEO's board's priorities conflict with the Governor's, then the SHEEO would find it very difficult to manage.

On a more negative note, Maryland's last point was echoed by another state which observed: "It also increases the likelihood that the SHEEO would change every time the Governor changed, which may be detrimental to long-term policy and planning."

A related worry from another state was that gubernatorial appointment might "deprofessionalize" the position:

The disadvantages are more significant and include the potential for greater politicalization of higher education policy by decreasing the independence of the SHEEO to represent and speak on behalf of the higher education community. Having the governor appoint the SHEEO could hinder long-term policy/reform initiatives and make these efforts even more sensitive to election results. Gubernatorial appointment could also deprofessionalize the position.

Yet another concern was voiced from a state where there are evidently periodic budget fights between the executive and legislative branches: "If there's struggle between branches then our budget could be jeopardized (if identified too closely with the executive branch). And personally I like the relative independence I currently have!"

A very mixed verdict came as a confidential reply from another state:

The gains and losses depend on the personality of the Governor and on his/her political strength, and authority. If the Governor is strong, has political and personal credibility, and a major role in the budget process, there are more pluses than minuses in having either Gubernatorial appointment or a seat on the cabinet. If the opposite situation prevails, the minuses outweigh the pluses. Most situations will probably be a mix of these two scenarios at any given point in time. In the majority of cases, I think there are more minuses than pluses in Gubernatorial appointment of the SHEEO and more pluses than minuses in the SHEEO sitting on the cabinet.

Another state reported in favor of SHEEO independence, but recognized that there would be distinct advantages in either gubernatorial appointment or even more pointedly, in participating in Executive Cabinet meetings:

Having the SHEEO appointed by the Governor would politicize what is currently perceived as a position somewhat removed from the ebb and flow of political changes. This makes it easier for the SHEEO to take positions on tough issues

with a focus on students and the public good rather than what is currently viewed as politically popular.

The advantage to having the appointment made by the Governor would be the potential for greater access and support.

Having the SHEEO "sit" on the Governor's Cabinet would be advantageous from the standpoint of perceived influence and access to key government officials. Regardless of any formal relationship between the SHEEO and the Governor, the support of the Governor will enhance the effectiveness of the SHEEO.

In yet another state, the earlier emphasis on the particular characteristics of the current Governor was also stressed:

You could argue either way on this question. The Commission is viewed as a legislative entity, independent of the administration. At the same time, all things being equal it probably would strengthen the role of the Commission if it had direct association with the administration.

It probably would be an advantage for higher education if the SHEEO was a member of our new governor's cabinet, because he has a vision for the state and a sound understanding of the value of higher education in his vision. That was not the case with our previous governor, and in my opinion, higher education would have suffered even more had it been part of that administration.

From another state comes preference for non-appointment by the Governor combined with appreciation of the value of sitting in with the Cabinet:

Being invited to participate as a cabinet member does not require the same responsibility as an agency director who is a cabinet member. I am not appointed by the Governor; therefore, our agency is not obligated to adopt or carry out the Governor's agenda. I am asked to contribute a higher education perspective to the cabinet discussions and to be informed of the Governor's priorities and objectives as they apply to all of state government including higher education. This understanding of my participation avoids concerns regarding the independence of the Board, although the Board is appointed by the Governor and confirmed by the Senate.

A slightly different position was voiced by the SHEEO in another state who, not appointed by the Governor nor sitting with the Cabinet, nevertheless found great value in other top level Executive Branch meetings:

The X Board of Higher Education has worked hard to preserve its independence, recognizing, of course, its obligations to the Office of the Governor. Giving the Board the responsibility for selecting the SHEEO does not suggest total independence since the Governor appoints the majority of the Board's members.

But the history has been that the Board's independence actually serves the Governor since it mirrors his/her statewide focus. As for not being on the Cabinet, communication with members of the Cabinet, particularly the Deputy Governor for Education and Workforce and the Director of the Bureau of the Budget, is ongoing and involves shared service on numerous statewide committees, task forces, etc.

An interesting comment came from another state where the SHEEO called attention away from appointment by the Governor and/or sitting with the Cabinet to point out the crucial importance of the Governor appointing strong lay members of the statewide board:

I prefer the independence of the SHEEO reporting to a separate commission, especially a constitutionally created body. That provides substantial protection from partisan or political pressure, and facilitates objective and impersonal reports. That goes over well with legislators and the campuses. A member of the cabinet is not seen as so objective by those other constituencies.

However, it is valuable to have very influential persons appointed by the Governor to sit on the Commission, so that effective communications in both directions is ensured. Strong non-partisan members greatly influence legislation and budgets.

One of the more thoughtful replies came from yet another SHEEO:

It remains my opinion as a SHEEO not appointed by the Governor that this is in the best long-term interests for higher education, provided that at the start there is not open animosity to the higher education commissioner by the Governor and his staff and/or the legislature, since both branches of government must be willing to hear higher education issues. The more difficult question in my state is whether the chair of our coordinating board should be appointed by the Governor, as is the chair of the K-12 board. At present that distance is the one in greater question.

Generally, appointment by the governor is by its nature time-limited and may result in the appointment of an individual without the qualifications of education and/or experience to gain the support of the academic community and to act both expeditiously and knowledgeably on pending higher education issues. Conversely, of course, the sheer political clout of being the Governor's person cannot be discounted, especially in perceived power. It is the case, however, that the direct appointment may have to maintain a governor's position that is contrary to his own and may have less negotiating room when it comes to legislative review of budgets and bills. From the vantage point of my state, I do believe that being a member of the Governor's leadership groups - however they are labeled - can be advantageous in fostering alliances and keeping the information flow strong. There are, of course, some junctures where the opportunity to reference an issue or a decision back to the higher education oversight board is a useful distancing tool.

Overall, I suspect that all SHEEO's fantasize about the state where the Governor and the governor's chosen SHEEO are in sync and act upon a common agenda, though lately it appears that such circumstances where they have existed are not lasting long enough to get the agenda done.

Finally, one SHEEO voiced the strongest objection to any structural relationships that might compromise the alleged independence of the higher education system:

I do not sit with the governor's cabinet. It is important that to the extent possible a public higher education system such as this (and the many across the country) maintain some independence from the administration. The ceo for a public college/university system should never be viewed as partisan in any way - we serve all the students, all the citizens. State government cannot help but be in that position, but it is up to our governing boards and visionary governors to protect the public higher education systems from being perceived as being engaged in political endeavor.

V. CONCLUSION

With this recital of many SHEEO views, it should be obvious that all of the consolidated board leaders and the great majority of coordinating board leaders do not wish to be appointed by the Governor. Comments from a few states and the Maryland case study of gubernatorial appointment do point to some important gains from a stronger Governor's role. However, most observations and the Maryland case study (as it is now poised for the first real conflict of interest for the SHEEO serving both as Secretary of Higher Education in the Governor's Cabinet, appointed by that Governor, and as CEO of the coordinating board, a majority of whose members were appointed by earlier governors of a different political party) also reveal some very important downsides. Among the several downsides already cited, one might note again the particular problem for SHEEOs and their boards in states where the Executive and Legislative branches are controlled by different parties (or even with strong personality conflicts within the same party). On balance, then, this paper suggests that much more may be lost than gained by having the governor appoint the SHEEO.

In contrast to this general opposition to gubernatorial appointment of the SHEEO, opinions from both consolidated board and coordinating board states expressed belief in the value of non-gubernatorially-appointed SHEEOs nonetheless participating either in the Governor's Cabinet or in some wider executive branch meetings of leaders. That way, it seemed to be suggested, higher education leadership could put higher education concerns in the realistic context of wider state social, economic and political issues, and could even speak up and be heard, providing the current Governor was not overtly hostile to the higher education agenda. Thus, this paper concludes that more may be gained than lost by virtue of SHEEO participation in some form of Executive Branch senior meetings.

Returning now to the earlier-mentioned debate about whether such statewide boards were truly "in the middle" or rather leaned either to the state or the institutional side in policy

issues (see page 3), the vast preponderance of the evidence from the consolidated board states confirmed Millett's argument that these boards relate primarily (but not exclusively) to the institutional side, since they take very seriously their responsibility to literally govern the institutions under their jurisdiction. Of course, both SHEEOs and lay members of such boards also are concerned with the broader public interest, but it is clear from both Millett's writings and from the testimony cited above from such states, that their first instinct in most consolidated board states is to protect and nurture those institutions. There is absolutely nothing wrong with that, provided both that that fact of life is recognized and accepted and that the SHEEO must obviously be chosen by his/her board, with perhaps some informal gubernatorial consultation along the way. However, this points to a stronger state role, for either the Governor or the relevant legislative committees, or both, to monitor that the consolidated governing board and its self-chosen SHEEO actually do undertake policies that are good not only for their institutions, but also for the broader state public interest.

There is no similar clear verdict, however, when it comes to the issue of whether coordinating boards lean one way or the other, or somehow manage to appear "in the middle." Millett, it is remembered, argued that such boards should be viewed as "arms of the state" while Glenny and Berdahl have urged that such boards ought not to appear "captured" by either side. One thinks of the amusing quote from Lord Wolfenden, then Chair of the now-defunct University Grants Committee in Britain. Before its termination by Mrs. Thatcher in 1989, it was a coordinating board for British higher education (in American terms). Lord Wolfenden was quoted as saying that the UGC operated on "a principle of equal and opposite unpopularity." This meant, of course, that the Government regarded the UGC as a special advocate for the needs of higher education in Britain, while the universities regarded it as an agent of accountability to the state. If both sides recognize this state of affairs, the body in question may be doing its job properly!

Coordinating boards do not have the "governance connection" to bias them toward the institutions. But in contrast, they fall too much under the shadow of serving as "hit man" for the state, they will, sooner or later, lose the confidence of the institutions that they are also protecting institutional integrity. As irritating as it must be for non-higher education people to hear, one cannot reform these institutions "against their will." There are two strong reasons for this fact of life. First, in higher education more than nearly any other type of domain with the exception of artistic and religious activities, it is impossible to coerce obedience to goals whose legitimacy is not recognized and accepted (if not supported) by the grass roots practitioners. Burton Clark has noted what a "flat hierarchy" exists in higher education, where "superiors" do not give orders to "subordinates." Efforts to improve the efficiency, effectiveness and accountability of higher education in coordinating board states, then, will have a greater chance to be successful if that board is not perceived as just another arm of the state.

Second, there is a concept, now nearly two centuries old, called "academic freedom" which any sane society will lean over backwards to protect. Admittedly, it is the source of some foolishness, but also it also shelters today's mavericks some of whom become tomorrow's prophets. Coordinating boards do not normally get involved in academic freedom matters. However, if they are seen as parts of an ever-strengthening state Executive role which might threaten not only legitimate institutional autonomy in some matters, but also, directly or indirectly, academic freedom, then, predictably, uneasy institutions will lose confidence in such boards as "intermediaries" and perhaps decline to participate seriously in the board's and other

state policies in higher education. The institutions will then change to a minimum compliance mode that will defeat the best efforts of reform.

In an old book (Berdahl,1971,p.266) this dilemma was described:

. . . persons in higher education (will) have to face the fact that their choice is not between having a stronger coordinating agency or retaining the status quo (much less returning to a *laissez-faire* situation); it is between having a stronger coordinating board or being ingested into the executive branch of government.

The steady growth in state executive power described earlier illustrates that this issue is not only still around, but has grown more crucial. As much as one may admire the stronger governors around the country, to the extent that such strength has come at the expense of the semi-independence of the institutions of higher education and the reputations for “equal and opposite unpopularity” for state boards which try to ensure the development of higher education in the broad public interest, it will cause a long term threat to the vitality and quality that has made the American system of higher education the envy of the world.

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Washington D.C: American Council on Education.

Glenny, Lyman (1959) **Autonomy of Public Colleges.** New York: McGraw-Hill.

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Post Script: Things I Would Have Done Differently in this Study

With the wisdom of hindsight, I now see that there were at least two serious omissions from this study. First, I should also have inquired in each state whether the Governor appointed the Chair of the state board, regardless of whether or not the SHEEO was gubernatorially-appointed. In Maryland the Governor does appoint the Chair once a year, and this obviously adds strength to the other role in naming the SHEEO. A second omission was my failure to inquire about any possible parallels in each state with the appointment process for the chief executive officer of the state school system. Again, in Maryland, there is an interesting contrast which ought to have been more deeply explored. While the Governor does not appoint the State Superintendent of Public Instruction, this officer sits with the Governor’s Cabinet and I’m told that at times in the past, this led to some serious disagreements between the two officers, with the Superintendent “disinvited” by one Governor from later Cabinet meetings. Whether this split between a Strong Governor and an independent State Superintendent led to outcomes to the state’s K-12 system that were ultimately harmful, beneficial, or, more probably, some of both, must remain unanswered here.

Appendix A:

1. In your state does the Governor play any role, formal or informal, in the appointment of the SHEEO? If there is a role, please describe it.
2. However appointed, does the SHEEO sit with the Governor's Cabinet? If so, is the practice based on statute or only on invitation?
3. Labeling your reply confidential or not, what is YOUR opinion of the gains and losses of having either Gubernatorial appointment of the SHEEO or of the SHEEO sitting with the Governor's Cabinet?