

Moos and Rourke, who share this opinion, suggest that one reason why the appointive system works best is that meddling in higher education is not "good politics,"<sup>10</sup> and governors, more often than legislatures, have refrained from throwing it into the hopper of politics. "To avoid giving any appearance of political interference," they say, "governors sometime go to great lengths to make conspicuously non-political appointments to governing boards."<sup>11</sup>

The ex officio method of selection deserves special note. In recent years its use has declined.<sup>12</sup> The state of Georgia, for example, in 1946 by constitutional amendment removed their governor from membership on the Regents of the University System of Georgia. This fact is particularly interesting since the constitutional amendment invalidated an act of 1931 and another in 1937, both of which had made the governor an ex officio regent.

Many students of the trustee system view this tendency to reduce ex officio members as a desirable one. The value of the governor (the most common ex officio member on state institutional boards) as an ex officio member on any board, not just trustee boards, was questioned by Leslie Lipson in his book, *THE AMERICAN GOVERNOR FROM FIGUREHEAD TO LEADER*. He states:

<sup>10</sup> But note the tragic situation which developed in Mississippi when Governor Ross Barnett attempted to "stack" the board for political, racist reasons.

<sup>11</sup> Moos & Rourke, *supra* note 8, at 301. But see quote from an Arizona regent: "Although we give lip service to the idea that appointments are not 'political,' in effect they are. It is rare for a governor to appoint a member from a party other than his own unless that individual has aided his campaign." *Ibid.*

<sup>12</sup> *Id.* at 243.

"Such requirements that the governor himself directly participate in administrative minutiae are of manifest futility. They defeat their own ends. The governor has so much to do that he cannot give time to all the boards. If, however, he does attend, either he is frittering away his energy on henhouses and piggeries or he has to secure a majority vote on important matters by "trading" with the other members. In neither case can there be effective overall supervision of general administrative policy."<sup>13</sup>

Another study stated categorically that the "number of ex officio members should be kept to the minimum allowed by law."<sup>14</sup> Still another survey reported the revealing fact that boards which have ex officio membership are divided as to their contribution to the system, while boards without ex officio membership expressed a strong preference to have none.<sup>15</sup>

It appears, therefore, that the writers on the subject favor a limitation or an exclusion of the ex officio member. It should be remembered, however, that the technique of selection is but a technique. The appointive system, if it be the best, can and has failed. A board can succeed only where public opinion in the community "insists upon putting the affairs of higher education in the most capable hands."<sup>16</sup>

#### SIZE OF BOARD

The Board of Trustees of the University of North Carolina is labeled by

<sup>13</sup> L. LIPSON, *THE AMERICAN GOVERNOR FROM FIGUREHEAD TO LEADERS* 37 (1939).

<sup>14</sup> MARTORANA & HOLLIS, *supra* note 4, at 29.

<sup>15</sup> Moos & Rourke, *supra* note 8, at 305.

<sup>16</sup> *Id.* at 304.