



Committee of **Seventy**

Clean and effective government. Fair elections. Informed citizens.

# ***NEEDLESS JOBS***

*Why Six Elected City Positions Should Die*

*March 16, 2009*

Roadmap to Reform

Second in a series

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## **GOVERNMENT REFORM AND THE COMMITTEE OF SEVENTY**

This report was produced by the Committee of Seventy, which has been fighting for better government and fair elections in Philadelphia for more than a century.

It is the second report in a series, “Roadmap to Reform.” The first, published in January 2009, offered solutions to unaddressed ethics problems and ideas for strengthening the city’s campaign finance law.

Ethics reform and citizen participation have occupied the Committee of Seventy for the last several years, but the current financial crisis has prompted us to move government effectiveness higher on our agenda. The taxpayer dollars dealt with in this report are not monumental, but we hope we can prompt innovation on a larger scale and advance the belief that government here can be remade despite severe political obstacles.

The non-profit Committee of Seventy is aggressively non-partisan. Its work is overseen by a 50-member Board of Directors and a smaller Executive Committee. Its funding comes largely from foundations and from the business and legal communities. Daniel K. Fitzpatrick, President & CEO, Citizens Bank, Eastern PA/NJ/DE, is Chairman of the Board. Zachary Stalberg is President & CEO.

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## OVERVIEW

The global economic crisis is forcing the City of Philadelphia to make some of the toughest choices in its history.

We can simply tax and cut, or we can take real advantage of the unprecedented opportunity to remake city government. To improve customer service. To professionalize operations. To streamline functions. To implement efficiencies. To save money. To increase revenues. To diminish patronage, nepotism and cronyism. To make government make more sense to citizens.

Mayor Nutter made this point several weeks ago. “What I’m talking about,” he said, “is looking at a complete restructuring and reform of our entire city government ... When you have to make these kinds of tough decisions, you have to be in a position to evaluate everything in front of you.”<sup>1</sup>

The mayor was talking about the possibility of eliminating a set of obscure elected offices. After an intensive look at this issue, the Committee of Seventy concludes that this would be financially beneficial and – perhaps even more importantly – a major symbolic step in the remaking of City Hall.

The citizens of Philadelphia seem to agree on the need to seriously consider all ideas – of which the Committee of Seventy would include the abolition of six barely-understood elected positions that date back a century and a half or more and are known to political insiders as “the row offices.”

Over the last several weeks, at forums held throughout the city, residents shared their views on how to close the budget gap. A number of recurring themes emerged, among them a desire

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<sup>1</sup> Bob Warner, Chris Brennan and Catherine Lucey, *Nutter eyes charter change to make row office cuts*, Philadelphia Daily News, December 10, 2008.

to eliminate redundancies in the provision of city services, consolidate services to reduce costs and improve the delivery of those services.<sup>2</sup>

**In this report, the Committee of Seventy examines and recommends elimination of the Clerk of Quarter Sessions, the City Commissioners, the Sheriff and the Register of Wills as independently elected offices and the transfer of all *necessary* tasks from those offices to governmental entities that can handle them efficiently and professionally.**

A number of factors drive our recommendations:

**COST, REVENUE AND OPPORTUNITIES:** Allegheny County’s experience in eliminating unnecessary elected offices in 2005 confirms that cost savings, operating efficiencies and better customer service can result from consolidating services. (See Section 2 for more background on Allegheny County, which has 130 municipalities, including Pittsburgh.)

In Philadelphia, the combined cost of the annual budgets of the four offices run by the six “row officers” is approximately \$36 million. Some of the functions and costs would simply be shifted and would yield no savings, of course. *But eliminating the positions of the elected officials who run these offices saves money in itself and presents a rare opportunity to objectively assess and reduce other expenses.*

If implemented promptly, merely doing away with the salary and benefits of the six elected officials, and the cost of electing them, could save as much as \$5 million over the life of the City’s next five-year plan. That does not include cars, office space, equipment and the many additional costs associated with operating four independent offices.

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<sup>2</sup> Penn Project for Civic Engagement, *The City Budget: Tight Times, Tough Choices, A Report to the Community, the Mayor and His Cabinet*, 10, March 2, 2009, available at [http://www.gse.upenn.edu/pdf/TTTC\\_Report.pdf](http://www.gse.upenn.edu/pdf/TTTC_Report.pdf).

Some of these offices have revenue-producing and revenue-collecting functions as well. The city could benefit from the opportunity to take a fresh look at these revenue sources and to find currently untapped ways to increase revenue from them.

One example was presented earlier this month when Mayor Nutter held a joint press conference with the Sheriff's Office to announce stepped-up efforts to collect outstanding revenue by putting sheriff's sale signs on the doors of tax delinquents. How many more such revenue opportunities exist in these offices?

We look forward to the in-depth financial analysis of how the four offices are spending tax dollars, and how much would be saved by their consolidation, that is now being undertaken by the Pennsylvania Intergovernmental Cooperation Authority (PICA).

**NO CASE FOR INDEPENDENCE:** Unlike the District Attorney and the City Controller, whose jobs can involve sensitive investigations of city officials and departments, we have found no compelling reasons for any of the four offices to remain elected.

Only Register of Wills Ronald R. Donatucci attempted to make a real case for independence. He told the Committee of Seventy his independence is required because he performs a judicial function by hearing testimony on challenges to wills and resolving disputes among heirs.

However, the City's Civil Service Commission also serves a judicial function by conducting fact-finding hearings on employee appeals and issuing formal written decisions on factual and legal conclusions. The three Civil Service Commissioners are not elected. They are appointed by the Mayor.

**BEST PRACTICES:** Our research of "best practices" around the country and the experience in Allegheny County and Pittsburgh illustrates that there is no inherent advantage to electing the individuals who perform the services now provided by the Clerk of Quarter Sessions, City Commissioners, Sheriff and Register of Wills. Those functions can be, and sometimes are, folded into other, non-elected, departments of local government or within the court system.

We do not suggest eliminating the functions of the four offices. While we offer some ideas for transferring those functions, the optimal solutions will require far more study.

But we believe the key tasks performed by these offices can be smartly reassigned without eating up the dollar savings attached to eliminating the cost of the six elected officeholders.

For instance, the functions of the Clerk of Quarter Sessions and most functions of the Register of Wills can be transferred to the local court system. The Sheriff's duties can be split between the courts and the Police Department, with sheriff's sales shifting to the City's Finance department as in New York City. The responsibility for running elections can be moved from partisan City Commissioners to a professional administrator with experience in managing and supervising local government elections. (For more information, see Sections 3 to 6.)

Even before the economic crisis hit with full fury, Philadelphians demonstrated a desire to consolidate governance functions in order to improve the city's ability to deliver services more effectively, streamline operations and maximize efficiencies. In November 2008, 72% of the voters approved merging the operations of the Fairmount Park Commission with the city's Department of Recreation in order to help simplify government and make the city's CEO – the mayor – clearly accountable.

**FAVORITISM:** Restructuring the four elective offices would diminish patronage and nepotism. At best, hiring relatives or political friends inevitably creates a perception that relationships trump qualifications.

The Committee of Seventy heard many positive comments about the customer-friendly service and prompt turn-around provided by the office of the Register of Wills. That said, the entire staff of that office falls outside of the City's merit-based civil service system and is filled with ward leaders and committeepople. Unlike other City employees, none of these employees are subject to Section 10-107 of the Home Rule Charter, which imposes tight restrictions on political activities.

We are equally troubled by the fact that immediate family members of the Clerk of Quarter Sessions, Chairperson of the City Commissioners and the Sheriff are employed by their parents. *Two are in the second-ranking position in their respective offices.* The only message this sends is a bad one.

**ACCOUNTABILITY AND TRANSPARENCY:** Despite Philadelphia's so-called "strong mayor" form of government, the mayor has virtually no authority over any of the offices that are covered in this report. City Council has only a bit more authority because of its responsibility for approving the budgets of the four offices.

These offices are free to operate with a bad combination of autonomy and anonymity. Bringing them within the tent of city government will increase accountability and transparency. Obviously, mayoral responsibility is no guarantee of proper behavior by a city employee, but at least it is clear where the buck stops.

**THE VALUE OF ANONYMITY:** The relative anonymity of the four offices carries over to the officeholders. City Commissioner Chairperson Marge Tartaglione has some name recognition, primarily because of her colorfulness and legendary prowess as the Democratic leader of the 62<sup>nd</sup> Ward. However, the other five elected officials are relatively invisible to most voters – even though they regularly appear on the ballot.

The fact that voters don't know who these elected officials are, what their offices do or whether they work full-time virtually guarantees the election of whomever the ruling party chooses to put forward. For more than a half century, that has meant Democratic City Committee.

**THE TIMING IS RIGHT:** Eliminating these positions is made easier by the fact that four of the six elected officials have plans to leave government. Clerk of Quarter Sessions Vivian T. Miller, City Commissioner Tartaglione, Sheriff John D. Green and Register of Wills Donatucci are enrolled in the City's Deferred Retirement Option Program (DROP). This means they should retire before the next scheduled term begins in January 2012.

While we do not believe that elected officials should be allowed to participate in DROP in the first place, once enrolled, the voters and the Committee of Seventy expect them to honor this commitment.

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It will not be easy to rid our government of these official relics – and not just because of the inevitable political pressure to maintain the status quo.

The Committee of Seventy recommends a phased elimination of the four elective offices. Different legal steps are required – ranging from enacting a City Council ordinance (Clerk of Quarter Sessions), amending the Philadelphia Home Rule Charter (City Commissioners and the Sheriff). Eliminating the Register of Wills seems to require passing legislation in the Pennsylvania General Assembly, although even the City’s Law Department is not clear about this procedure.

Furthermore, it would be a disservice to the elected officials themselves and to their employees to paint all with one brush – as presenting them as a “package” would inevitably do in the eyes of the public. There are major differences among the offices, each of which has a bearing on a decision on the timing of, and urgency for, the restructuring.

For example, the performance of the Office of the Clerk of Quarter Sessions has been repeatedly criticized by the Pennsylvania Auditor General, the Philadelphia City Controller and, most recently, the President Judge of the Philadelphia Court of Common Pleas. Because the Clerk’s Office can be changed by simple City Council action, and because all but three of its employees are already chosen by a merit-based civil service process, we recommend eliminating this office as a first step.

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The recommendations contained in this report were arrived at after significant research on the history and functions of these four offices and an analysis of how their respective

responsibilities are handled in other cities. The work began before Mayor Nutter publicly raised the issue in December 2008.

We also sought meetings, more than once, with the elected officials who head the four offices to hear their views on the value of retaining their independent elected office. We are grateful that Register of Wills Donatucci and Clerk of Quarter Sessions Miller readily agreed to talk to us. We regret that Sheriff Green and City Commissioners Tartaglione, Anthony Clark and Joseph J. Duda would not.

We also made formal requests for the names of the employees and their affiliations (such as family ties and political connections), budget details and efforts to save taxpayer dollars and to downsize their staffs.

We received no response from Sheriff Green or Commissioners Tartaglione, Clark and Duda. Despite the fact that many employees in the Register of Wills' office hold positions in the Democratic Party, a representative of the office told us that they don't ask their employees' political affiliations. The response from the Clerk of Quarter Sessions' office was that they were not obligated to provide any information (beyond our interview with Clerk of Quarter Sessions Miller and her daughter, First Deputy Robin T. Jones).

Even the Pennsylvania Intergovernmental Cooperation Authority (PICA) – the official body responsible for protecting the interests of state and city taxpayers – has been refused some of the same information.

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The individuals who hold the six elected offices are long-time public servants. With the exception of City Commissioner Clark, who was elected in 2007, the other five elected officials have held their positions for a total of 118 years. City Commissioner Tartaglione has served the longest, having first been elected with Mayor Frank Rizzo in 1975.

Their names have not surfaced in ethical scandals that have brought down other government officials. And, while opinions differ significantly about the quality of their performance in office, we do not question their dedication. However, this does not mean that electing individuals to these positions continues to make sense.

There will be far costlier items in the next city budget than the four offices discussed in this report. But public trust in government is never more important than it is during a crisis, and the independent functioning of these offices does little to build public trust.

When the city and county were consolidated almost sixty years ago, these four remnants of county government were inexplicably retained. But there was no crisis then.

With a crisis weighing heavily on us all today, the Committee of Seventy calls upon Mayor Nutter and City Council to put political and personal relationships aside and begin to take action on these recommendations.

## THE ALLEGHENY COUNTY EXPERIENCE

In 2005, Allegheny County voters (including residents of Pittsburgh, its largest city) eliminated six elected offices and turned them into appointive positions. While our recommendations are different – we do not want to simply convert the positions to appointed posts – it still makes sense to take a close look at Allegheny County’s experience.

County officials estimate savings of more than \$1 million each year since the elimination of several so-called “row offices”<sup>3</sup> – the Coroner, Clerk of Courts, Prothonotary, Register of Wills, Recorder of Deeds, and Jury Commissioners.<sup>4</sup> The cost benefits are largely attributable to eliminating duplicate positions, since the functions of these six officers were consolidated within three new City offices.

The reorganization has clearly improved efficiency and transparency, since employees are covered by Allegheny County’s ethics and merit protection systems. In addition, the offices are incorporated in the county’s government-wide human resources, information technology, payroll, and purchasing systems. This means they are subject to uniform policies on work hours, vacation, and sick leave.

Like other City government offices, the newly created offices are served by the county-wide Law Department for legal advice and services. Under the old “elected row office” system, each individual office had its own solicitor. Consolidating the various court and real estate related records offices also centralizes public access and makes uniform all fee schedules and policies.<sup>5</sup>

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<sup>3</sup> “These separately elected offices are commonly known as ‘row offices’ due to their appearance in a row on organizational charts or election ballots and the relative autonomy of each office from the central board.” Christina Crayton, *Elected or Appointed County Officials?*, National Association of Counties, Jan. 4, 2004, available at <http://www.naco.org/ContentManagement/ContentDisplay.cfm?ContentID=11773>.

<sup>4</sup> Allegheny County News Release, *Onorato Presents 2009 Comprehensive Fiscal Plan*, Oct. 7, 2008, available at <http://www.county.allegheny.pa.us/news/2008/281007a.asp>.

<sup>5</sup> Allegheny County Controller Mark Patrick Flaherty, *Row Office Restructuring Plan*, available at <http://www.alleghenycounty.us/control/Restructure0504.pdf>.

It is helpful to learn lessons in efficiency and cost-savings from these reforms, and it is even more useful to understand that the more extensive restructuring we recommend would result in even greater improvements in those areas.

Allegheny County was a trailblazer. Their experience shows that it is not only legally possible to eliminate elected offices, but that there are real administrative and financial benefits in doing so. By all accounts, although it is still early, the transition appears to have been successful.

In fact, Allegheny County had much further to go than Philadelphia. By the turn of the 21st Century, the county had perhaps the most fragmented government structure of any similar county in the country, with hundreds of municipalities and special districts, more than three dozen school districts, and a profusion of independent elected officers.<sup>6</sup> When city and county officials began studying consolidating and streamlining their operations in the late 1990s, they were faced with 10 separate row offices, employing around 1,000 people. All of them were completely outside existing civil service regulations and ethics ordinances.<sup>7</sup>

A study in 2000 by the Allegheny Institute for Public Policy looked at 17 similar urbanized counties across the country and found that Allegheny had more elective row offices than any of these communities, sometimes by a factor of two, three, or even four. The study also found that the county was among the worst in leaving these offices completely untouched by any ethics regulations or merit system for hiring and employee relations. There was powerful evidence that these offices were hotbeds of patronage jobs. A survey of 791 row office employees found that 93 percent were registered Democrats even though the county-wide voter registration data found that 28 percent were Republicans. The chance of such a statistical imbalance happening by chance was "close to zero," the report concluded.<sup>8</sup> An investigation by a local newspaper in 2000 found that about 14 percent of row office

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<sup>6</sup> Rae W. Archibald and Sally Sleeper, *Government Consolidation and Economic Development in Allegheny County and the City of Pittsburgh*, the RAND Corporation, 2008. Sponsored by the Citizens Advisory Committee on the Efficiency and Effectiveness of City-County Government.

<sup>7</sup> Jake Haulk and Eric Montarti, *Row Office Professionalism and Accountability: A Comparative Study*, The Allegheny Institute for Public Policy, Report #00-09, Oct. 2000.

<sup>8</sup> *Id.*

employees were either Democratic committee members or were closely related to powerful Democratic officials.<sup>9</sup>

In 2005, in a popular referendum, Allegheny County voters approved the elimination of six elective row officers: Coroner, Clerk of Courts, Prothonotary, Register of Wills, Recorder of Deeds, and Jury Commissioners. The Clerk, Prothonotary, Jury Commissioners, and Register of Wills were combined into one appointive office, headed by a Director of Court Records named by the County Executive. The Coroner was replaced by an appointed Medical Examiner. The elected Recorder of Deeds was replaced by an appointed Real Estate Manager.<sup>10</sup>

The measure left in place the elective status of several other "row offices:" the District Attorney, Sheriff, Controller, and Treasurer.

Recently, however, there has been talk of eliminating the county Sheriff and Treasurer.<sup>11</sup>

The Sheriff's office has been under particular pressure since the 2005 referendum, with auditors criticizing its "archaic" accounting system that has made it difficult to track money handled by that office. A 2006 audit by the county Controller found a lack of internal controls, poor record keeping, and systematic overcharging of fees, amounting to about \$2.5 million over three years.<sup>12</sup> Also in 2006, former Sheriff Pete DeFazio pleaded guilty to federal charges that he had forced subordinates to make campaign contributions in return for promotions. According to prosecutors, employees who refused were punished with bad assignments or denied time off. DeFazio, who had been Sheriff for a decade, was sentenced to five years of probation and fined \$5,000.<sup>13</sup>

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<sup>9</sup> Jeffrey Cohan and Mark Belko, *Row Offices Employing Many Pals*, Pittsburgh Post-Gazette, June 18, 2000, available at <http://www.post-gazette.com/regionstate/20000618rowoverview1.asp>.

<sup>10</sup> Since the incumbent officials were allowed to finish out their terms, the changes became effective in January 2008.

<sup>11</sup> Jerome L. Sherman, *Six Elected Row Offices Become 3 Appointed*, Pittsburgh Post-Gazette, May 18, 2005, available at <http://www.post-gazette.com/pg/05138/506358-180.stm>.

<sup>12</sup> Jerome L. Sherman, *Allegheny County sheriff's Sale Records are Chaotic, Audit Shows*, Pittsburgh Post-Gazette, June 16, 2006, available at <http://www.post-gazette.com/pg/06167/698740-85.stm>.

<sup>13</sup> WXPI-TV, *Former Allegheny Co. Sheriff Sentenced To Probation, Fine*, Feb. 23, 2007, available at <http://www.wpxi.com/news/11095408/detail.html>.

An effort to convert the elective Sheriff's office to an appointive position stalled in 2007, when a judge blocked a referendum, saying that the county needed to wait five years after the 2005 referendum to make more changes to the Home Rule Charter.<sup>14</sup>

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<sup>14</sup> Ann Belser, *Judge Blocks Referendum on Appointed Allegheny County Sheriff*, Pittsburgh Post-Gazette, Mar. 29, 2007, available at <http://www.post-gazette.com/pg/07088/773323-85.stm>.

## THE CLERK OF QUARTER SESSIONS

**Recommendation: City Council should pass an ordinance eliminating the elective position of Clerk of Quarter Sessions and making the office a part of the administration of the Court of Common Pleas.**

The name "Clerk of Quarter Sessions" is a baffling anachronism. We suspect that only a handful of city voters have the vaguest idea what the Clerk does, what part of City government the office belongs to, much less who the Clerk is. Too bad William Penn isn't around to tell us. The office was created back in his time.

The Clerk's primary job is to keep records and provide administrative support for the Court of Common Pleas, Pennsylvania's court of general trial jurisdiction. But we see no compelling reason for this elective office. Clerk Miller was kind enough to meet with us. But, when pressed, she could not explain why her office needed to be independent.

The Clerk's office has been a source of considerable controversy. State and local auditors have consistently found sloppy administrative and financial procedures. In the last few months, the President Judge of the Court of Common Pleas has publicly criticized the Clerk for serious financial problems.

Even if the performance of the Clerk's office were not chronically poor, we strongly believe that *this City* does not need an independently *elected* Clerk or the \$550,000 minimum salary the Clerk would earn over the five year budget plan, plus benefits and other perks currently attached to this position. Additional savings would be realized without a separate office to maintain, as well as all of its ancillary expenses.

The adjunct court services currently carried out by the Clerk belong in the court system, as they are in virtually every other city we looked at.

Moving the Clerk's functions within the tent of the court system has potential financial benefits. Enormous savings will result when the Commonwealth finally complies with the Pennsylvania Supreme Court's 1987 ruling<sup>15</sup> that the state is constitutionally responsible for funding the entire unified judicial system, the biggest chunk of which is the First Judicial District. The County Commissioners of Pennsylvania are taking legal steps to get the state's highest court to enforce compliance.<sup>16</sup>

This is a good time to eliminate the office. As we mentioned, Clerk Miller is enrolled in DROP and should retire before the next scheduled term begins in January 2012.

Eliminating the elected Clerk's position is not difficult since all it takes is City Council to enact legislation.<sup>17</sup>

## **PROFILE OF THE OFFICE**

### **What does the Clerk Do?**

The earliest Clerks of Quarter Sessions had broad county governmental functions. But most of those duties disappeared in the 19th and 20th centuries.

Today, the Clerk of Quarter Sessions is the Clerk of the merged Municipal Courts, Courts of Common Pleas, and the Juvenile Division of the Family Court. The Clerk has slightly different responsibilities to each court, but generally performs the following key functions:<sup>18</sup>

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<sup>15</sup> County of Allegheny v. Commonwealth of Pennsylvania, 517 PA 65 (1987).

<sup>16</sup> Amaris Elliott-Engel, *Nutter Wants Harrisburg to Pay for FJD*, The Legal Intelligencer, December 22, 2008. The Report on the Mayor's 2009 community forums on the budget found "enormous support" for a campaign to get the state to pay for the local courts. Penn Project for Civic Engagement, *The City Budget: Tight Times, Tough Choices, A Report to the Community, the Mayor and His Cabinet*, 10, March 2, 2009, available at [http://www.gse.upenn.edu/pdf/TTTC\\_Report.pdf](http://www.gse.upenn.edu/pdf/TTTC_Report.pdf).

<sup>17</sup> 53 P.S. § 13132(a)-(b).

<sup>18</sup> Philadelphia Clerk of Quarter Sessions website, <http://www.phila.gov/quartersessions/>

- Recording, indexing and filing bills of information and transcripts of Municipal Court;
- Maintaining dockets and recording decisions of the courts on bills of information or criminal transcripts;
- Taking bail imposed by judges;<sup>19</sup>
- Entering orders for judgments upon bail forfeitures;
- Issuing bench warrants, and commitments or discharges for defendants;
- Collecting fines and costs imposed by the courts;
- Staffing courtrooms;
- Handling matters relative to court case files in the Juvenile Division of Family Court.

### **Who Works in the Clerk's Office?**

The Clerk is elected every four years, on the same schedule as the mayoral elections. Clerk Miller has been in office since 1991. Her salary, the limits of which are dictated by the Philadelphia Code,<sup>20</sup> is currently \$110,498.<sup>21</sup>

Since the Clerk's office is almost entirely comprised of merit-based civil service employees (111 of the 114 employees), the nepotism was obvious. The First Deputy is Clerk Miller's daughter, Robin T. Jones, who earns \$72,800. There are few practices as disillusioning to the public as when an elected official gives the most important job in the office to a close family member.

With the exception of the Clerk and First and Second Deputies, all of the remaining 111 employees in the Clerk's office are hired under the city's civil service system.<sup>22</sup>

The office has a budget of just over \$5 million.<sup>23</sup> It handles approximately \$90 million per year in payments for court-imposed fines, costs, and bail.<sup>24</sup> However, as will be discussed in

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<sup>19</sup> This is the controversy discussed later in this section with the unified state receipts system. The Clerk maintains that she still holds this power; the President Judge disagrees.

<sup>20</sup> See Phila. Code §§ 20-305(4), 20-308(3).

<sup>21</sup> Phila. FY09 Approved Operating Budget.

<sup>22</sup> City of Philadelphia, Office of Human Resources, March 13, 2009.

<sup>23</sup> Phila. FY09 Approved Operating Budget.

<sup>24</sup> City Controller Alan Butkovitz, *Clerk of Quarter Sessions Auditor's Report, Fiscal 2006 and 2005*, March 31, 2008, available at [http://www.philadelphiacontroller.org/publications/audits/01\\_64\\_062608\\_Clerk\\_qt\\_sessions\\_16405.pdf](http://www.philadelphiacontroller.org/publications/audits/01_64_062608_Clerk_qt_sessions_16405.pdf).

the following section, the future of this responsibility is in doubt as the Clerk and the President Judge fight over which office should handle these payments.<sup>25</sup>

### **How has the Clerk Performed?**

The arrival of a new statewide Common Pleas Criminal Case Management System (CPCMS) in 2006 altered some of the duties of the Clerk's office, since it centralized accounting for handling payments that had formerly been divided between the Clerk's office and the First Judicial District. The two agencies entered into a complicated memorandum of understanding in 2007 to ensure smooth cooperation in administering the new computer system.

This has not happened. According to the Clerk, the CPCMS is far more helpful to the state than the city and that, in any event, no effort was made to properly train her employees.<sup>26</sup>

The hostility erupted openly in January 2009 when the President Judge accused the Clerk's office of owing the city more than \$5 million from forfeited bail and running behind on distributing \$1.4 million in court fines and payments to crime victims. According to the President Judge, the Clerk's office also owes an additional \$17 million to people owed bail refunds.<sup>27</sup>

The President Judge then ordered the Clerk's office to turn all of its fiscal responsibilities over to the Probation Department (which is part of the First Judicial District) including accounts receivable, accounts payable and bail, and all associated bank accounts.<sup>28</sup> The order specifically left in place the traditional role of the Clerk as the keeper of the court's records, orders, and dockets. The Clerk refused, saying that the President Judge's demands were illegal and violated her responsibility to the voters who elected her.<sup>29</sup> She added that the

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<sup>25</sup> City 2009 Operating Budget; *see also* City Controller Alan Butkovitz, *Clerk of Quarter Sessions Auditor's Report, Fiscal 2006 and 2005*, March 31, 2008, available at [http://www.philadelphiacontroller.org/publications/audits/01\\_64\\_062608\\_Clerk\\_qt\\_sessions\\_16405.pdf](http://www.philadelphiacontroller.org/publications/audits/01_64_062608_Clerk_qt_sessions_16405.pdf).

<sup>26</sup> Interview with Zachary Stalberg and Ellen Mattleman Kaplan, February 25, 2009.

<sup>27</sup> Nancy Phillips, *Quarter Sessions Clerk Defies Judge's Order*, *The Philadelphia Inquirer*, Jan. 31, 2009 <http://www.philly.com/philly/news/local/38741772.html>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

state's administrative rules prevented her from releasing the funds until the cases with which they were associated were completed.<sup>30</sup>

Finally, the Clerk asked the state Supreme Court to intervene. Pennsylvania Supreme Court Chief Justice Ronald D. Castille, the top court's liaison to the FJD, then stepped in and told the President Judge and Clerk Miller to work out an agreement. This has yet to happen.

Clerk Miller told us that she believes that the President Judge's position is motivated by personal hostility, but she refused to elaborate.

The Clerk of Quarter Sessions' office has also been subject to harsh state and local criticism for its internal office practices.

In 2008, Philadelphia City Controller Alan Butkovitz reported that the Clerk's efforts to collect fines and costs from defendants was "poor" and that the office had not reconciled the \$29 million Cash Bail Refund Account, making it impossible to audit that account properly. His auditors reported violations of the Home Rule Charter's rules against employees holding multiple jobs, and weak internal controls in keeping bail records, employee attendance reports, and reconciling petty cash activity. The Controller's report, which was based on data from fiscal years 2005 and 2006, said that bail records were stored in a "haphazard manner," meaning his auditors could only locate six of ten randomly selected documents as part of a test of the system.

In a March 2008 written response, the Clerk said that all the issues Controller Butkovitz raised had either been corrected or were in process.<sup>31</sup>

This was not the first time the Clerk's office had been scolded by auditors. In 2005, State Auditor General Jack Wagner examined more than \$6 million in checks issued from the

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<sup>30</sup> Clerk of Quarter Sessions--Duties and Responsibilities with Regard To Financial Process; President Judge Administrative Order; No. 2009-01, 39 Pa.B. 830, Saturday, February 14, 2009  
<http://www.pabulletin.com/secure/data/vol39/39-7/246.html>

<sup>31</sup> *Id.*

Clerk's office to the state Department of Revenue. While it did not find any critical failings, the auditors warned that the Clerk's assessment of fines, costs and fees, and the internal controls to monitor bank accounts were "inadequate," and that the filing and posting of fines and costs were "improper" and "untimely." The report said the Clerk's office had failed to correct previously reported problems: "These significant deficiencies increase the potential for funds to be lost, stolen, or misappropriated."<sup>32</sup>

### **How did the Clerk come to be elected?**

The Clerk is a remnant of the original county Clerk and court system established by William Penn in 1682. The office originally included functions now housed in a number of other offices, including the Prothonotary of the Court of Common Pleas and the Register of Wills.<sup>33</sup>

In the 18th Century, the Clerk was a gubernatorial appointment: court officials would nominate three candidates and the governor would choose from among them. The Clerk held considerable authority in the counties, including operating roads and bridges, appointing and auditing some other county officials, and licensing businesses, including taverns. From 1790 until 1838, the Clerk was purely a gubernatorial choice.<sup>34</sup> In 1838, it became an elective position.<sup>35</sup>

The 1949 Home Rule Act permitted Philadelphia's City Council to create a Commission to draft a Home Rule Charter for Philadelphia's city government. But the City was not given any authority to reorganize Philadelphia's constitutional county offices. To do this took passage in 1951 by the state legislature, and then by Pennsylvania's voters, of a proposed constitutional amendment to complete Philadelphia's city-county consolidation. The result of the 1951

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<sup>32</sup> Pennsylvania State Auditor General Jack Wagner, *Clerk of Quarter Sessions and Adult Probation Office, Philadelphia County, Audit Report for the Period January 1, 2001 to December 31, 2003*, Dec. 5, 2005, available at <http://www.auditorgen.state.pa.us/Reports/County/CountyOffices/ctyClerkQuarterSessions0103PhiladelphiaCty103106.pdf>.

<sup>33</sup> Philadelphia Information Locator Service, Agency Information: Clerk of Quarter Sessions, <http://www.phila.gov/phils/docs/Inventor/graphics/agencies/A021.htm>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

consolidation was the merger with City government of several former county offices, including the Clerk of the Court of Quarter Sessions.

In 1968, the old Philadelphia Quarter Sessions Court was merged into the Court of Common Pleas and the Quarter Sessions Clerk became the Clerk of the Common Pleas Court, although it retained the archaic name.<sup>36</sup>

The Clerk's office can be abolished, and its functions transferred elsewhere, by an ordinance passed by City Council.<sup>37</sup> No voter referendum is required.

### **How are the Clerk's functions carried out around the country?**

Other cities tend to place adjunct court services handled by the Clerk of Quarter Sessions within the court system – irrespective of whether the individual holding the top job is appointed or elected.

In some cases, the duties are vested in one official who handles many additional judicial and administrative duties. In other cases, the duties are divided up among a number of small judicial positions.

Below are profiles on offices with similar functions in other major U.S. cities:

#### **Baltimore:**

The City and County of Baltimore are separate jurisdictions, although the city is geographically surrounded by the county. Both the City<sup>38</sup> and County<sup>39</sup> have elected Circuit Court Clerks, who not only perform all of the judicial functions of Philadelphia's Clerk of Quarter Sessions, and several other judicial offices, but also

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<sup>36</sup> County Office Descriptions, Pennsylvania State Archives, <http://www.phmc.state.pa.us/BAH/dam/rg/coffices.htm>.

<sup>37</sup> See 53 P.S. § 13132(a)-(b).

<sup>38</sup> Baltimore City, MD, Maryland State Archives, Maryland Manual Online, *available at* <http://www.msa.md.gov/msa/mdmanual/36loc/bcity/html/bcityj.html>.

<sup>39</sup> Baltimore County, MD, Maryland State Archives, Maryland Manual Online, *available at* <http://www.msa.md.gov/msa/mdmanual/36loc/bco/html/bcoj.html>.

have broader non-judicial responsibilities, including keeping real estate records, issuing licenses, and handling payments for a variety of fees and taxes.<sup>40</sup>

Baltimore City has a budget of about \$16 million, but handles more than \$83 million in revenues from various fees and maintains special accounts totaling more than \$6 million. In 2008, state auditors criticized the City Clerk's office for poor controls and accounting for several accounts. The report cited administrators for improperly monitoring employee access and use of the automated cash register system.<sup>41</sup>

The County Clerk has a budget of about \$7 million but handles more than \$36 million in various payments and administers special purpose accounts totaling more than \$9 million. In 2008, state auditors said the office had inadequate controls on cash receipts.<sup>42</sup>

### **Boston:**

The duties handled by Philadelphia's Clerk are divided among a number of officials, known as "Clerk-Magistrates," one for each division of the state-run trial court at the county level. There are 85 Clerk-Magistrates statewide serving various courts.<sup>43</sup> The Clerk-Magistrate, which is a gubernatorial appointment, has administrative and record keeping functions, as well as some judicial functions, particularly conducting preliminary hearings.<sup>44</sup>

Former Governor Mitt Romney established a process by which a judicial nominating commission would conduct a "blind review" of applicants for Clerk-Magistrate in an effort to deter patronage appointments.<sup>45</sup> Even so, the system remains the target of criticism, with plum appointments occasionally going to politically-connected individuals.<sup>46</sup>

### **Chicago:**

An elected Clerk of the Circuit Court of Cook County performs the functions of Philadelphia's Clerk, but is considered an employee of the state judiciary and a non-

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<sup>40</sup> Office of Legislative Audits, Department Of Legislative Services, Maryland General Assembly, *Audit Report, Office of the Clerk of Circuit Court, Baltimore City*, Aug. 2008, available at <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/BaltoCityClk08.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> Office Of Legislative Audits, Department Of Legislative Services, Maryland General Assembly, *Audit Report, Office of the Clerk of Circuit Court, Baltimore County*, May 2008, available at <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/BaltoCoClerk08.pdf>.

<sup>43</sup> The Massachusetts Bar Association, *Introduction*, <http://www.massbar.org/legislative-activities/joint-bar-committee-/the-judicial-selection-process/introduction->.

<sup>44</sup> *Id.*

<sup>45</sup> The Massachusetts Bar Association, *The Judicial Nominating Commission Application and Selection Process*, <http://www.massbar.org/legislative-activities/joint-bar-committee-/the-judicial-selection-process/the-judicial-nominating-commission-application-and-selection-process>.

<sup>46</sup> Chris Tagney, *Swift Picks Insiders for Court Posts*, Boston Globe, Oct. 17, 2002, available at <http://cltg.org/cltg/cltg2002/02-10-17.htm#Globe>.

judicial officer of the court.<sup>47</sup> The position was created in 1964 after a constitutional amendment that combined several courts,<sup>48</sup> creating one of the largest unified court systems in the world. The Clerk has 1,800 employees, all of whom are considered county employees, and a budget of more than \$81 million.<sup>49</sup> Several members of the office were swept up in a massive federal corruption probe in the 1980s, known as Operation Greylord, which uncovered a widespread case fixing scheme by judges and other court officials.<sup>50</sup>

### **Dallas:**

The duties Philadelphia assigns to the Clerk of Quarter Sessions are performed by an elected Dallas County District Clerk, who supports all criminal and most civil courts in the county.

### **Detroit:**

An elected Wayne County Clerk,<sup>51</sup> not only handles the duties of Philadelphia's Clerk of Quarter Sessions, but also administers elections.<sup>52</sup> The office has 280 employees with a budget of almost \$24 million.<sup>53</sup> All the employees except the Clerk and a handful of appointive deputies are unionized and covered by the county Civil Service system.<sup>54</sup>

### **Houston:**

The duties Philadelphia assigns to the Clerk of Quarter Sessions are performed by the Harris County District Clerk, who is an elected official. The office supports all criminal and most civil courts in the county. The City of Houston has a separate municipal court, the Clerk of which is appointed by the mayor.<sup>55</sup>

### **Phoenix:**

Phoenix has a complicated system. The duties of Philadelphia's Clerk are split up among a number of officials at several levels of the Arizona courts.<sup>56</sup> The highest county court is the Superior Court, where the Clerk is elected and presides over an

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<sup>47</sup> The Hon. Dorothy Brown, Clerk of the Circuit Court of Cook County, *2000-2007 Review, First Term and Second Term to Date*, available at [http://198.173.15.31/Forms/pdf\\_files/Term\\_Review\\_for\\_website.pdf](http://198.173.15.31/Forms/pdf_files/Term_Review_for_website.pdf).

<sup>48</sup> IL Const. art. VI, § 18.

<sup>49</sup> Clerk of the Circuit Court, *2009 Cook County Executive Budget Recommendations*, available at [http://www.cookcountygov.com/taxonomy/Budget/Budget2009/cc\\_FY09\\_Q\\_ExecBudget.pdf](http://www.cookcountygov.com/taxonomy/Budget/Budget2009/cc_FY09_Q_ExecBudget.pdf).

<sup>50</sup> Maurice Possley, *Operation Greylord: A federal probe of court corruption sets the standard for future investigations*, The Chicago Tribune, Aug. 5, 1983, available at <http://www.chicagotribune.com/news/politics/chi-chicagodays-greylord-story,0,4025843.story>.

<sup>51</sup> Cathy M. Garrett, Wayne County Clerk, Campaign Website, <http://cathymgarrett.com/>.

<sup>52</sup> Wayne County Clerk, <http://www.waynecounty.com/mygovt/clerk/home.aspx>.

<sup>53</sup> Wayne County Budget FY 2007-08, available at [http://www.waynecounty.com/ceo/budgetDocs/2007\\_08/deptClerk.pdf](http://www.waynecounty.com/ceo/budgetDocs/2007_08/deptClerk.pdf).

<sup>54</sup> Telephone Interview with Shirley McLean, Wayne County Clerk's Office, March 4, 2009.

<sup>55</sup> City of Houston Municipal Courts, <http://www.houstontx.gov/courts/index.html>.

<sup>56</sup> Ariz. Judicial Branch, Maricopa County, <http://www.superiorcourt.maricopa.gov/>.

office of about 720 employees.<sup>57</sup> Because the Superior Court includes family, juvenile, and probate judges, the Clerk has broad duties, including those held in Philadelphia by the Register of Wills and Office of the Prothonotary.<sup>58</sup>

There are separate Clerks for the lower court, known as the Courts of Justice, who are hired by the Justices of the Peace. Under a 2008 Administrative order by the State Supreme Court, however, most administrative duties, such as procuring equipment, preparing budgets and managing juries, are handled by the Superior Court Clerk.<sup>59</sup> The Clerk's employees are considered regular Maricopa County employees.<sup>60</sup> There is a long history of systemic problems with the Justice Courts. In 1994, the state Supreme Court put the Justice Courts under the control of the central judicial administration and only returned local control in 2006.<sup>61</sup>

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<sup>57</sup> Clerk of the Superior Court, Maricopa County, Ariz., <http://www.clerkofcourt.maricopa.gov/clkbio.asp>.

<sup>58</sup> Ariz. Judicial Branch, Maricopa County, <http://www.superiorcourt.maricopa.gov/>.

<sup>59</sup> Ariz. Supreme Court, Administrative Order No. 2008-59, *available at* <http://www.supreme.state.az.us/orders/admorder/Orders08/2008-59.pdf>.

<sup>60</sup> Telephone Interview with Human Resources Department, Maricopa County, Ariz., March 4, 2009.

<sup>61</sup> Ariz. Supreme Court, Administrative Order No. 2006-56, *available at* <http://www.supreme.state.az.us/orders/admorder/Orders06/2006-56.pdf>.

## THE CITY COMMISSIONERS

**Recommendation: City Council should pass a proposed amendment to the Philadelphia Home Rule Charter to eliminate elected City Commissioners, and submit the amendment to the voters for approval.**

The responsibility for overseeing Philadelphia's elections is in the hands of three elected City Commissioners: two Democrats and one Republican. All are ward leaders.

Elections, of course, are supposed to be operated free of partisan influence. Nothing illustrates that better than the Presidential election of 2000. Regardless of which candidate you might have favored, it is hard to ignore the conflict of interest presented by the fact that the person in charge of enforcing the election laws in Florida – the decisive state – also co-chaired George W. Bush's Florida campaign.

In Philadelphia, the City Commissioners largely operate outside of the public's view. They seem to prefer it that way.

Of the ten largest cities in the United States, Philadelphia is the only one where local elected officials run local elections. There is little incentive for them to professionalize or modernize elections.

Elections are becoming increasingly complicated -- so much so that graduate degree programs in elections management exist.<sup>62</sup> That is why elections in most jurisdictions are run by a professional elections executive, much like a private sector CEO, who is responsible for making operational, financial and personnel decisions.

There are a number of models Philadelphia could consider in constructing an improved system for handling local elections, but as R. Doug Lewis, Executive Director of the National Association of Election Officials at The Election Center in Houston, Texas has said, "We

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<sup>62</sup> See, e.g. Fordham University Graduate School of Arts and Sciences, Program in Elections and Campaign Management, [http://www.fordham.edu/academics/programs\\_at\\_fordham\\_/elections\\_\\_campaign\\_/index.asp](http://www.fordham.edu/academics/programs_at_fordham_/elections__campaign_/index.asp).

should have it well established by this time that one size or one solution does not work well in all parts of America.”<sup>63</sup>

However, many cities have a Commission or Board responsible for appointing the top elections professional. If this model is adopted in Philadelphia, members could be appointed by the Mayor, City Council, and perhaps a third party, for example, the Governor, Secretary of the Commonwealth (who oversees Pennsylvania’s electoral process) or the President Judge of the Philadelphia Court of Common Pleas. Representation from the major parties should be required (as it is now among the Commissioners), and staggered terms and term limits set. Members could also be subject to City Council confirmation, and possible recall in the case of malfeasance, a system similar to the city's Ethics Board.<sup>64</sup>

Because of the importance of developing the best approach, the City should consult with national election experts before making this important decision.

*At a minimum*, there would be considerable cost-savings associated with eliminating the three Commissioners’ salaries, plus benefits and other perks currently attached to these positions.

Of the 97 permanent, full-time employees in the City Commissioners office,<sup>65</sup> 79 fall under the merit-based civil service system. The other 18 are exempt employees. One of those is Renee Tartaglione, who is the daughter of the Commissioners’ Chairperson. There may be others with political or family connections but the Commissioners wouldn’t supply personnel information.

The timing for eliminating elected City Commissioners is opportune. Like Clerk of Quarter Sessions Miller, Commissioner Tartaglione is enrolled in DROP and has said she intends to retire before the 2011 election. However, this is not the first time she was supposed to retire under DROP.

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<sup>63</sup> Testimony before the U.S. Senate Rules Committee, July 25, 2007.

<sup>64</sup> Phila. Board of Ethics, <http://www.phila.gov/ethicsboard/about.html>.

<sup>65</sup> City of Philadelphia, Office of Human Resources, current as of March 16, 2009.

In November 2007, apparently based upon advice given by the City’s Law Department, she ran for reelection, retired for 24 hours in January, 2008 in order to receive her \$288,136<sup>66</sup> lump sum DROP payment, and then returned to work the following day. This use of the DROP program – which was not intended for elected officials – has been protested by the Committee of Seventy and many others.<sup>67</sup>

Eliminating elected City Commissioners requires City Council passage of an amendment to the Home Rule Charter, followed by a ballot referendum.<sup>68</sup> It will require political courage by Democratic leaders in government to take control of elections away from fellow local Democrats.

## **PROFILE OF THE OFFICE**

### **What do the City Commissioners Do?**

The City Commissioners oversee and administer voter registration and conduct elections in Philadelphia in compliance with relevant State and Federal laws. Their major duties include:<sup>69</sup>

- Maintaining the accuracy and currency of the data, images, and paper documents for the registered eligible voters;
- Preparing District Register – pollbooks for use in determining voter eligibility;
- Maintaining boundary maps and descriptions for the City’s 1,678 voting districts and locating accessible and suitable polling places;
- Training and processing payroll for polling place officials;
- Processing candidate nomination petitions;
- Preparing and packaging election materials required by polling place officials;
- Preparing ballot configurations in accordance with ballot certifications;
- Maintaining, servicing, and preparing nearly 3,500 electronic voting machines;
- Processing Absentee, Alternative and Provisional ballots;

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<sup>66</sup> Jeff Shields, *Pension Perk Costs Phila. – Or Maybe Not*, Phila. Inquirer, Jan. 4, 2009, available at <http://www.philly.com/philly/news/homepage/37053679.html?viewAll=y>.

<sup>67</sup> At the recent budget forums, DROP was “one of the most-discussed items” with participants expressing “fierce public outrage over elected and appointed officials being eligible for this.” Harris Sokoloff and Chris Satullo, *The City Budget: Tight Times, Tough Choices*, the University of Pennsylvania Project for Civic Engagement, March 2, 2009, at 2.

<sup>68</sup> 53 P.S. § 13132(c)-(d).

<sup>69</sup> Phila. City Commissioners Office, <http://www.phillyelection.com/miseng.htm>.

- Reporting unofficial election results and certifying official election results;
- Informing candidates, political party committees, the media and the general public of voter registration and election processes.

The City Commissioners have an annual budget of about \$11 million.<sup>70</sup> The Controller's audit report lists \$18,000 in "locally generated non-tax revenue" in 2005.<sup>71</sup>

### **Who Runs the Commissioners' Office?**

The three City Commissioners are elected every four years, with one member serving as Chair and no more than two members belonging to the same political party.<sup>72</sup> Their salaries are dictated by the Philadelphia Code,<sup>73</sup> and were as follows in 2008: Chairperson Tartaglione (\$118,331), Commissioner Clark (\$106,980) and Commissioner Duda (\$110,865).<sup>74</sup>

### **How have the City Commissioners Performed?**

The Committee of Seventy, of course, is not without its own experience with elections. This organization monitors election issues year-around and operates a large, non-partisan voter protection program on Election Day.

Our contacts with the City Commissioners and their staff are often positive – and sometimes not. For instance, Commissioners' Chairperson Tartaglione, who is also the Democratic Leader of the 62nd Ward, has protested the large number of volunteers that the Committee of Seventy has utilized on Election Day, notably at polling places within her ward.

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<sup>70</sup> Based on Departmental Total, All Funds from City of Philadelphia Fiscal 2009 Operating Budget, Departmental Summary By Fund.

<sup>71</sup> City Controller Alan Butkovitz, *City Commissioners Office, Auditor's Report, Fiscal 2005*, June 18, 2007, available at

[http://www.philadelphiacontroller.org/publications/audits/01\\_73\\_05\\_City\\_Commissioners\\_Office.pdf](http://www.philadelphiacontroller.org/publications/audits/01_73_05_City_Commissioners_Office.pdf).

<sup>72</sup> See Phila. Code § 2-112(1).

<sup>73</sup> Phila. Code §§ 20-305(6), 20-308.

<sup>74</sup> Based on a list of employees provided by the City of Philadelphia, Office of the Director of Finance on February 2, 2009.

As a result of actions by the Commissioners, the dedicated workforce in the Commissioners' Office and, yes, the Committee of Seventy's volunteers, recent elections have tended to run relatively smoothly. But the Commissioners' record is not unblemished:

- The Commissioners' attitude toward voters who face delays at polling places could be described as casual at best.
- Several voting divisions in Philadelphia have more registered voters than state law allows. A division in Old City has exceeded the limit as far back as 1988. In some cases, there are divisions with too few voters – a problem that costs the city money.
- In 2006, the U.S. Department of Justice sued the City Commissioners for failing to provide sufficient election-related materials and assistance to Hispanic voters in violation of federal law. Since a 2007 settlement, federal officials have monitored Philadelphia's Election Day behavior.
- In the face of pressure from activists and Mayor Nutter, the Commissioners agreed to post election results online in real time – something most cities did routinely.
- In the May 2006 primary election, more than 200 electronic voting machines failed to work correctly, causing delays that lasted into the evening. The Commissioners were slow to fully explain why the breakdowns happened.
- The Commissioners' web site for voters – a necessary customer service tool in the 21<sup>st</sup> Century – is weak compared to similar sites run by the state and other cities.

Local audits have illustrated additional problems in the internal operations of the City Commissioners' office. City Controller Alan Butkovitz released a 2007 performance audit report that revealed several areas where there were improperly established internal controls and a failure to comply with appropriate laws regarding payroll, revenue, other expenditure, and personal property activities.<sup>75</sup> The report also stated that:<sup>76</sup>

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<sup>75</sup> City Controller Alan Butkovitz, *City Commissioners Office, Auditor's Report, Fiscal 2005*, June 18, 2007, available at

[http://www.philadelphiacontroller.org/publications/audits/01\\_73\\_05\\_City\\_Commissioners\\_Office.pdf](http://www.philadelphiacontroller.org/publications/audits/01_73_05_City_Commissioners_Office.pdf).

<sup>76</sup> *Id.*

- Four key officials of eleven required individuals in the Commissioners' office failed to file annual financial disclosure forms as required under the State Ethics Act and other State and local regulations.
- The office's petty cash fund was susceptible to abuse and petty cash spending limits had been circumvented by splitting invoices.
- Personal property assets were at risk because one person controlled record keeping, performed annual counts, and approved disposals.
- Asset certification records had not been submitted to the Controller's Office for the previous five fiscal years.
- Attendance or leave records had not been maintained for non-civil service employees.
- Revenue receipts had not been deposited in a timely fashion or reconciled with the City's online accounting system.

The City Commissioners declined to submit a written response to the Controller's audit for inclusion in the final report.<sup>77</sup>

### **How did the City Commissioners come to be elected?**

The City Commissioners were created by an act of the Pennsylvania Assembly in 1711. Then known as County Commissioners, they were appointed by the Assembly to oversee the Board of Tax Assessors and ensure proper tax levies and collections. Subsequent acts of the Assembly throughout the 18th Century made the Commissioners elected officers (in 1725) and gradually expanded their duties to coincide with those of the Board of Tax Assessors, culminating with the complete replacement of the Board during the Revolution. Tax Assessors and Collectors were later appointed by the Commissioners, who also gained regulatory powers and maintenance duties for the county's land, transportation infrastructure, courts, and prison.

The Commissioners' role in the election process came about in the early 19th Century. At that time lists of qualified voters were based upon the list of taxpayers and the Commissioners furnished election officers with those lists. Their role again expanded to include leasing polling places and provisioning ballot boxes.

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<sup>77</sup> *Id.*

In 1854, a state law abolished “County Commissioners” and transferred their election oversight responsibilities to elected City Commissioners, who were directed by the two Councils that exercised legislative authority. Twenty years later, a new state constitution took effect that designated certain City officials as county officers. This removed the officers, who were still elected, from civil service regulations that applied to most City agencies.

The Commissioners assumed complete control over elections with the establishment of the County Board of Elections under their direction in 1937, and ultimately accepted the responsibility of keeping current the list of qualified voters from the Registration Commission when that body was abolished by ordinance in 1965.<sup>78</sup>

Like the Clerk of Quarter Sessions, the completion of Philadelphia’s city-county consolidation resulted in a merger with City with several former county offices, including the City Commissioners. The Commissioners’ composition, duties and qualifications are contained in the Philadelphia Code.<sup>79</sup>

### **How are elections operated around the country?**

In other jurisdictions, elections and voter registration duties tend to be organized into one of two possible formats.

The first involves a central office supervised by one official, while the second involves a supervisory board of several members. Denver, San Diego, and Los Angeles have a single office, with Denver electing a Clerk and Recorder who then appoint an elections director, and the two California counties appointing a Registrar of Voting. Houston splits the duties between an elected County Clerk who administers elections, and the county-appointed Tax Collector who supervises voter registration. New York City, Boston, and Baltimore all have Boards of Elections, whose members are appointed by either a local or state authority.

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<sup>78</sup> Phila. Informational Locator Service, Office of the City Commissioners, <http://www.phila.gov/phils/Docs/inventor/Graphics/agencies/A001.htm>.

<sup>79</sup> See Phila. Code § 2-112.

Chicago is relatively unique in that it features both an appointed Board of Elections specifically for the city, and an elected Clerk to supervise the rest of Cook County.

Below are profiles on elections operations in other major U.S. cities:

**Baltimore:**

The Governor of Maryland appoints a five-member Board of Elections for every county in the state, plus the City of Baltimore, based on lists of nominees provided by both political parties. This typically results in a 3-2 split in the makeup of each Board, with the larger number determined by the Governor's own political affiliation.<sup>80</sup> The five members then vote for their own director.<sup>81</sup> A State Board of Elections with its own Administrator in turn oversees the operations of the various county Boards.<sup>82</sup>

**Boston:**

The Boston Election Department is organized under the Boston city government to oversee all federal, state, and municipal elections for that city.<sup>83</sup> It is headed by an Election Commissioner appointed by the Mayor.<sup>84</sup>

**Chicago:**

The Chicago area has two distinct groups of election officials. The first is the appointed Chicago Board of Election Commissioners that oversees elections conducted within the city proper.<sup>85</sup> The second is the elected Cook County Clerk who, in addition to other administrative duties, also oversees elections in the unincorporated sectors of Cook County.<sup>86</sup>

**Denver:**

The City of Denver recently completely reorganized the composition of their election officials by a change to their city charter. Previously, elections had been overseen by the Denver Elections Commission, an independent body appointed by the Mayor.<sup>87</sup> In the wake of a complete collapse of Denver's computerized voting systems, ballot-counting and ballot-printing machines in November 2006, Denver's Mayor and City Council President overhauled the Commission.<sup>88</sup>

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<sup>80</sup> John Fritze & Doug Donovan, *City Elections Chief Quits in Frustration*, Balt. Sun, Sept. 21, 2006.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> City of Boston Election Department, <http://www.cityofboston.gov/elections/>.

<sup>84</sup> Michael Levinson & Matt Viser, *State Says It Will Take Control of City Voting*, Boston Globe, Nov. 9, 2006.

<sup>85</sup> Board of Election Commissioners for the City of Chicago, <http://www.chicagoelections.com/>.

<sup>86</sup> Cook County Clerk's Office, <http://www.cookctyclerk.com/>.

<sup>87</sup> Denver Elections Division, <http://www.denvergov.org/AboutUs/tabid/382451/Default.aspx>.

<sup>88</sup> Alan Gathright, *Election Debacle Triggers Resignation*, Rocky Mountain News, Nov. 14, 2006.

The appointed Commissioners were replaced with newly instituted elected offices of Clerk and Recorder, which was approved by the public through a ballot initiative in January 2007.<sup>89</sup> The Clerk in turn appoints an elections director to oversee the new Elections Division. The Division is now divided into election operations, administration, and logistics departments with a clearly delineated hierarchy and set of responsibilities.<sup>90</sup>

### **Detroit:**

The City of Detroit has a Department of Elections to oversee all municipal, state, and federal elections in the city and to handle voter registration duties. The Department is overseen by a three-person Election Commission organized under the city charter and consisting of the City Clerk, the President of the City Council, and the Corporation Counsel, with the Clerk serving as chair of the Commission and Chief Elections Officer for the city.<sup>91</sup> Both the Clerk<sup>92</sup> and the City Council President are elected officials, while the Corporation Counsel serves as chief of the city's law department and is appointed by the Mayor.<sup>93</sup>

### **Houston:**

Houston's elections administration is split between two different officials. The first is the elected Clerk of Harris County, who oversees the administration of county and state elections as stipulated under Texas statutory law and the State Constitution. The Clerk contracts with local political parties to conduct elections within the City of Houston and other smaller jurisdictions.<sup>94</sup> Voter registration duties are handled by the County Tax Collector, who is appointed by the County Commissioners.<sup>95</sup>

### **Los Angeles:**

Los Angeles County is relatively unique in California. For the last forty years, the offices of County Clerk, County Recorder, and Registrar of Voters have been combined into one aptly named Department of the Registrar-Recorder/County Clerk.<sup>96</sup> Three distinct divisions now exist within the Department, overseen by a Clerk appointed by the County administration. The Registrar's Office continues to conduct election administration and voter registration duties for the county.<sup>97</sup>

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<sup>89</sup> Denver Elections Division, <http://www.denvergov.org/AboutUs/tabid/382451/Default.aspx>.

<sup>90</sup> *Id.*

<sup>91</sup> Detroit Department of Elections, <http://www.ci.detroit.mi.us/Departments/DepartmentofElections/AboutUs/tabid/232/Default.aspx>.

<sup>92</sup> Detroit City Clerk, <http://www.detroitmi.gov/legislative/CityClerk/>.

<sup>93</sup> Detroit Law Department, <http://www.ci.detroit.mi.us/Departments/LawDepartment/AboutUs/tabid/320/Default.aspx>.

<sup>94</sup> Harris County Clerk, <http://www.cclerk.hctx.net/>.

<sup>95</sup> Harris County Tax Collector, <http://www.tax.co.harris.tx.us/>.

<sup>96</sup> LA Registrar-Recorder/County Clerk, [http://www.lavote.net/GENERAL/About\\_Us.cfm](http://www.lavote.net/GENERAL/About_Us.cfm).

<sup>97</sup> *Id.*

**New York:**

Elections and voter registration in New York City are administered by the Board of Elections, an administrative body of 10 Commissioners – two from each of the five boroughs – who are appointed by the City Council from nominees suggested by both political parties.<sup>98</sup> The Commissioners serve four year terms and appoint a bipartisan staff to oversee their six offices throughout the city: a main office and one in each borough.

**San Diego:**

San Diego County is more in step with the rest of California compared to Los Angeles. It maintains a single office with a Registrar of Voters appointed by the County administration who oversees elections and voter registration.

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<sup>98</sup> NYC Board of Elections, <http://vote.nyc.ny.us/abouttheboard.html>.

## THE SHERIFF

### **Recommendation: City Council should pass a proposed amendment to the Philadelphia Home Rule Charter to eliminate an elected Sheriff, and submit the amendment to the voters for approval.**

Depending on your age, the word “Sheriff” conjures up all sorts of images – from John Wayne in “Rio Bravo” and Cleavon Little in “Blazing Saddles” to Gene Hackman in “Unforgiven” and Tommy Lee Jones in “No Country for Old Men.”

But if you ask most Philadelphians who their elected Sheriff is or what he does you are likely to be met with a blank stare. This would not be surprising, except for the fact that City voters have elected their Sheriff since 1838.

The staggering budget deficit the City faces is a compelling reason to consider whether this age-old tradition is worth retaining just for tradition’s sake.

We are not suggesting that Philadelphia should not have someone called the “Sheriff.” Virtually all states, cities and even tiny counties have one, but the ways they are selected vary. For instance, New York City’s Sheriff’s office is not headed by a “Sheriff,” but by an appointed Deputy Commissioner of Finance.

We believe *this City* does not need an *elected* Sheriff, and that the individual holding that title need not command the current \$112,233<sup>99</sup> salary, plus benefits and other perks currently attached to this position.

With a comparatively small staff (242 full-time employees)<sup>100</sup> performing what are essentially ministerial duties, common sense tells us that there are relatively easy options for transferring those duties elsewhere in City government.

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<sup>99</sup> City of Philadelphia, Finance Department, current as of March 16, 2009. Sheriff Green recently took a voluntary 5% pay cut, as did a number of other high-level City officials.

<sup>100</sup> City of Philadelphia, Office of Human Resources, current as of March 1, 2009.

For instance, the Police Department could take over warrant service and civil process service. The Police Department is authorized by the City Code<sup>101</sup> to conduct evictions, which is a form of civil process, and they serve criminal warrants as well.

Prisoner transport could be parceled out to the court system or to the Police Department. Police officers already transport prisoners. In a recent letter to the editor of the Philadelphia *Daily News*, a prisoner housed at the Philadelphia Detention Center called two 35<sup>th</sup> District officers “models of police professionalism and courtesy” for their “efficient, exemplary service” in driving him from the prison to the courthouse.<sup>102</sup>

As in Phoenix, court security could be placed in a newly created Office of Security based in the court system or become an arm of the Police Department. This is not at all unusual for Sheriff’s departments with extensive police power, such as in Los Angeles and San Diego counties.

Finally, as we noted in the overview, sheriff’s sales would be best situated in a department equipped to conduct large financial transactions, perhaps an arm of the City’s Finance department as in New York City.<sup>103</sup>

As we said in the section of the Clerk of Quarter Sessions, the City would realize substantial financial benefits by moving at least some of the Sheriff’s functions to the courts when the Commonwealth finally complies with the Pennsylvania Supreme Court’s 1987 ruling that the state is constitutionally responsible for funding the entire unified judicial system.

Another reason for eliminating an elected Sheriff is to rid that office of patronage and nepotism. While, as noted earlier, the Sheriff’s office refused to cooperate with our research for this report, City personnel records indicate that 19 employees fall outside of the City’s

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<sup>101</sup> Phila. City Code § 9-1603.

<sup>102</sup> Letter from Curtis Garner, *Letters: A big thank you from the Big House*, Phila. Daily News, March 13, 2009, at 20, available at <http://www.philly.com/philly/opinion/41193627.html>.

<sup>103</sup> We note that there are non-governmental options as well. A private company that claims to be the only one of its kind, Synergistic Resource Integration, Inc. (SRI), works with Sheriff’s offices in Indiana to handle the details of Sheriff’s sales in order to “...enable[e] the Sheriff’s employees to better handle law enforcement duties for the citizens of that county.” SRI, Inc. Sheriff’s Sale System Services, <http://sri-sheriffsale.com/Services.aspx>.

merit-based civil service system. We are able to at least identify six people, including the Sheriff's brother, who work for the department. While these individuals may be highly competent, that is not the way the public sees it.

As with the City Commissioners, eliminating an elected Sheriff requires passage of an amendment to the Home Rule Charter, followed by a ballot referendum.<sup>104</sup>

## **PROFILE OF THE OFFICE**

### **What does the Sheriff Do?**

The traditional function of a Sheriff is to provide law enforcement. But today that function is largely performed by professional police departments, as in Philadelphia.<sup>105</sup>

Today the Sheriff's primary role is to support the court system. More specifically, his major duties include:<sup>106</sup>

- Serving warrants;
- Apprehending fugitives;
- Enforcing court-ordered injunctions;
- Conducting sheriffs sales on properties that are foreclosed, judicially seized, or delinquent on taxes;
- Serving civil complaints and writs of execution;
- Serving Writs of Possession (eviction notices) after a mortgage foreclosure or a landlord/tenant dispute;<sup>107</sup>
- Processing Subpoenas;
- Transporting prisoners to and from court;
- Maintaining security in and around the courtrooms.

The Sheriff's office has an annual budget of about \$15 million and is responsible for accounts containing tens of millions of dollars from foreclosure and tax sales and other collected

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<sup>104</sup> 53 P.S. § 13132(c)-(d).

<sup>105</sup> Philadelphia Police Department, Department History, [http://www.ppdonline.org/hq\\_history.php](http://www.ppdonline.org/hq_history.php).

<sup>106</sup> Office of the Sheriff, City and County of Philadelphia, <http://www.phillysheriff.com/>.

<sup>107</sup> Phila. City Code § 9-1603.

fees.<sup>108</sup> In response to an across-government request by Mayor Nutter, Sheriff Green recently cut 5% from his office budget.<sup>109</sup>

### **Who Works in the Sheriff's Office?**

The Sheriff is elected every four years during the mayoral municipal elections. Sheriff Green has been in office since 1987. As noted earlier, his current salary, the level of which is dictated by the Philadelphia Code,<sup>110</sup> is \$112,233. Commendably, the Sheriff voluntarily took a 5% pay cut as part of the November 2008 Rebalancing Plan to help with the City's budget crisis.<sup>111</sup>

The department has 242 full-time employees, 229 in the merit-based civil service system and 19 exempt staff members.<sup>112</sup>

Two Democratic committeepeople are on the Sheriff's staff, along with his brother, Vincent. Also employed by the Sheriff are a former Democratic ward leader (an Under Sheriff), the mother of a Democratic committeeperson (the Sheriff's Chief-of-Staff) and the wife of a committeeperson.

### **How has the Sheriff Performed?**

Our recommendation regarding the Sheriff's office is not based on the performance of the incumbent. However, it would be more difficult to make a case for eliminating the Sheriff's office if the current office was considered an example of outstanding municipal governance.

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<sup>108</sup> City Controller Alan Butkovitz, *Office of the Sheriff, Auditor's Report, Fiscal 2006 and 2005*, Aug. 11, 2008, available at

[http://www.philadelphiacontroller.org/publications/audits/1\\_10\\_6\\_08\\_Sheriffs\\_Office\\_FY05\\_06.pdf](http://www.philadelphiacontroller.org/publications/audits/1_10_6_08_Sheriffs_Office_FY05_06.pdf).

<sup>109</sup> Michael A. Nutter, FY 2010-2014 Budget Briefing for City Council, Feb. 9, 2009.

<sup>110</sup> Philadelphia Code §§ 20-305(3), 20-308.

<sup>111</sup> Interview with Connie Little, Under Sheriff, March 13, 2009.

<sup>112</sup> City of Philadelphia, Office of Human Resources, current as of March 1, 2009.

Unfortunately, that has not been the case. This bolsters our assertion that transferring the functions elsewhere would have the potential for greater efficiencies, cost-savings and professionalism.

The Sheriff's office received praise for canceling the entire Sheriff's Sale list in April 2008 after City Council passed a resolution requesting a moratorium on residential sales to allow borrowers additional time to seek settlements so they would not lose their homes.<sup>113</sup> At the same time, the office has been criticized for imposing higher fees than required to advertise foreclosure sales.<sup>114</sup>

Generally speaking, internal controls and management practices have been found severely lacking. Endorsing Green's 2007 Democratic primary challenger, Michael Untermeyer, a *Philadelphia Inquirer* editorial observed: "Accounting practices have been so slipshod that the Sheriff's office couldn't account for money determined to be missing in a 2003 city audit. Funds that were supposed to be disbursed were not. Millions of dollars in contracts are given out without competitive bidding... Though Green says he has made many improvements, his record is a litany of unsound judgment and not embracing good practices until an audit points out a problem."<sup>115</sup>

In 2008, City Controller Alan Butkovitz reported a number of problems in the department, based on data from 2005 and 2006.<sup>116</sup> He reported that the office's personnel and payroll system was at a "very high risk of fraud and abuse" since the entire system was handled by just one person, the Sheriff's Chief Administrative Officer.

Likewise, the auditors found that non-payroll expenditures were at "high risk" because they too were handled by a single person, the Accounts Payable Clerk. Moreover, the Clerk was

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<sup>113</sup> Testimony before the U.S. Senate Committee on the Judiciary. The Honorable Annette M. Rizzo, Philadelphia Court of Common Pleas. October 24, 2008. Judge Rizzo commended Sheriff Green for a similar action in 2004.

<sup>114</sup> Bruce Schimmel, *Sheriff John Green's Disingenuous Genuflection*, Phila. City Paper, May 18-24, 2006.

<sup>115</sup> Editorial, *For Phila. Sheriff, Democratic Primary*, Phila. Inquirer, May 4, 2007.

<sup>116</sup> City Controller Alan Butkovitz, *Office of the Sheriff, Auditor's Report, Fiscal 2006 and 2005*, Aug. 11, 2008, available at

[http://www.philadelphiacontroller.org/publications/audits/1\\_10\\_6\\_08\\_Sheriffs\\_Office\\_FY05\\_06.pdf](http://www.philadelphiacontroller.org/publications/audits/1_10_6_08_Sheriffs_Office_FY05_06.pdf).

using the personal log-on and password of the City's Finance Director, a violation of both good practice and city policy.

Other problems cited in the Controller's report included, among other things, failure of more than half of the office's top employees to file the state financial disclosure forms (required to detect conflicts of interest), lax policies on keeping time records, improper banking procedures, and poor compliance with the City's policies on sick leave. In addition, the auditors found ongoing issues in handling money from foreclosure and tax lien sales, including holding onto unclaimed money owed to the state, as required by law.

The Sheriff's Department denied many of the allegations in the report and said others had been corrected by the time the document was issued.<sup>117</sup>

After examining 2003-2007 financial data, a 2008 audit by State Auditor General Jack Wagner found inadequate internal controls over receipts and agreed with the Controller's observation that money owed to the state was often not transmitted on time.<sup>118</sup> A few years earlier, a Deputy State Treasurer for Audits and Investigations charged the Sheriff's office with improperly holding \$3.3 million in unclaimed property. Although the matter was settled in 2006, the Sheriff acknowledged problems with accounting in his office as a result of old computers and continuing Y2K conversion issues.<sup>119</sup>

### **How did the Sheriff come to be elected?**

The Sheriff is probably the most ancient American governing institution, dating to the early Middle Ages, when it emerged as the main office exercising power in the name of the English

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<sup>117</sup> City Controller Alan Butkovitz, *Office of the Sheriff, Auditor's Report, Fiscal 2006 and 2005*, Aug. 11, 2008, available at

[http://www.philadelphiacontroller.org/publications/audits/1\\_10\\_6\\_08\\_Sheriffs\\_Office\\_FY05\\_06.pdf](http://www.philadelphiacontroller.org/publications/audits/1_10_6_08_Sheriffs_Office_FY05_06.pdf).

<sup>118</sup> Pennsylvania State Auditor General Jack Wagner, *Sheriff, Philadelphia County, Examination Report for the period March 1, 2003 to August 31, 2007*, May 15, 2008, available at

<http://www.auditorgen.state.pa.us/reports/county/countyoffices/ctysheriffphiladelphia091608.pdf>.

<sup>119</sup> Mary F. Patel, *Shots from the Sheriff*, Phila. City Paper, February 21, 2007, available at <http://www.citypaper.net/articles/2007/02/22/shots-from-the-sheriff>.

King in each county. American colonists imported the idea to their new communities as they expanded.<sup>120</sup>

The first American Sheriffs appeared in 1634 in Virginia. By the time William Penn laid down his "Frame of Government" in 1682, Sheriffs were well established in Pennsylvania. The office has remained part of every state constitution right up to the most recent version, in 1968. Until 1838, county Sheriffs were appointed by the Governor: the voters of the county would nominate two candidates and the governor would choose between them.<sup>121</sup> It wasn't until the Pennsylvania Constitution of 1838 when they became elective officers.

While the office of the Sheriff is specified in the State Constitution, that provision exempts jurisdictions such as Philadelphia, which have Home Rule Charters.<sup>122</sup> As a result of the 1951 city-county consolidation, the former county Sheriff's office now operates under the Philadelphia Home Rule Charter.

### **How are Sheriff's offices operated around the country?**

New York City offers perhaps the closest example of what might work in Philadelphia. Although called the Sheriff's Office, the office that handles the equivalent of the Philadelphia Sheriff's duties is not headed not by a sheriff, but by a Deputy Commissioner of Finance who is appointed by the mayor,<sup>123</sup> and accounts for about 7 percent of the \$204 million budget for the Finance Department.<sup>124</sup>

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<sup>120</sup> Pennsylvania Sheriff's Association, The Sheriff's Office in History, <http://www.pasheriffs.org/about-us/sheriff-history/>.

<sup>121</sup> Pennsylvania State Archives, County Office Descriptions, <http://www.phmc.state.pa.us/BAH/dam/rg/coffices.htm>.

<sup>122</sup> PA Const. art. IX, § 4.

<sup>123</sup> New York City Finance Division, About Finance, [http://www.nyc.gov/html/dof/html/about/about\\_divisions.shtml](http://www.nyc.gov/html/dof/html/about/about_divisions.shtml).

<sup>124</sup> New York City, City Council Changes as Adopted, Schedules A and B to the Fiscal Year 2009, Expense and Contract Budget Resolutions, *available at* [http://www.nyc.gov/html/omb/downloads/pdf/adopt08\\_expresso.pdf](http://www.nyc.gov/html/omb/downloads/pdf/adopt08_expresso.pdf).

The office, which dates from 1602 and is one of the oldest agencies in the city,<sup>125</sup> exists mostly to serve civil documents, including evictions and foreclosures. It is empowered to enforce (and arrest violators of) certain taxes, such as cigarette taxes, and is responsible for finding and bringing in for treatment persons suffering from mental health problems.<sup>126</sup>

A New York State Commission On Local Government Efficiency And Competitiveness convened by former New York Governor Eliot Spitzer recommended in a 2008 report that non-charter counties be given the same flexibility as charter counties (such as New York) to convert to an appointive sheriff, subject to a popular referendum.

Sheriffs serving most other major cities are elected. However, their offices and budgets are far larger – and their duties are often more extensive – because they run county jail systems or provide at least some police protection in areas outside of the city limits. The Cook County Sheriff (who serves Chicago), the Suffolk County Sheriff (who serves Boston) and Harris County Sheriff (who serves Houston) are three examples.

Below are profiles on Sheriff's offices serving other major U.S. cities:

**Baltimore:**

The Sheriff of Baltimore County is an elected Constitutional position. The Office has 60 deputies and 10 officers and seven non-sworn support staff.<sup>127</sup> It handles duties similar to those of the Philadelphia Sheriff: court security, prisoner transport, and process and warrant service.<sup>128</sup> The office has a budget of about \$100 million. All employees are covered by the county's merit system.

Baltimore City, which is a separate political entity although it is geographically surrounded by the county, also has an elective Sheriff. Like the county, the city has a police department,<sup>129</sup> so the Sheriff does not provide routine law enforcement, although his officers are authorized to enforce traffic laws and issue citations. His deputies perform the same basic duties as the County Sheriff, but the office has some

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<sup>125</sup> Jesse McKinley, *F.Y.I.*, The New York Times, November 27, 1994 at 2, *available at* <http://query.nytimes.com/gst/fullpage.html?res=9F0CE4DF1530F934A15752C1A962958260&scp=1&sq=%22New+York+City+Sheriff%22>.

<sup>126</sup> <sup>126</sup> New York City Finance Division, About Finance, [http://www.nyc.gov/html/dof/html/about/about\\_divisions.shtml](http://www.nyc.gov/html/dof/html/about/about_divisions.shtml).

<sup>127</sup> Baltimore County, Maryland, Welcome to the Sheriff's Office, <http://www.baltimorecountymd.gov/Agencies/sheriff/history.html>.

<sup>128</sup> Baltimore County, Maryland, Welcome to the Sheriff's Office, Duties and Powers of the Sheriff's Office, <http://www.baltimorecountymd.gov/Agencies/sheriff/shagduty.html>.

<sup>129</sup> Baltimore City Police Department, <http://www.baltimorepolice.org/>

additional responsibilities, including a special response team and a witness protection unit.<sup>130</sup> The city Sheriff has been the subject of considerable criticism by the press and auditors, including a 2000 audit that found poor accounting and widespread abuse of overtime and sick leave. He has hired friends and family members in his office, and in 2002, five of his officers beat a man in a case of mistaken identity.<sup>131</sup>

### **Boston:**

The Suffolk County Sheriff is an elective position and serves a six year term. Most of the communities within Suffolk County, including Boston,<sup>132</sup> have their own police department. Therefore, the Sheriff primarily engages in civil process service and maintains the county jails. The office has about 1,100 employees, about 80 of whom are attached to the jails, and a budget of about \$130 million.<sup>133</sup> Scandals have erupted in a number of Sheriff's offices across Massachusetts. In 2001, for example, Republicans in Quincy filed an ethics complaint against Democratic Plymouth County Sheriff Joseph McDonough for allegedly hiring many family members and contributors.<sup>134</sup> The previous Sheriff in Suffolk County resigned in 2002 after allegations of abuse in the county jails.<sup>135</sup>

### **Chicago:**

The Cook County Sheriff's Office claims to be the second largest in the nation, with more than 6,800 officers and staff.<sup>136</sup> The Sheriff has been elected since 1831. All employees are appointed by the Sheriff, but the process has been subject to a 2006 court-ordered monitoring system and review of its personnel policies as part of a lawsuit alleging political bias in the hiring and supervision of deputies.<sup>137</sup>

Chicago has its own City Police Department,<sup>138</sup> but the Sheriff's office retains a traditional police function in 72 other square miles of the county that are not incorporated. The office also maintains a "Sheriff's Police" division with about 500 sworn officers and 100 support staff. The department provides security at courthouses, conducts evictions, and serves civil papers. It runs the Cook County jail and a boot

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<sup>130</sup> Baltimore City Sheriff's Office, <http://www.baltimorecity.gov/government/sheriff/>

<sup>131</sup> *Best Politician*, The Baltimore City Paper, Sept. 22, 2004, *available at* <http://www.citypaper.com/bob/story.asp?id=9040>.

<sup>132</sup> City of Boston, Police Department, <http://www.cityofboston.gov/Police/>.

<sup>133</sup> Suffolk County Sheriff's Office, Department Overview, <http://www.scsdma.org/deptOverview/index.html>.

<sup>134</sup> Tom Benson, *Sheriff Faces Ethics Complaint*, The Patriot Ledger, May 22, 2001.

<sup>135</sup> Michael Jonas, *New Sheriff In Town, With 2 Battles To Fight*, The Boston Globe, December 15, 2002.

<sup>136</sup> Cook County Sheriff, The Office of the Sheriff, [http://www.cookcountysheriff.org/off\\_of\\_sheriff/offofsheriff.html](http://www.cookcountysheriff.org/off_of_sheriff/offofsheriff.html).

<sup>137</sup> *Shakman v. Sheriff of Cook County*, Case number 69 C 2145, Supplemental Relief Order for Sheriff of Cook County, *available at* <http://www.cookcountysheriff.org/Shakman%20Settlement%20Document%20SRO.pdf>.

<sup>138</sup> Chicago Police Department homepage, <http://egov.cityofchicago.org/city/webportal/portalEntityHomeAction.do?entityName=Police&entityNameEnumValue=33>.

camp. It also helps the Department of Correction monitor paroled prisoners through the 17-year-old Department of Community Supervision and Intervention.<sup>139</sup>

A lengthy article on the Illinois Police and Sheriff's News website says that the Cook County Sheriff's Office had a woeful record of corruption, incompetence, and scandal from its earliest days up until a sweeping federal crackdown in 1984 known as Operation Safebet.<sup>140</sup> There have been significant improvements since that time. Recent news coverage of new Sheriff Thomas Dart, has mostly been positive, largely focusing on his lawsuit against online classified ad services seeking to force them to stop advertising prostitution services,<sup>141</sup> and his refusal to conduct evictions he considered unfair.<sup>142</sup>

### **Dallas:**

The Sheriff of Dallas County is elected and has about 1,600 employees and a budget of about \$135 million.<sup>143</sup> Although Dallas has its own city police department,<sup>144</sup> the Sheriff provides some law enforcement patrol for unincorporated parts of the county. The bulk of the department's duties, therefore, are similar to the Philadelphia Sheriff's office. Court security, prisoner transport and warrant service appear to be handled by an unrelated official known as a constable. The Sheriff's Office also maintains the county jail, with more than 8,000 inmates, and serves as a repository for confiscated guns and other property.<sup>145</sup>

### **Detroit:**

The Wayne County Sheriff is elected and presides over the second largest law enforcement agency in the state, with 1,300 employees and a budget of \$120 million.<sup>146</sup> Although Detroit has a city police department,<sup>147</sup> the Sheriff's office retains a robust law enforcement division, patrols county roads and parks, and maintains specialized units for emergency response, warrant service, marine patrol, mounted patrol and crowd control, internet crime, vice and narcotics, and auto theft. The Sheriff is responsible for the county jail system, the largest in the state, with about 2,600 inmates. The office transports prisoners, provides security at courthouses, and serves

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<sup>139</sup> Cook County Sheriff, The Office of the Sheriff, [http://www.cookcountysheriff.org/off\\_of\\_sheriff/offofsheriff.html](http://www.cookcountysheriff.org/off_of_sheriff/offofsheriff.html).

<sup>140</sup> Richard C. Lindberg, *A Police Department Held Hostage by Politics: A History*, available at <http://www.ipsn.org/county1.html>.

<sup>141</sup> *Craigslist Sued Over Erotic Ads*, BBC News, March 6, 2009, <http://news.bbc.co.uk/1/hi/world/americas/7928148.stm>.

<sup>142</sup> Nick Summers, *Vigilante or Hero? Why one Chicago Sheriff is defying the courts and refusing to perform evictions*, Newsweek, March 10, 2009, <http://www.newsweek.com/id/188619>.

<sup>143</sup> Dallas County Sheriff's Office, <http://www.dallassheriffsoffice.com/intro/main/main.html>.

<sup>144</sup> Dallas Police Department, [http://www.dallaspolice.net/index.cfm?page\\_ID=7914&CFID=930164&CFTOKEN=75287260](http://www.dallaspolice.net/index.cfm?page_ID=7914&CFID=930164&CFTOKEN=75287260).

<sup>145</sup> Dallas County Sheriff's Office, <http://www.dallassheriffsoffice.com/intro/main/main.html>.

<sup>146</sup> Sheriff of Wayne County, <http://www.waynecounty.com/mygovt/sheriff/default.htm>.

<sup>147</sup> City of Detroit, Police Department, <http://www.detroitmi.gov/Departments/PoliceDepartment/tabid/141/Default.aspx>.

civil process documents, including foreclosures and evictions.<sup>148</sup> Incumbent Sheriff Warren C. Evans earned high marks after his election when his department took over policing of the small Wayne County town of Highland Park and made progress in driving down crime.<sup>149</sup>

### **Houston:**

The Harris County Sheriff is elected and presides over the third largest department in the country,<sup>150</sup> with about 4,000 employees and a budget of \$372 million.<sup>151</sup> It claims to be among the oldest law enforcement office in the state, dating from 1837 in the Republic period. Although Houston has its own city police department,<sup>152</sup> the Sheriff's Office provides police protection in the large unincorporated parts of Harris County. The Sheriff runs the county jails, provides security at courthouses, and serves criminal warrants. The department has specialized undercover and intelligence units.<sup>153</sup> The department has had trouble with jail management in recent years, with federal officials now investigating 140 deaths of inmates in county custody. The former Sheriff was forced to apologize after a series of departmental emails, preserved as part of an unrelated court case, contained racial and ethnic slurs from deputies.<sup>154</sup>

### **Los Angeles:**

The Sheriff of Los Angeles County is elected and presides over the largest Sheriff's Department in the U.S., with at least 14,500 employees and a budget around \$2 billion.<sup>155</sup> The office was formed in 1850, when the state chartered its original counties. The Department provides police protection for the large unincorporated parts of Los Angeles County, home to more than 1 million people in 2,600 square miles,<sup>156</sup> and contracts with some of the many municipalities to provide police services, although the City of Los Angeles has its own police department.<sup>157</sup> The Sheriff's Department provides security at county courts, transports prisoners, serves criminal warrants and civil papers, including evictions and foreclosures. It runs the county jails and maintains specialized units, including an emergency response unit and a registry for

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<sup>148</sup> Sheriff of Wayne County, <http://www.waynecounty.com/mygovt/sheriff/default.htm>.

<sup>149</sup> Alejandro Bodipo-Memba, *Safety In Highland Park: Wayne Sheriffs tame 'Wild West', Residents feel safer with new police arrangement*, The Detroit Free Press, July 6, 2004, available at <http://www.warrencevans.com/Media/SAFETY%20IN%20HIGHLAND%20PARK%20Wayne%20Sheriffs%20tame%20%27Wild%20West%27.htm>.

<sup>150</sup> Harris County Sheriff's Office, <http://www.hcso.hctx.net/index.asp>.

<sup>151</sup> Harris County Budget Book, FY 2008-2009, available at <http://www.hctx.net/CmpDocuments/74/Budget/03-FY%202008-09%20Budget%20Book-Departments.pdf>.

<sup>152</sup> Houston Police Department, <http://www.houstontx.gov/police/index.html>.

<sup>153</sup> Harris County Sheriff's Office, <http://www.hcso.hctx.net/index.asp>.

<sup>154</sup> Alan Bernstein, *The stage is set for sheriff's race: Incumbent Tommy Thomas and challenger Adrian Garcia vie to be top county lawman*, The Houston Chronicle, Sept. 27, 2008, <http://www.chron.com/disp/story.mpl/politics/6027272.html>.

<sup>155</sup> Los Angeles County, Sheriff's Department, <http://www.lasd.org/aboutlasd/baca1.html>.

<sup>156</sup> County of Los Angeles, Chief Executive Office, Office of Unincorporated Area Services, <http://ceo.lacounty.gov/OUAS/>.

<sup>157</sup> Los Angeles Police Department, <http://www.lapdonline.org/>.

sex offenders.<sup>158</sup> Sheriff Lee Baca has drawn a fair bit of criticism, including accusations of favorable treatment for celebrities who are jailed and questions about whether he hired friends and accepted free meals, trips, and event tickets. He has sharply denied the accusations.<sup>159</sup>

### **Phoenix:**

The Maricopa County Sheriff's Office is led by elected Sheriff Joe Arpaio, who proudly proclaims to be "America's Toughest Sheriff."<sup>160</sup> The department has more than 3,800 employees and a budget of \$76 million.<sup>161</sup> It provides police services for a large area outside the city of Phoenix, which has its own police department.<sup>162</sup> The office serves warrants and civil papers, including foreclosures and evictions, although a constable serves certain civil processes.<sup>163</sup> The office runs the county jails, but court security is handled by an in-house security division of the courts.<sup>164</sup>

Sheriff Arpaio makes national and even international news regularly because of unusual programs and initiatives, including an old-fashioned chain gang and a tent city for prisoners to save on the cost of building prisons. In 1995, he required prisoners to wear pink underwear to cut down on theft of county-issued prison garb.<sup>165</sup> But Arpaio's antics have drawn a flood of negative press and lawsuits, most recently a lawsuit alleging violation by his deputies of the civil rights of Hispanic residents during a series of aggressive raids looking for illegal immigrants.<sup>166</sup> County auditors have been critical of the Sheriff's management. Most recently, a 2007 audit found weaknesses in the department's procedures for calculating and justifying overtime, regular payroll, and medical leave and said that the department kept inadequate records on special assignments by deputies and performance data for assessing employees.<sup>167</sup>

### **San Diego:**

The San Diego County Sheriff is elected and heads a department of about 4,000 employees. It provides police services for the unincorporated areas of the county and

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<sup>158</sup> Los Angeles County, Sheriff's Department, <http://www.lasd.org/aboutlasd/baca1.html>.

<sup>159</sup> Associated Press, *L.A. Sheriff Once Again Draws Scrutiny*, Arizona Daily Star, June 9, 2007, available at <http://www.azstarnet.com/news/186833>.

<sup>160</sup> Maricopa County Sheriff's Office, <http://www.mcso.org/index.php?a=Home>.

<sup>161</sup> Maricopa County, FY 2008-09 Annual Business Strategies, Adopted Budget, available at <http://www.maricopa.gov/budget/pdf/ABS2008-09ADP.PDF>.

<sup>162</sup> City of Phoenix Police Department, <http://phoenix.gov/POLICE/>.

<sup>163</sup> Maricopa County Sheriff's Office, <http://www.mcso.org/index.php?a=Home>.

<sup>164</sup> The Judicial Branch of Arizona, Maricopa County, Court Security, <http://www.superiorcourt.maricopa.gov/CourtSecurity/index.asp>.

<sup>165</sup> Maricopa County Sheriff's Office, <http://www.mcso.org/index.php?a=Home>.

<sup>166</sup> Associated Press, *Lawsuit accuses a Sheriff's office of racial profiling*, Dec. 13, 2007, available at <http://www.iht.com/articles/ap/2007/12/13/america/NA-GEN-US-Immigration-Lawsuit.php>.

<sup>167</sup> Sheriff's Office Payroll, Review of Sheriff's Office Payroll, Premium Pay, and Leave Time, Maricopa County Internal Audit Department, May 2007, available at [http://www.maricopa.gov/Internal\\_audit/PubDocuments/FY2007/Reports/Sheriff%20Office%20Payroll.pdf](http://www.maricopa.gov/Internal_audit/PubDocuments/FY2007/Reports/Sheriff%20Office%20Payroll.pdf).

on a contract basis for nine cities,<sup>168</sup> though the largest municipality, San Diego, has a city police department.<sup>169</sup> The department runs the county jail system, with eight facilities housing about 5,000 inmates. Since the dissolution of the Marshal's office in 2000, the Sheriff now protects the courthouses in addition to carrying out the traditional Sheriff's functions of warrant service and civil process, including foreclosures and evictions.<sup>170</sup>

The department is one of the original law enforcement agencies in the state, founded in 1850 when the state chartered the original 27 counties.<sup>171</sup> The office has a budget of about \$566 million.<sup>172</sup> The office came under criticism in recent years from civil rights organizations which alleged lax investigations of shootings by deputies,<sup>173</sup> and from good government organizations for mediocre compliance with the state's freedom of information laws<sup>174</sup> - an allegation the Sheriff angrily rejected.<sup>175</sup>

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<sup>168</sup> San Diego County Sheriff's Department, About Us, <http://www.sdsheriff.net/aboutus.html>.

<sup>169</sup> San Diego City Police Department, <http://www.sandiego.gov/police/>

<sup>170</sup> San Diego County Sheriff's Department, About Us, <http://www.sdsheriff.net/aboutus.html>.

<sup>171</sup> San Diego County Sheriff's Department, History, [http://www.sdsheriff.net/about\\_history.html](http://www.sdsheriff.net/about_history.html).

<sup>172</sup> San Diego County Sheriff's Department, 2007 Annual Report, [http://www.sdsheriff.net/documents/2007\\_report.pdf](http://www.sdsheriff.net/documents/2007_report.pdf).

<sup>173</sup> Letter from Kevin Keenan, Executive Director, ACLU of San Diego & Imperial Counties, to William D. Gore, Undersheriff, San Diego County, *Fatal Shootings Reveal That Department Is Behind In Best Practices*, Jan. 5, 2006, available at [http://www.aclusandiego.org/news\\_item.php?article\\_id=000241](http://www.aclusandiego.org/news_item.php?article_id=000241).

<sup>174</sup> See, for example, Californians Aware Audit, [http://www.calaware.org/calaware\\_audit/lawenforcement2/search.php?&in\\_page=9](http://www.calaware.org/calaware_audit/lawenforcement2/search.php?&in_page=9).

<sup>175</sup> San Diego Sheriff's Department, *San Diego County Sheriff's Department Responds to 'Audit,'* Nov. 27, 2007, available at <http://www.voiceofsandiego.org/pdf/audit112807.pdf>.

## THE REGISTER OF WILLS

### **Recommendation: The elected Register of Wills' office should be eliminated by the appropriate legal mechanism.**

It would be hard to find many elected officials more obscure than the Register of Wills. The title only begins to hint at the actual duties of the office.

It turns out that the office has some fairly important duties - if you die in Philadelphia, the Register will have a hand in making sure your estate is handled fairly and that the state gets its share of any inheritance taxes. And if you get married in Philadelphia, you have to visit the Register's office to get your license.

But as important as these duties are, there is no convincing reason why they should rest with an elected official.

In most other cities we examined, the Register's duties are typically handled by individuals housed within the court system. Some are appointed, such as in New York City and Los Angeles. In other cases, even where they are elected, the Clerks are part of the judicial branch of government, such as the Clerk of the Superior Court in Phoenix and the Clerk of the Circuit Court in Chicago.

Our recommendation for eliminating an elected Register of Wills is no slight against the current officeholder. Register Donatucci has earned high marks from auditors for his running of the office and from residents and lawyers who appreciate the friendly customer service.

Rather we believe that *this City* does not need an *elected* Register of Wills. If the state were to eliminate this post, there would be a \$106,621 annual cost-savings in salary<sup>176</sup>, plus benefits

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<sup>176</sup> FY09 Approved Operational Budget.

and other perks currently attached to this position. Additional savings would be realized without a separate office to maintain, as well as all of its ancillary expenses.

However, the most compelling reason to change the current structure – and what differentiates the Register of Wills’ office from the three other elected officials we discuss – is to eliminate patronage. *Not one of the Register’s 68 employees<sup>177</sup> is part of the City’s merit-based civil service system.* To our knowledge, no other City department head – not even the Mayor – has the absolute discretion to hire, promote and fire his employees.

The Register’s office is well known for its rampant patronage. When a 1994 *Philadelphia Inquirer* series dubbed Register Donatucci “The Prince of Patronage,” he had no qualms about defending this practice: “I do not apologize in any way for hiring patronage workers. I did it once and I will do it again. Everyone in my office is a quality worker. My probate clerks are sensitive to the clients because they know they are dealing with bereaved people. I have hired committeepeople for the office because they understand people.”<sup>178</sup> His Chief-of-Staff, Ralph Wynder, himself a ward leader, told us that committeepeople are naturally more community-oriented and customer friendly.<sup>179</sup>

Bringing employees who perform the functions now within the Register of Wills’ office into the City’s civil service system would be a major step forward. It would open the door wider for non-political job applicants and remove the appearance of cronyism that deepens the public’s mistrust of government.

Transferring the largely ministerial duties now performed by the Register’s office – most likely to the Orphan’s Court, which is part of the First Judicial District – should not be difficult. Even the Register’s quasi-judicial role of hearing testimony on will challenges and resolving disputes among heirs, which (as we noted in the overview) Register Donatucci points to as a reason he must remain independent, can easily be brought within the court system.

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<sup>177</sup> City of Philadelphia, Office of Human Resources, current as of March 1, 2009.

<sup>178</sup> Mary Frangipanni, *Political Notebook*, Philadelphia City Paper, October 5-12, 1995.

<sup>179</sup> Telephone conversation with Ellen Mattleman Kaplan. March 4, 2009.

Looking at practices in other cities, and examining the structure of the local courts, it makes sense to move most of the functions of the Register of Wills' office to the Orphan's Court. It could simply be made an administrative arm of the courts. (We do not suggest that moving to the courts will necessarily end patronage. While the Philadelphia courts have come a long way to dispel their reputation as a haven for patronage and nepotism,<sup>180</sup> politically-based hiring within the court system continues to exist.)

One possible exception is issuing marriage licenses. It is unclear why this service is provided by the Register of Wills. (A comedian has probably had some fun with that.) In many cities we looked at, issuing marriage licenses is done by a County Clerk, an office Philadelphia does not have. In a few cases, such as Boston, the licenses are issued by some branch of the executive branch, appointed by the mayor.

Further study is necessary to determine how to accomplish the transfer of functions without any lapse in services required by City residents. There also needs to be a fresh look at the long list of fees imposed by the Register. Yes, they produce revenues. But at a time when residents are struggling with their personal finances, the symbolic value of reassessing some of the smaller fees (e.g., the \$10 charge to take testimony of a witness) could be important.

While it is premature to put a number on any cost-savings, the opportunity to save money should be part of the transfer conversations. And, as discussed earlier regarding both the Clerk of Quarter Sessions and the Sheriff, moving functions to the court system when the state assumes funding of the unified judicial system.

The timing to remake the Register's office is right. Register Donatucci is also enrolled in DROP. Like the Clerk of Quarter Sessions, City Commissioner Tartaglione and the Sheriff, he should retire during his current term. He suggested to us that the recession might force him to reconsider.<sup>181</sup>

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<sup>180</sup> Joseph A. Slobodzian, *Phila. 's new president judge's reward: budget crisis*, Philadelphia Inquirer, December 15, 2008.

<sup>181</sup> Conversation with Zachary Stalberg and Ellen Mattleman Kaplan. February 24, 2009.

The timing is important for another reason. The City Law Department believes that legislation enacted by the General Assembly may be required to eliminate an elected Register of Wills.<sup>182</sup>

It's difficult enough to convince 17 members of City Council to agree. Persuading 253 state legislators is even harder. We hope Philadelphians will lean on their representatives in Harrisburg to persuade their colleagues to promptly begin this process.

## **PROFILE OF THE OFFICE**

### **What does the Register of Wills' office do?**

The Register of Wills' office primarily assists the local courts by:

- Maintaining records of wills, inventory of estates, and related documents;
- Handling filing documents and payments of the state's Inheritance Taxes;
- Receiving wills for probate;
- Issuing letters of administration in cases of persons who have died intestate;
- Collecting inheritance taxes due the Commonwealth;
- Duplicating old probate records;
- Issuing new marriage licenses and duplicating old marriage licenses.

In addition, the Register serves as the Clerk of the Orphan's Court (another obscure institution), which handles most domestic administration matters, including settling disputes over wills and trusts, and settling matters related to the care of minors and disabled persons. In this capacity, the Register maintains the dockets and records of the court.

The Register's office has an annual budget of \$3.7 million.<sup>183</sup> It handles tens of millions dollars per year in inheritance tax payments on behalf of the state, and hundreds of thousands

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<sup>182</sup> E-mail to Ellen Mattleman Kaplan, Vice President and Policy Director, from Lewis Rosman, Senior Attorney, Philadelphia Law Department. March 3, 2009.

<sup>183</sup> Phila. FY09 Approved Operating Budget.

more in a large litany of fees, including costs associated with obtaining a marriage license and with settling estates.<sup>184</sup>

In response to an across-government request by Mayor Nutter, Register Donatucci recently cut 5% from his office budget.<sup>185</sup> The Register told us that, as a Christmas present to him, his staff offered to take an unpaid day off to help trim the budget even more.<sup>186</sup>

### **Who Works in the Register's Office?**

The Register is elected every four years on the same schedule as the mayoral elections. Register Ronald R. Donatucci was first elected in 1979. His current salary, the level of which is dictated by the Philadelphia Code,<sup>187</sup> is \$106,621.<sup>188</sup>

Commendably, he voluntarily took a 5% pay cut as part of the November 2008 Rebalancing Plan to help with the City's budget crisis. Donatucci also said nine supervisors and deputies would take a 5 percent pay cut and three vacant positions would remain open. (Interestingly, in 1993, during a period when city revenues were down and most city employees were under a wage freeze, Donatucci awarded his top 10 deputies raises ranging from 7.5 to 24 percent.)<sup>189</sup>

As we said earlier, the Register of Wills has 68 employees, all of whom are exempt from the city's Civil Service system. A quick look at the names given to us by the City, after the Register refused our request, shows a few ward leaders (including the Register and several top

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<sup>184</sup> Register of Wills, Auditor's Report, Fiscal years 2007 and 2006, issued Jan. 8, 2009 by City Controller Alan Butkovitz, available at [http://www.philadelphiacontroller.org/publications/audits/01\\_01\\_15\\_09\\_regwills\\_06.pdf](http://www.philadelphiacontroller.org/publications/audits/01_01_15_09_regwills_06.pdf) (last visited March 15, 2009).

<sup>185</sup> Michael A. Nutter, FY 2010-2014 Budget Briefing for City Council by Mayor Michael A. Nutter, 9, February 9, 2009.

<sup>186</sup> Interview of Register of Wills Ronald R. Donatucci by Zachary Stalberg and Ellen Mattleman Kaplan, February 24, 2009.

<sup>187</sup> Phila. Code §§ 20-305(5), 20-308.

<sup>188</sup> Phila. FY09 Approved Operating Budget.

<sup>189</sup> Vernon Loeb, Pay Hikes Abound At Wills Office, Register Of Wills Ronald Donatucci Gave 10 Deputies Raises Of 7.5 Percent To 24 Percent, The Philadelphia Inquirer, May 26, 1993, at A01.

staff members), quite a few committee people and family members of politically active Philadelphians. “The Prince of Patronage” pretty much says it all.

### **How has the Register Performed?**

As mentioned earlier, the Register of Wills received more kudos than the other elected offices discussed in this report for the performance of his office. The office has also performed well on local and state audits.

For example, earlier this year, City Controller Alan Butkovitz reported that his auditors found no significant deficiencies or issues of non-compliance.<sup>190</sup> While the office had been criticized in earlier years for lax accounting of the arrival time of employees, the auditors said that situation had been fully corrected by 2006.<sup>191</sup> Also resolved were past fire code violations in the Register's office and some outdated information on city property in the office.<sup>192</sup> In 2007, state Auditor General Jack Wagner issued a report that did not identify any problems with the handling of state funds by the Register of Wills.<sup>193</sup>

Unfortunately, performance is not the basis for our recommendations. There is simply no reason to keep this an elected position.

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<sup>190</sup> Register of Wills, Auditor's Report, Fiscal years 2007 and 2006, issued Jan. 8, 2009 by City Controller Alan Butkovitz, [http://www.philadelphiacontroller.org/publications/audits/01\\_01\\_15\\_09\\_regwills\\_06.pdf](http://www.philadelphiacontroller.org/publications/audits/01_01_15_09_regwills_06.pdf) (last visited March 15, 2009).

<sup>191</sup> Register of Wills, Auditor's Report, Fiscal year 2005, issued June 30, 2006 by City Controller Alan Butkovitz, [http://www.philadelphiacontroller.org/publications/audits/01\\_68\\_fy05.pdf](http://www.philadelphiacontroller.org/publications/audits/01_68_fy05.pdf) (last visited March 15, 2009).

<sup>192</sup> *Id.*

<sup>193</sup> Register of Wills/Clerk of Orphans' Court, Philadelphia County, Examination Report for the Period January 1, 2003 to December 31, 2006, issued December 13, 2007 by Auditor General Jack Wagner, <http://www.auditor.gen.state.pa.us/Reports/County/CountyOffices/ctyRofWCkofOrphansPhiladelphiaCounty012808.pdf> (last visited March 15, 2009).

## **How did the Register come to be elected?**

The colonial government of Pennsylvania included an official known the Register-General of Pennsylvania for the Probate of Wills and Granting Letters of Administration.<sup>194</sup> This officer was in charge of keeping track of birth records, marriage licenses and death records, in the form of wills. He could also issue Letters of Administration, which name administrators to handle an estate if a person dies without designating someone to act as executor.

At various times, the Register-General also kept track of records of indentured servants who entered the Commonwealth. In the case of a disputed will, the Register-General was empowered to call together two judges from the local Court of Common Pleas to act as a probate court. The position was originally a gubernatorial appointment. Throughout the Colonial era, there was just one Register-General, headquartered in Philadelphia, who appointed deputies to handle his duties in the counties.

The statewide Register-General was abolished in 1777 and replaced with independent officials in each county, an arrangement that was written into the new Constitution of 1790, though the office remained a gubernatorial appointment. The Constitution of 1838 made the positions elective. While some other counties, including Allegheny County,<sup>195</sup> have made the position appointive over the years, or even renamed the office and converted it to a more general records clerk office, Philadelphia has maintained the traditional name and elective structure.

The Register of Wills was not included in the city-county consolidation amendment to the state constitution that was passed in 1951. As a result it is not a city agency and does not operate under the Home Rule Charter. This is why eliminating the office as an elected position cannot be accomplished by City Council alone (as with the Clerk of Quarter Sessions) or with the approval of the voters (as with the Sheriff and City Commissioners).

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<sup>194</sup> <sup>194</sup> Pennsylvania State Archives, County Office Descriptions, <http://www.phmc.state.pa.us/BAH/dam/rg/coffices.htm> (last visited March 15, 2009).

<sup>195</sup> Jerome L. Sherman, *6 Elected Row Offices Become 3 Appointed*, Pittsburgh Post-Gazette, May 18, 2005, available at <http://www.post-gazette.com/pg/05138/506358-180.stm>.

## How are the Register of Will's functions performed around the country?

As said earlier, most other cities place the functions now carried out by the Register of Wills office within the court system – irrespective of whether the individual holding the top job is appointed or elected.

Below are profiles on offices with similar functions in other major U.S. cities:

### **Baltimore:**

Baltimore's Register of Wills is elected as required by the state Constitution.<sup>196</sup> The office has about 35 employees, all of whom are considered state employees, although they serve at the pleasure of the Register. With an annual budget of about \$2 million, the office handles more than \$16 million in fees and payments, primarily through inheritance tax payments.<sup>197</sup> A 2007 state report criticized the office for, among other things, failing to invest money efficiently and for problems in retaining cash receipts.<sup>198</sup> A more recent audit found improvements.<sup>199</sup> An elected Clerk of the Court issues marriage licenses.

### **Boston:**

The duties Philadelphia assigns to the Register of Wills are performed by the Register of Probate for Suffolk County, which claims to be the oldest elective position in the United States (since 1692).<sup>200</sup> The Register has about 70 employees,<sup>201</sup> and is covered by the Suffolk County Probate and Family Court's \$2.4 million budget.<sup>202</sup> One duty of the Register - issuing marriage licenses - is handled in Boston by that city's appointed City Clerk. The Clerk also issues other licenses and permits, and maintains records of City Council meetings.<sup>203</sup>

### **Chicago:**

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<sup>196</sup> State of Maryland, Register of Wills, <http://www.registers.state.md.us/> (last visited March 15, 2009).

<sup>197</sup> Audit Report, Office of the Register of Wills, Baltimore County, Maryland, April 2008, Office Of Legislative Audits, Department Of Legislative Services, Maryland General Assembly <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/BaltoCoROW08.pdf> (last visited March 15, 2009).

<sup>198</sup> Audit Report, Office of the Register of Wills, Baltimore County, Maryland, May 2007, Office Of Legislative Audits, Department Of Legislative Services, Maryland General Assembly <https://www.ola.state.md.us/Reports/Fiscal%20Compliance/BaltoCityROW07.pdf> (last visited March 15, 2009).

<sup>199</sup> Audit Report, Office of the Register of Wills, Baltimore County, Maryland, April 2008, Office Of Legislative Audits, Department Of Legislative Services, Maryland General Assembly <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/BaltoCoROW08.pdf> (last visited March 15, 2009).

<sup>200</sup> Richard Iannella, Register of Probate, A Biography of Register Richard Iannella, <http://www.probatecourtiannella.com/biography.htm> (last visited March 15, 2009).

<sup>201</sup> Telephone interview with a Deputy Register in Boston, (617) 788-8300.

<sup>202</sup> Massachusetts Budget Tracking Tool, Trial Court, Fiscal Year 2009, [http://www.mass.gov/bb/h1/fy2009h1/track\\_09/dpttrack/htrc.htm](http://www.mass.gov/bb/h1/fy2009h1/track_09/dpttrack/htrc.htm) (last visited March 15, 2009).

<sup>203</sup> Boston City Clerk webpage <http://www.cityofboston.gov/cityclerk/>

Most of the duties Philadelphia assigns to the Register of Wills are performed by the Clerk of the Circuit Court of Cook County. The clerk is elected but is considered an employee of the state judiciary and a non-judicial officer of the Circuit Court.<sup>204</sup> The position was created in 1964 after a constitutional amendment created one of the largest unified court systems in the world.<sup>205</sup>

The Clerk has 1,800 employees, all of whom are considered county employees, and a budget of more than \$81 million.<sup>206</sup> Several members of the office were swept up in a massive federal corruption probe in the 1980s, known as Operation Greylord, which uncovered a widespread case-fixing scheme by judges and other court officials.<sup>207</sup> An elected Cook County Clerk issues marriages licenses and has a number of additional administrative duties, including administering elections, keeping vital records, monitoring the county ethics and campaign finance regulations, and acting as the Clerk to the Board of Supervisors, the legislative body of the county.<sup>208</sup>

### **Dallas:**

The duties Philadelphia assigns to the Register Of Wills are performed by the Dallas County Clerk, who serves as Clerk of the Probate Courts, among many other duties.<sup>209</sup> The position is elected, as required by the state constitution.<sup>210</sup> The Clerk has about 215 employees, all but two of whom are civil service employees. The Clerk appoints a non-civil service Chief Deputy and special assistant.<sup>211</sup> The office has a budget of about \$17 million.<sup>212</sup>

### **Detroit:**

Michigan has no equivalent of the Register of Wills; the duties that Philadelphia assigns to the Register of Wills are handled by the administration of the Probate

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<sup>204</sup> The Honorable Dorothy Brown, Clerk of the Circuit Court of Cook County, 2000-2007 Review, First Term and Second Term to Date, [http://198.173.15.31/Forms/pdf\\_files/Term\\_Review\\_for\\_website.pdf](http://198.173.15.31/Forms/pdf_files/Term_Review_for_website.pdf) (last visited March 15, 2009).

<sup>205</sup> Illinois State Constitution, Article VI, Section 18.

<sup>206</sup> 2009 Cook County Executive Budget Recommendations, Clerk of the Circuit Court, [http://www.cookcountygov.com/taxonomy/Budget/Budget2009/cc\\_FY09\\_Q\\_ExecBudget.pdf](http://www.cookcountygov.com/taxonomy/Budget/Budget2009/cc_FY09_Q_ExecBudget.pdf), 2 (last visited March 15, 2009).

<sup>207</sup> Maurice Possley, *Operation Greylord: A federal probe of court corruption sets the standard for future investigations*, The Chicago Tribune, August 5, 1983, available at <http://www.chicagotribune.com/news/politics/chi-chicagodays-greylord-story,0,4025843.story>.

<sup>208</sup> Cook County Clerk's Office, Applying For A Marriage License, [http://www.cookctyclerk.com/sub/marriage\\_licenses.asp](http://www.cookctyclerk.com/sub/marriage_licenses.asp) (last visited March 15, 2009).

<sup>209</sup> Dallas County Clerk, [http://www.dallascounty.org/departments/countyclerk/cclerk\\_index.html](http://www.dallascounty.org/departments/countyclerk/cclerk_index.html) (last visited March 15, 2009).

<sup>210</sup> Dallas County District Clerk's Office, Historical List of Elected Officials, Dallas County, [http://www.dallascounty.org/departments/districtclerk/forms/cntyoff\\_604127.pdf](http://www.dallascounty.org/departments/districtclerk/forms/cntyoff_604127.pdf) (last visited March 15, 2009).

<sup>211</sup> Telephone interview with Connie Jones, Special Assistant, Office of the Clerk of the Probate Courts, March 6 2009.

<sup>212</sup> Dallas County FY 2009 Adopted Budget, [http://www.dallascounty.org/departments/budget/documents/FY2009Budget\\_c.pdf](http://www.dallascounty.org/departments/budget/documents/FY2009Budget_c.pdf) (last visited March 15, 2009).

Courts.<sup>213</sup> We were unable to get reliable additional information on the structure of the courts. One duty of the Register - issuing marriage licenses - falls to the Wayne County Clerk, an elected official whose duties are detailed in the chapter on the Clerk of Quarter Sessions.<sup>214</sup>

### **Houston:**

The Harris County Clerk,<sup>215</sup> who performs functions similar to Philadelphia's Register of Wills, serves as the Clerk of the Probate Court, among many other duties.<sup>216</sup> The position is elected, as required by the state constitution.<sup>217</sup> The office has 329 employees, all of whom are covered by the civil service system,<sup>218</sup> and a budget of about \$25 million.<sup>219</sup>

### **New York City:**

Most duties Philadelphia assigns to the Register of Wills are performed by the Clerk of the Surrogate's Courts in New York City, one in each of the City's five counties: New York City, Bronx, Kings, Queens, and Richmond.<sup>220</sup> The Chief Clerk is an appointive position. The Surrogate's Courts are run by elected judges known as Surrogates, who appoint the Chief Clerk. The Surrogates may also appoint a Commissioner of Record, who has some supervisory duties over the wills and other documents handled by the Chief Clerk.<sup>221</sup>

A City Clerk appointed by New York City's City Council issues marriage licenses and has other administrative responsibilities such as maintaining records of city property and the city's lobbyist registry, and acting as Clerk to the City Council.<sup>222</sup>

### **Phoenix:**

The duties Philadelphia assigns to the Register of Wills are performed by the elected Clerk of the Superior Court of Maricopa County. The Clerk is part of Arizona's judicial branch, which is under the supervision of the State Supreme Court.<sup>223</sup> The

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<sup>213</sup> Wayne County Probate Court homepage, <http://www.wcpc.us/> (last visited March 15, 2009).

<sup>214</sup> Welcome to the Wayne County Clerk Office, <http://www.waynecounty.com/mygovt/clerk/home.aspx> (last visited March 15, 2009).

<sup>215</sup> *Id.*

<sup>216</sup> Harris County Clerk's Office homepage, <http://www.cclerk.hctx.net/> (last visited March 15, 2009).

<sup>217</sup> *Id.*

<sup>218</sup> Telephone interview with official from the Harris County Civil Service office, March 6, 2009.

<sup>219</sup> Harris County FY 2008-09 Budget Book, *available at*

<http://www.hctx.net/CmpDocuments/74/Budget/03-FY%202008-09%20Budget%20Book-Departments.pdf>.

<sup>220</sup> New York State Unified Court System, Surrogate's Court,

<http://www.courts.state.ny.us/courts/nyc/surrogates/index.shtml> (last visited March 15, 2009).

<sup>221</sup> New York Code, Surrogate's Court Procedure § 2605.

<sup>222</sup> Office of the City Clerk, The City of New York, <http://www.cityclerk.nyc.gov/html/home/home.shtml> (last visited March 15, 2009).

<sup>223</sup> Clerk of the Superior Court's Office, Maricopa County, <http://www.clerkofcourt.maricopa.gov/clkmsg.asp> (last visited March 15, 2009).

Clerk has 720 employees, all of whom are considered county employees.<sup>224</sup> The Clerk's office is included in the \$149 million budget for the county's judicial branch<sup>225</sup>.

### **San Diego and Los Angeles:**

California has no equivalent of the Register of Wills. Most duties of that office, and all other Philadelphia judicial officials, are folded into the administrative structure of the Superior Courts of the counties.<sup>226</sup> All Executive Officers and Clerks are appointed by the Judges of the Superior Court,<sup>227</sup> which is part of California's judicial branch.<sup>228</sup> The administrative employees of the county courts are considered state employees, are unionized, and are covered by a merit-based civil service system.<sup>229</sup>

An elected County Clerk, known as the "Register-Recorder/County Clerk" in Los Angeles<sup>230</sup> and the Assessor/Recorder/County Clerk in San Diego,<sup>231</sup> issues marriages licenses. They handle a wide variety of other administrative duties, including keeping vital records, business records, and administering elections.

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<sup>224</sup> Telephone interview with representative of the Maricopa County Human Resources Department, March 6, 2009.

<sup>225</sup> Maricopa County Department of Finance, FY 08-09 Executive Summary – January 2009, February 11, 2009, <http://www.maricopa.gov/finance/PDF/Variance/Jan%2009%20Variance%20Report%20with%20Commentary.pdf> (last visited March 15, 2009).

<sup>226</sup> Superior Court of California, County of Los Angeles, Probate: General Information, <http://www.lasuperiorcourt.org/probate/> (last visited March 15, 2009).

<sup>227</sup> Los Angeles Superior Court, About the Court: Court Administration, <http://www.lasuperiorcourt.org/aboutcourt/admin.htm> (last visited March 15, 2009).

<sup>228</sup> California Courts, The Judicial Branch of California, <http://www.courtinfo.ca.gov/about/> (last visited March 15, 2009).

<sup>229</sup> Telephone interviews with Phillip Carrizosa, Public Affairs Officer for the California Judicial Branch, (415) 865-8044.

<sup>230</sup> Los Angeles County, Registrar-Recorder/County Clerk, <http://www.lavote.net/> (last visited March 15, 2009).

<sup>231</sup> San Diego County Assessor/Recorder/County Clerk homepage, <http://arcc.co.san-diego.ca.us/default.aspx> (last visited March 15, 2009).

## AN INVITATION TO RESPOND

The Committee of Seventy invites citizens, political leaders and especially the six office-holders who would be impacted by the recommendations in this report to respond in writing.

While some of the officials granted interviews and supplied some specific information about their operations, we would welcome detailed rebuttals from the Clerk of Quarter Sessions, City Commissioners, the Sheriff and the Register of Wills. We will post those rebuttals *in unedited form* on the Committee of Seventy's web site, [www.seventy.org](http://www.seventy.org).

We also welcome comments and suggestions from city workers and regular taxpayers – particularly suggestions about achieving efficiencies and generating more revenue in relationship to the functions performed by the four offices covered in this report.

**Please send rebuttal or comments to [jdavid@seventy.org](mailto:jdavid@seventy.org).**

The non-partisan Committee of Seventy has expanded its historic mission – fair elections and clean government -- to include issues of government effectiveness.

If you have thoughts about how to improve local government in Philadelphia and the region, please call 215.557.3600 or send an e-mail to [dbright@seventy.org](mailto:dbright@seventy.org).