

COMPENSATION BOARD STUDY COMMITTEE
REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

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COMMONWEALTH OF VIRGINIA
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1973

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COMPENSATION BOARD STUDY
Report of the
Virginia Advisory Legislative Council

Richmond, Virginia
December 12, 1973

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

At the 1972 Session of the General Assembly, the Virginia Advisory Legislative Council was directed to study the functioning of the State Compensation Board and to recommend any necessary changes in its operation and makeup. This study was conducted pursuant to House Joint Resolution No. 60 as follows:

House Joint Resolution No. 60

Directing the Virginia Advisory Legislative Council to study the Compensation Board.

Whereas, the predecessor of the Compensation Board, the State Fee Commission, was created in nineteen hundred thirty to deal with specific problems which had arisen at that time; and

Whereas, although the needs of the State and local governments and the problems which are now arising are radically different from those which existed at the time its predecessor was created, the Compensation Board has substantially the same powers, responsibilities and procedures as the State Fee Commission was given at that time; and

Whereas, among other problems, a need has arisen for a clearly defined personnel plan and standardization of compensation for those employees whose compensation is subject to the power of the Compensation Board; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study of the State Compensation Board, its functions, responsibilities, structure and operations. Such study shall include consideration of possible alternative structures for determining compensation of constitutional officers as well as changes in procedures and methods of operation.

All agencies of the State shall assist the Council on request. The Council shall conclude its study and make its report no later than September one, nineteen hundred seventy-three.

Your Council appointed Delegate W. Roy Smith of Petersburg to act as Chairman of the Study. Delegate Smith with the approval of your Council appointed the following persons as members: Senator George S. Aldhizer of Broadway; David B. Ayres, Jr., State Comptroller, of Richmond; J. Elwood Clements, Sheriff of Arlington County; Delegate Walther B. Fidler of Warsaw; Delegate Arthur R. Giesen, Jr. of Verona; E. P. Greever, Treasurer of Tazewell County; Delegate George H. Heilig, Jr. of Norfolk; Royston Jester, III,

Commonwealth's Attorney for Lynchburg; Delegate Raymond R. Robrecht of Salem; Senator H. Selwyn Smith of Manassas; Samuel W. Swanson, Clerk of the Circuit Court of Pittsylvania County; John B. Vaughan, Sheriff of Hanover County and Robert H. Waldo, Commissioner of the Revenue for Chesapeake.

The Committee held its initial meeting on September 26, 1972. At this meeting, Delegate Arthur R. Giesen, Jr. was elected to serve as Vice Chairman. The Committee has met on a regular basis over the past year to pursue its study.

The Committee held a public hearing in Richmond on November 4, 1972. The hearing was well attended and the Committee heard the comments and suggestions of some fourteen persons. Briefly stated, the opinions expressed by the persons appearing before the Committee were as follows: the compensation board concept is a good concept and should be retained; there is a need for the Board to have more staff support; the Board should have full-time members; local control of compensation of constitutional officers would be undesirable as it would bring local politics into the process of compensating such officers; and there is a need to have persons working for the Board who could make field inspections to determine the real needs of a constitutional officer.

In addition to the public hearing, the Committee prepared two questionnaires. The first questionnaire was sent to all the constitutional officers, the chief executive officer for each locality and the head of the legislative body of each locality. (See Appendix I) The second questionnaire was sent to each state in the United States to determine their method of compensating officers comparable to our constitutional officers. The comments received in reply to these two questionnaires were a very important part of the Committee's deliberations.

The Division of Legislative Services (formerly the Division of Statutory Research and Drafting) provided the staff and secretarial support necessary to undertake the Committee's study.

II. Recommendations

A. *The Compensation Board should be retained and continue to perform its duties in the manner recommended by your Council.*

Recognizing the need for a voice for State government in the operation of the offices of the constitutional officers, the General Assembly established the Fee Commission in 1926. This Commission was authorized to fix the expense allowances to be allowed each constitutional officer within the Commonwealth.

In 1934, the Fee Commission was abolished and the Compensation Board was established to perform the function of setting expense allowances. Additionally, the Commonwealth's attorneys, county and city treasurers and commissioners of the revenue were removed from the fee system for the purpose of compensation. In lieu of the fees, the officers were paid a salary fixed by the Compensation Board within limits set by general law. In 1942, the Compensation Board was given the authority to fix the salaries and approve the expense allowances to all sheriffs and sergeants within the Commonwealth. Although the clerks of court continue to be compensated by a fee system, the Compensation Board does set the expense allowances including the salaries of their deputies, assistants and other employees.

Each of the constitutional officers whose salaries and/or expense allowances are fixed by the Compensation Board are required to be elected for each county and city by the *Constitution of Virginia*. Each such officer performs services which are essential to the criminal justice process, the system of courts and the revenue collection process of the Commonwealth and has such other duties which are imposed upon him by the general law of the

Commonwealth. The Commonwealth has a vital interest in providing adequate and equitable salaries and operating expenses to insure these duties are properly performed.

In the case of each constitutional officer, except the clerks of court, the Commonwealth is required to provide no less than one-half of the constitutional officers' salaries and expense allowances. In the fiscal year 1971-1972, the State expended approximately one million three hundred thousand dollars for compensation and expenses of the Commonwealth's attorneys, three million six hundred dollars for salaries and expenses of county and city treasurers, and three million five hundred thousand dollars for the salaries and expenses of the commissioners of the revenue. The sheriffs' and sergeants' salaries and expenses are paid two-thirds by the State and one-third by the county or city. In the fiscal year 1971-1972, the State expended approximately eight million four hundred thousand dollars for the salaries and expenses of the sheriffs and sergeants.

Constitutional officers have a necessary and valuable service to perform for the State. Since the State contributes to their salaries and expenses in substantial proportions it must be able to control the extent of such support.

The setting of salaries and expenses of constitutional officers by the Compensation Board is the most practical method of achieving some degree of equitable uniformity throughout the Commonwealth, not only as to compensation but as to classification of personnel with respect to training, competence and performance.

For the foregoing reasons, your Council recommends that the Board should be retained and that the Board should continue to perform its duties and functions within the recommendations of this Committee.

B. The State Compensation Board should be enlarged to five members and one member should be appointed by the Governor as a full-time Chairman.

The Board is presently composed of three members — the Chairman appointed by the Governor, the Auditor of Public Accounts and the State Tax Commissioner. Under the best circumstances, the present members can only devote a part of their time to the functions of the Board. The State Compensation Board has the duty and responsibility for setting the salaries of all constitutional officers and their staffs except the salaries of the clerks of court. In 1972 the Board was required to set the salaries of some 4,989 persons. The Board must approve all the expense items for the operation of the offices of all the constitutional officers. The Board does not have sufficient staff to deal adequately with the personnel matters which annually face the State Compensation Board.

In view of the present limitations on the time and energies of the Board, your Council feels that it is essential to the proper functioning of the Board to have a Chairman whose sole responsibility is the administration of the Board's work. Your Council feels that a full-time Chairman can provide liaison between the Board and the localities in which the constitutional officers work. The Chairman would be appointed by the Governor subject to the confirmation of the General Assembly.

We recommend that the State Director of Personnel should be required by law to serve on the State Compensation Board. Most of the work of the Board deals directly with the setting of salaries for the employees of the constitutional officers. The Director of Personnel would bring to the Board his expertise and experience in personnel matters. His presence will be of great assistance to the Board in its deliberations and decisions.

We further recommend that the Auditor of Public Accounts remain on the

Board. Because of his relationship with the localities as well as the constitutional officers, he is generally familiar with many aspects of the local situation.

Your Council recommends that the number of members on the Board be increased from three to five. The two additional members will be elected by the General Assembly to serve for terms of four years. In order to allow the two new members to acquire expertise and to provide for continuity, your Council recommends that the new members be allowed to succeed themselves.

Your Council urges the adoption of this Recommendation to alleviate the workload of the present Board, to bring more expertise to the Board and to allow more continuity in the membership of the Board.

C. The State Compensation Board should be provided sufficient staff to enable it to properly perform its functions.

In the public hearing and in the responses to the Committee's questionnaire, one of the two major complaints was the lack of understanding of the local problems of the operation of a given constitutional office. The complaints were that the Board lacks sufficient staff to gain a full understanding of the burdens and duties of each constitutional office. The other major complaint was the lack of input from the locality into the deliberations of the board, particularly that local personnel plans and pay scales, both governmental and private, are not fully considered.

Your Council recognizes that the Board needs persons to assist it who have expertise in personnel and office management. A sufficient staff will enable the Board to determine the amount of time, effort and work required in the daily operations of the office of a constitutional officer. Your Council further feels that sufficient staff will allow field visits to the offices of the constitutional officers to observe their operations and working conditions. A sufficient staff will be able to review the personnel plans and pay scales of localities for their own employees performing comparable tasks. This will allow the Board to have the necessary data from the localities to make sound judgments and decisions in the setting of salaries and expenses for the constitutional officers and employees of such officers. The approximate cost for the operation of the Compensation Board with the additional personnel will be four hundred fifty-five thousand dollars for the next biennium.

For the above reasons, your Council recommends that necessary appropriations be provided to the State Compensation Board in order for it to be sufficiently staffed to properly perform its duties and functions.

D. The present procedure for an appeal of a State Compensation Board decision should be changed to provide for a five member Review Panel with a right of appeal of its decision under certain circumstances to a three-judge court.

Under the present law, there are two methods to appeal a decision on salaries and expenses made by the Board. The first, found in § 14.1-51 of the *Code of Virginia*, provides that any governing body of a county or city may appeal a decision of the Board to a reviewing body composed of the three members of the State Compensation Board and two members appointed from the local governing body. The second, set out in § 14.1-52 of the *Code of Virginia*, provides for an appeal of a decision of the Board to a special three-judge panel appointed in accordance with law.

Your Council feels that there is no need for two avenues of appeal of a Board decision. The majority view expressed at the public hearing was that the appeal by § 14.1-51 of the *Code of Virginia* offered very little relief for the county or city and none for the constitutional officer. Your Council further

feels that the setting of salaries and expenses for constitutional officers is primarily an administrative function and should not be treated as a judicial proceeding. Your Council therefore, recommends that §§ 14.1-51 and 14.1-52 be amended to eliminate the present appeal procedures and that these be replaced by the procedure recommended herein.

Your Council recommends that the only method of objection to a decision of the Board be to a Review Panel. This Review Panel will be composed of five members which will be appointed in the following manner — two by the objecting party (locality or constitutional officer); two by the Compensation Board from its membership; and one judge or retired judge of a court of record by the Chief Justice of the Supreme Court. In the case of findings, conclusions or decisions of the Review Panel being unconstitutional or arbitrary, capricious or an abuse of discretion, the objecting party or the Compensation Board will be given a right to appeal to a special three-judge court.

Your Council strongly urges the adoption of this recommendation as it will promote a uniform and more equitable procedure for the hearing of objections to the decisions to the State Compensation Board.

III. Conclusion.

Your Council concludes:

1. The Compensation Board should be retained and continue to perform its duties in the manner recommended by your Committee.
2. The State Compensation Board should be enlarged to five members and one member should be appointed by the Governor as a full-time Chairman.
3. The State Compensation Board should be provided sufficient staff to enable it to properly perform its functions.
4. The present procedure for an appeal of a State Compensation Board decision should be changed to provide for a five member Review Panel with a right of appeal of its decision under certain circumstances to a three-judge court.

The necessary legislation to carry out the recommendations of your Council are attached in the Appendix II.

Respectfully submitted,

Lewis A. McMurrin, Jr., *Chairman*

Willard J. Moody, *Vice Chairman*

Russell M. Carneal

Joseph V. Gartlan, Jr.

Jerry H. Geisler

Arthur R. Giesen, Jr.

Edward E. Lane

C. Hardaway Marks

Stanley A. Owens

William V. Rawlings

D. French Slaughter, Jr.

James M. Thomson

Lawrence Douglas Wilder

Edward E. Willey

Questionnaire Results

The following material contains a quantitative list of replies to the questionnaire sent by the Committee to all constitutional officers, chief legislative and executive officers of counties and cities and all members of the General Assembly. At the end of this list of questions and replies, there is a synopsis of the typical answers received. The Committee wishes to thank those persons who replied to its questionnaire.

QUESTIONNAIRE of the Compensation Board Study Committee

The following questions are being asked for the benefit of the Virginia Advisory Legislative Council Committee studying the State Compensation Board. IMPORTANT. It is absolutely necessary that the answers to these questions be received at the following address before May 12, 1973 if you wish for your opinions to be considered: Division of Statutory Research and Drafting; Box 3AG; Richmond, Virginia 23219; attention Mr. Courtney R. Frazier.

If additional sheets are needed to answer the questions, please attach hereto.

TOTAL REPLIES: 394

1. Are you satisfied with the present work of the State Compensation Board?
— If not, why?

<i>Yes</i>	<i>No</i>	<i>No Answer</i>
191	184	19

2. Do you feel the Compensation Board should be abolished? — If so, why?

<i>Yes</i>	<i>No</i>	<i>No Answer</i>
58	306	30

3. If you feel the Compensation Board should be abolished, what alternatives do you suggest?

4. Do you think localities should have the primary responsibility for determining salaries and setting personnel standards of State Constitutional Officers? — Why?

<i>Yes</i>	<i>No</i>	<i>No Answer</i>
72	266	56

5. Do you think the State should have the primary responsibility for determining salaries and setting personnel standards of State Constitutional Officers? — Why?

<i>Yes</i>	<i>No</i>	<i>No Answer</i>
228	96	70

Question No. 1. Are you satisfied with the present work of the State Compensation Board? If not, why?

No. Compensation Board does not follow schedule of salaries as prescribed by statute.

No. Compensation Board does not consider sufficient information for each locale; local competitive salaries, responsibilities, workloads, problems.

No. Compensation Board has no uniform salary scales or guidelines; renders decisions arbitrarily.

Question No. 2. Do you feel the Compensation Board should be abolished? If so, why?

No. But Compensation Board should have salary schedules and incentives.

Yes. Set up a similar board with more expertise.

Yes. Set up one board per constitutional office.

Yes. Compensation Board is inequitable in its administration.

Question No. 3. If you feel the Compensation Board should be abolished, what alternatives do you suggest?

a. Local governing bodies determine financial needs and salaries as done by Compensation Board. Also have State agency to review and approve the salaries set by local governing bodies.

b. Enact legislation similar to that pertaining to District Courts and magistrates.

c. General Assembly should set salaries and determine personnel standards.

d. Restructure; Executive Assistant having an assistant for each constitutional office. Assistants should develop pay scale and guidelines for each respective office.

e. Set up a board for each constitutional office.

f. Replace Compensation Board with a Civil Service Commission which would investigate local situations, set pay scales, job descriptions, etc., with a view toward relating to the problems of the individual office from its standpoint — not that of the State standpoint.

g. Enlarge Board to include a member from each constitutional office.

h. County Board of Supervisors should set salaries or enlarge Board to include a member from each constitutional office.

i. State should pay 100% of salaries and set up regulations for personnel.

j. Create a new board to approve all expenditures except determine salaries and personnel standards.

k. Employ a finance office to whom all offices may submit requests for reimbursement on office expenditures.

l. Specified money should be refunded to counties and cities to operate their own constitutional offices. Money should be returned on the basis of population or some other equitable method.

m. Enlarge the Compensation Board and create an appeals board.

n. Enlarge the Compensation Board to include representatives of the General Assembly, the State Treasury and the Director of Personnel.

o. Enlarge the Compensation Board to include a representative from each local governing body and each constitutional office.

Question No. 4. Do you think localities should have the primary responsibility for determining salaries and setting personnel standards of State constitutional officers? Why?

No. Salaries should be consistent Statewide.

No. This is a State responsibility.

No. This would involve too much local politics and pressures.

Yes. Localities seem to be much more familiar and concerned with responsibilities, workloads, and problems of local constitutional officers.

Question No. 5. Do you think the State should have the primary responsibility for determining salaries and setting personnel standards of State constitutional officers? Why?

Yes. Salaries should be equalized, should be consistent throughout the State.

Yes. State is more aware of problems than locale.

Yes. But the State and locale should work together.

No. Locales more aware of problems than Compensation Board.

A BILL

To amend and reenact §§ 14.1-48, 14.1-51, 14.1-52 and 14.1-52.1, as severally amended, of the Code of Virginia relating to membership, compensation, duties and appeals from a decision of the State Compensation Board.

Be it enacted by the General Assembly of Virginia:

1. That §§ 14.1-48, 14.1-51, 14.1-52 and 14.1-52.1, as severally amended, of the Code of Virginia be amended and reenacted as follows:

§ 14.1-48. Membership; compensation. — The Compensation Board shall consist of the Auditor of Public Accounts, the State ~~Tax Commissioner~~ *Director of Personnel, as ex officio members, and one member, who may or may not be an officer or employee of the Commonwealth, a full-time chairman of the Board* who shall be appointed ~~and designated as chairman of the Board~~ by the Governor *with the confirmation of the General Assembly* and who shall hold office at the pleasure of the Governor, *and two individuals to be elected by a joint vote of the two Houses of the General Assembly. The two members elected by the General Assembly shall serve for terms of four years and may be re-elected for succeeding terms; provided, however, that the initial term of the member first appointed shall be for a period of two years. If the General Assembly is not in session on the effective date of this act, the Committees on Privileges and Elections of the Senate and the House of Delegates shall make the initial appointments subject to the election of the General Assembly at its next session. All vacancies shall be filled in the manner of original appointments or elections; provided, however, in the case of a member elected by the General Assembly and the General Assembly is not in session, the Committees on Privileges and Elections of the Senate and the House of Delegates shall appoint a successor to fill the vacancy for a term ending thirty days after the commencement of the next session of the General Assembly and the General Assembly shall elect a successor for such unexpired term. The ex officio members of the Board* Auditor of Public Accounts and the State *Director of Personnel* shall not receive any compensation for their services as such members. The two members ~~designated by the Governor as chairman~~ *elected by the General Assembly and the chairman appointed by the Governor* shall receive such compensation as shall be fixed by law. ~~The Compensation Board shall function as a separate Board within the framework of the Department of Accounts.~~

§ 14.1-51. Duties of Board in fixing salaries, expenses, etc. — All salaries, expenses and other allowances of all such officers shall, if possible, be fixed and determined at least fifteen days before the beginning of each budgetary period. The Board shall, at meetings duly called by the chairman, carefully consider the questionnaires and written requests filed as required by § 14.1-50 and consider *the nature of the duties and work requirements of the position being considered; the experience and qualifications and performance of the incumbent therein; the prevailing wage scale in the locality or to the salaries paid under existing pay plans or merit systems, work involved in the discharge of the duties of the respective officers, the amount expended or proposed to be expended by such for clerks, deputies and other assistants, the efficiency with which the affairs of such office are conducted,* and such other matters as the Board may deem pertinent and material, and after such consideration the Board shall fix and determine ~~what constitutes a fair and~~

~~receive a salary~~ *a salary consistent with such factors* which is to be paid to each such officer and to his clerks, assistants and deputies, and all other expense items requested. Prior to holding any such meeting for the fixing of salaries and expenses as provided in this article, ten days' written notice of the time, place and purpose of such meeting shall be given every officer affected and to the mayor or city manager of the city or to the chairman of the governing body of the county affected.

When the salaries, expenses and other allowances for the several counties and cities have been tentatively fixed by the Board they shall notify the governing body of each city and county of the amounts so fixed. ~~Within thirty days, thereafter, but not later, the governing body may file with the Compensation Board any objection it may have to such allowances so fixed. When such objection is filed the Board shall fix a time for a hearing on such objection, of which time the governing body as well as the officer affected shall have at least fifteen days' notice. For the purpose of determining the merits of such protest the governing body may designate two members of such body to serve as additional members of the Compensation Board and such additional members shall each have one vote on the Board.~~

The chairman of the Board shall record the salary of each such officer, his clerks, assistants and deputies, and the allowances made for other items, and shall promptly notify each such officer of the same with respect to his office.

§ 14.1-52. Any officer whose salary, expenses or other allowances are affected by a decision of the Board under this article made for the fiscal year pursuant to ~~and at the time designated by §§ 14.1-50 and 14.1-51 of the Code of Virginia and no other~~, or any county or city affected thereby, ~~or the Attorney General as representative of the Commonwealth~~, shall have the right to ~~appeal from any such decision of object to any such allowances so fixed by the Board, within forty five days from the date of such decision. Such objection shall be filed with the Chairman of the Board within fifteen days after notification of the Board's decision has been made as provided in § 14.1-51, along with the names of two individuals which the objecting party desires to be placed on the Review Panel.~~

The Review Panel shall be composed of two members selected by the objecting party, two members of the Compensation Board chosen by the chairman of such Board, and one judge or retired judge of a court of record appointed by the Chief Justice of the Supreme Court, who shall preside over the panel.

The Chairman of the Board shall make his selections to the Review Panel and notify the Chief Justice of the Supreme Court within seven days from the date of receipt of the notice of objection. The Chief Justice of the Supreme Court shall make his appointment forthwith and the hearing shall be conducted within forty-five days of such appointment; provided, however, the judge or retired judge appointed to the Review Panel shall have the discretion to grant a continuation for good cause shown. The objecting party shall be given at least fifteen days' notice of such hearing by the chairman of the Board.

The Review Panel shall sit in the circuit courtroom of the locality in which the objecting party resides or such other suitable place as designated by the clerk of the circuit court and shall determine the merits of such objection. The clerk of such court of record shall act as clerk for the Review Panel; provided, however, if the clerk of such court of record is the objecting court, the presiding judge shall appoint a qualified person to act as clerk to the Review Panel. A record shall be kept of the proceedings of

the Review Panel and the clerk shall be the custodian for such record. Upon an appeal, as provided for in this section, the clerk shall prepare the record as soon as possible after an appeal is taken. The cost of the transcription of the record for appeal shall be borne by the Commonwealth.

Decisions of the Review Panel shall be final; provided, however, Such appeal by any party shall lie to the circuit court of the county or corporation court of the city wherein the officer making the appeal resides Review Panel sat when the findings, conclusions or decisions of the Review Panel are (1) in violation of Constitutional provisions; or (2) arbitrary, capricious, or an abuse of discretion. The court shall be presided over by the judge of the court to which the appeal is taken and two judges of circuit or corporation courts remote from that to which the appeal is taken, designated by the Chief Justice of the Supreme Court and the clerk of the court to which the appeal is taken shall notify the Chief Justice of such appeal. Notice of such appeal shall be given within the time above specified by any such officer ten days to the Compensation Board and the Attorney General. The appeal shall be heard within thirty sixty days from the date the same is taken. At least fifteen days' notice of the time and place set for the hearing shall be given the officer noting such appeal, the Compensation Board and the Attorney General. On Such appeal all questions involved in said decision shall be heard de novo by the court, only on the record from the Review Panel and such other evidence as the court deems necessary to determine the issues in reaching its final decision, and its decision on all questions shall be certified by the clerk thereof to the officer affected and to the chairman of the Compensation Board. From the decision of the court there shall be no right of further appeal.

§ 14.1-52.1. Appeals from certain decisions affecting expenses, allowances, etc., of clerks of court. — Any clerk of a court of record whose expenses or other allowances, or when the salary and number of his deputies, are affected by the annual decision of the Board or as to such expenses, or other allowance, or to the salary and number of his deputies, under this article, or any county or city affected thereby, or the Attorney General as representatives of the Commonwealth, shall have the right of appeal review from of such decision. Such appeals objections shall be taken and heard in the manner provided in § 14.1-52.

I concur with all of the recommendations of the Committee except for the retention of the procedure for further appeal to a three-judge court.


Although I continue to believe that the localities should have the primary responsibility for setting salaries and allowances of the constitutional officers and their employees, it has been demonstrated that this is a minority viewpoint. Therefore, since it appears that the primary responsibility will continue to be a State function, the Compensation Board must be enlarged and restructured as recommended by the Committee. Further, the staff must also be enlarged, and its operations expanded in accordance with the recommendations of the Committee.

The revised five-man board procedure recommended by the Committee provides a better appeal mechanism than present law for several reasons. Since the Compensation Board members constitute a majority of the present five-man board, there is a feeling that such appeals are an exercise in futility. This viewpoint is unjustified but understandable. Perhaps most important is the fact that appeal to the five-man board is presently available only to the locality and not to the constitutional officer directly. The Committee recommendation will make the appeal to the five-man review panel available to both the locality and the constitutional officer on an equal basis. Further, the designation of a judge,

or retired judge, as chairman of the five-man review panel should assure impartiality. This should be the extent of appeal.

In order to explain adequately the basis of my dissent, it is necessary to deal with a very delicate matter. In slightly over three and one-half years as Chairman of the Compensation Board, I have become aware of the resentment, even animosity, that exists toward the Board. Coupled with this attitude is the fact that the local judge has a very close working relationship with the constitutional officers, particularly the Sheriff and the Attorney for the Commonwealth. Under these circumstances, the resident judge on the three-judge appeal court does not always seem to project an impartial judicial attitude. However, the presence of two judges from remote jurisdictions will often, but not always, compensate for any such apparent predilection. The fact that decisions of the three-judge court are not subject to further appeal reinforces the uncomfortable feeling that the position of the Compensation Board does not always receive objective and impartial consideration.

On the grounds that any bias that might exist in the composition of the five-man Review Panel will, under the proposal, be in favor of the appellant, either the constitutional officer, the locality or both, I must vigorously dissent to the retention of the three-judge court to consider appeals from decisions of the five-man Review Panel. It must be kept in mind that the Committee is recommending only limited grounds for appeals to a three-judge court. Further, it is my understanding that adequate remedies are provided under existing law from decisions that are arbitrary, capricious, an abuse of discretion or in violation of Constitutional provisions. Therefore, specific provision for the right of appeal to a three-judge court appears to be unnecessary. However, if the three-judge appeal mechanism is retained, the decisions of that three-judge court should similarly be subject to further appeal on the limited grounds recommended by the full Committee. Otherwise, the authority and prestige of the Compensation Board will be so seriously eroded as to render the attainment of a significant degree of equitable uniformity throughout the Commonwealth virtually impossible.


David B. Ayres, Jr.