



Office of Legislative Oversight

MONTGOMERY COUNTY, MARYLAND

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279-1932

M E M O R A N D U M

October 25, 1979

TO: County Council

FROM: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

SUBJECT: Initial Comments on Executive Branch Reorganization Plan

The Office of Legislative Oversight (OLO) has made an initial review of the Executives' proposed reorganization plan which was, submitted by the County Executive to the Council President by memorandum dated September 27, 1979. We have concentrated on the general organization and management aspects of the plan. It is our understanding that Art Spengler will be reviewing and commenting on the budget and staffing aspects, while Perry Jones will be concerned with legislative requirements of the proposal.

The results of our initial review are attached. You will find a schematic of the departments/agencies affected by the reorganization, general comments, and some specific comments for each of the affected departments/offices.

This submission is not to be considered final. As the reorganization action moves through public hearing, worksessions and debate, OLO will continue to monitor and provide comments where appropriate. Also, one of our FY 80 work projects is to monitor the implementation of reorganization legislation.

AM:cls

cc: Mr. McDonell, Council Staff Director
Mr. Spengler, Deputy Staff Director
Mr. Jones, Legislative Counsel
Mr. Kendal, Executive Management

SCHMATIC OF OFFICES/DEPTS AFFECTED IN PROPOSED REORGANIZATION

OF EXECUTIVE BRANCH, 10/79

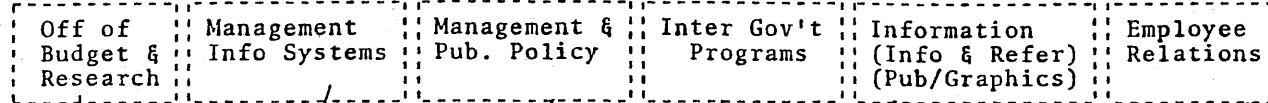
EXECUTIVE MANAGEMENT

Executive Management

(note a)

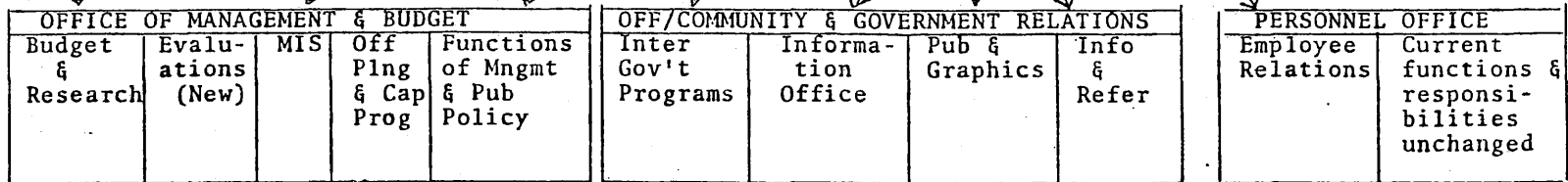
EXECUTIVE MANAGEMENT STAFF
ABD FUNCTIONS

(current)



(note c)

(Reorgan)



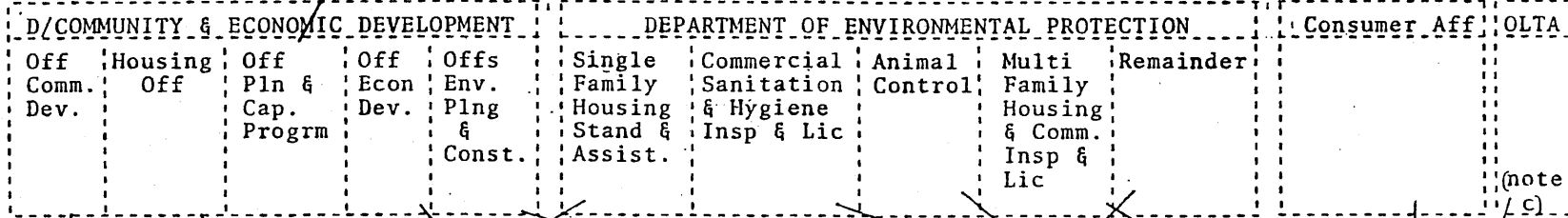
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(note c)

OPERATING OFFICES AND DEPARTMENTS

(current)

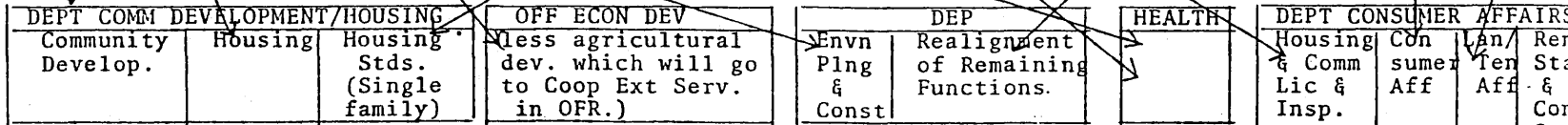


(note c)

(note c)

(note c)

(Reorgan)



(note b)

(note b)

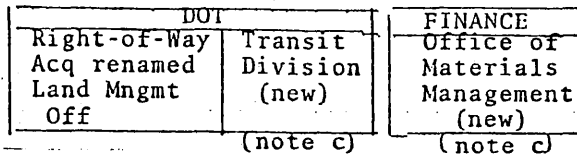
(note c)

(note c)

(note b)

Notes:

- a) Executive Management will undergo a redistribution of functions primarily through transfers.
- b) New non-merit directors authorized (Total 5).
- c) Dept/Off currently authorized a non-merit director.
- d) Includes: restaurants, group facilities, school, camps.
- e) Includes: weights/measures; motor vehicle repair; TV, radio and electrical appliances repair, close-out sales, solicitors.



(note c)

(note c)

GENERAL

1. A review of the reorganization legislation indicates that the proposed changes in the assignment of specific responsibilities are identified and changed in a spotty manner. A more thorough review of existing legislation will be required to identify all necessary changes. For example: One proposed reorganization bill, #57-79, amends certain sections of Chapter 5, Montgomery County Code, "Animal Control," to transfer the administration and enforcement responsibilities from the Department of Environmental Protection to the Department of Health. Chapter 5 identifies the Director, DEP as the "Animal Control Officer." In proposing the changes to current legislation to reflect the reorganization, the current law is amended to read: "the director of the department of health or his designee acting under the general supervision of the chief administrative officer is now designated as the Animal Control Officer." However, Sections 5-42 through 58, Rabies Control, were not amended and they still assign certain responsibilities to either the health officer or to the animal control officer as if they were two different positions. On another related matter, Bill 57-79 refers to the "director of the department of health." In all prior legislation, the official title of the head of the department of health is the "county health officer" (See Chapter 2-42, Montgomery County Code).

2. The proposed legislation (Bill 57-79) changes the designation of the Office of Family Resources to the Department of Family Resources. However, other current laws which refer to the Office of Family Resources were not changed to reflect the new title. Examples: Bill 37-77 which changed the name of Office of Human Resources to Office of Family Resources; and Bill 26-78 which designated OFR as a principal office.

3. Council may wish to explore the whole area of Deputies and assistants, (Asst. Chief, Asst. Director). A review of County government indicates that there are approximately 50 such positions. In some cases, these deputies/assistants have programmatic responsibilities; however, a cursory review of some job descriptions indicates that others are primarily just an alter-ego to the Director/Chief. In a period of retrenchment and fiscal constraint, I would suggest we examine the duties and contribution of each deputy/assistant chief. (A related factor is that deputy/assistant positions are grouped in the higher grades--the average of approximately 50 such positions is 29--and are usually provided separate clerical support).

OMB

1. Creates a new non-merit director.

2. Identifies seven problems. An eighth problem could be:

--There is a lack of centralized policy making and standardized procedures. All departments go their separate way.
(Maybe new function of "Develops Administrative Procedures" will cover this.)

3. Organization Guide (at page 18) reflects that Records Management is transferred from Facilities and Services to OMB. No discussion on this can be found in the reorganization paper and apparently it is not covered in the proposed changes to the Code.

4. Organization Guide does not include the following two functions originally in Planning and Capital Programming Office (are they dropped)?

--Develops Executive comments and recommendations regarding area Master Plans prepared by the Montgomery County Planning Board; and

--Develops and maintains an inventory of vacant County-owned real property and manages disposition through transfer, sales or lease. (This may be going to new Land Management Office in DOT).

5. A recent change to the Code (Bill 26-78) made the position of Director, Office of Budget and Research a non-merit position, with the incumbent director "grandfathered" as a merit employee. The reorganization does not address whether the position of Director, Office of Budget and Research, will remain a non-merit position now that it is subordinate to OMB.

6. I question the proposed organizational arrangement establishing the Associate Director (Planning, Evaluation) in OMB.

a) The entire evaluation effort appears to be limited to one merit-employee, as no staff is indicated. Who will design the evaluation? On page 13 of the Executive's proposal the fourth of seven identified problems with the current organization are identified. The 4th states that "Virtually no systematic program evaluation is done." I agree; however, one position provides no solution to the problem. I do not believe the Associate OMB Director will be able to draw from the staff of OMB to conduct evaluations. The Office of Budget and Research currently has a performance evaluation mission which is has been unable to accomplish because of regular budgetary duties.

b) Apparently, this same Associate OMB Director will also be responsible for some planning. A review of page 18 indicates that these planning responsibilities will be concerned with Community Planning Analysis. Planning, plus the additional responsibility of project coordination for CATV and Surplus Schools, will spread the efforts of the one evaluation position even thinner.

c) It would be preferable if the person responsible for evaluations reported directly to the County Executive (or at least directly to the CAO). Burying evaluation under the Director OMB has the potential of creating a conflict-of-interest, albeit perceived, whenever the other subordinate elements of OMB (Budget, CIP or MIS) are evaluated. Furthermore, reports prepared by the evaluator will conceivably be subject to the review of the Director, OMB with the possibility that the reports will be subject to negotiation prior to their release to the County Executive. Consequently, any report by the evaluator, especially one concerning OMB activities, will lack full credibility and independence. Both the public and private sector are replete with examples where evaluators, auditors and those who judge another's performance answer directly to the Chief Executive Officer, (Inspectors General in Federal agencies, commercial accountants, Internal Auditors). The current literature on evaluation/audits defends the independence and freedom of evaluators and auditors from even a perceived conflict of interest.

In summary, there is nothing inherently wrong with placing evaluation in the Office of Management and Budget. However, the probability of success of the evaluation effort and the assurance that the evaluation effort will be perceived as an independent and credible activity is seriously diminished when it is not answerable to the highest managing official. In addition, the absence of any evaluation staff would indicate a lack of interest in a viable evaluation effort and would, in my opinion, portend its failure.

Office of Economic Development

1. Creates a new non-merit director.
2. Who "develops" programs for revitalizing? Now, office only "coordinates."
3. Who does the following:
 - a) Acts as an advocate for small and minority business enterprises and financial institutions;
 - b) Promotes and develops, plans for increased tourism and conference activity within the County;
 - c) Represents the Executive as Chairman of the County's Employment Development Commission, responsible for employment development of handicapped and socially or economically disadvantaged persons; and
 - d) Provides staff assistance to and coordination of Executive-appointed Economic Development Advisory Committee efforts toward evaluation of and recommendations for an improved economic environment?
4. Apparently agricultural planning and other activities relating to agriculture now go to the Office of Cooperative Extension Service in the Office of Family Resources. If so, will Cooperative Extension Service take over the following functions relating to agriculture currently assigned to the Office of Economic Development in DCED?
 - a) Plans, develops and implements programs for agricultural and other economic activity in relation to County needs, facilities and public improvements; and
 - b) Conducts and maintains an inventory of agricultural resources within the County.
5. For Council information, current functions of the Cooperative Extension Service in OFR are:
 - a) Provides agricultural programs to improve the socio-economic and environmental aspects of agricultural and environmental aspects of agriculture and to promote public understanding of modern architecture;
 - b) Offers home economics and family living programs;
 - c) Gives horticulture services emphasizing effective gardening, shrubbery and lawn techniques;
 - d) Offers 4-H Youth Program;
 - e) Conducts nutrition education programs; and
 - f) Provides special programs for disadvantaged families.

Consumer Affairs

1. Creates a new non-merit director.
2. Abolishes the non-merit position of Executive Director of OLTA.
3. Some very important differences between Office of Consumer Affairs and OLTA.
 - a) OLTA - Adjudication according to process established by County law.
Consumer Affairs - No adjudication--must go to County Attorney. React to state and credit laws.
 - b) OLTA - Funded from licensing fees from landlords.
Consumer Affairs - Funded from general fund.
 - c) OLTA - Can initiate process.
Consumer Affairs - Must have pattern of behavior before acting.
 - d) OLTA - Evenhanded - represents both landlord (merchant) and tenant (consumer).
Consumer Affairs - Consumer advocate.
 - e) See attached memo from OLTA staff for more detail.
3. Why eliminate the Executive Director? Won't Commission continue to need an Executive Secretary or Executive Director?

M E M O R A N D U M

August 22, 1979

TO: Charles W. Gilchrist
County Executive

FROM: The Staff
Office of Landlord-Tenant Affairs

SUBJECT: Reorganization Proposals for the Executive Branch
(Second Draft; July, 1979)

Thank you for requesting our comment.

I. TRANSFERRING DEP INTO OLTA

For reasons stated on Page 20 of your proposal, we heartily support your plan to combine, in one department, responsibility for licensing and inspecting rental facilities (now performed by DEP) and our responsibility for solving complaints, gathering data and educating the public on landlord-tenant matters. It may interest you to know that we vehemently opposed Bill No. 24-77, which took from OLTA the licensing function, gave it to DEP and caused a predicted increase in license fee. Responding to the reorganization plan of 1977, we urged that DEP's rental housing responsibilities be incorporated into OLTA, an organization that has proven itself over the years to be efficient and effective. We urge that same position now.

II. TRANSFERRING OLTA INTO OCA

A. Differences

No doubt, it is possible to abolish OLTA and transfer its functions to the Office of Consumer Affairs (OCA). But is such a change desirable? To properly answer this question, "technical" statutory alterations (Page 22) and fiscal impact (Page 3)—two subjects given virtually no treatment in the Draft—must be carefully evaluated. Putting these paramount concerns aside temporarily, let us consider the Draft's argument for absorption:

1. Agencies with similar statutory mandates, purposes, and functions should be combined (major premise);
2. OLTA and OCA have similar statutory mandates, purposes and functions (minor premise);
3. OLTA and OCA should be combined (conclusion).

While the major premise has merit, the minor premise is inaccurate; therefore, the conclusion must fail. Numerous differences between the two agencies will illustrate the need to keep them apart and running well.

1. Subject-Matter Differences

Money is exchanged for "something" in both the landlord-tenant setting and the consumer-merchant setting. Yet, that "something" which is the object of regulation, is quantitatively and qualitatively different in each case. Land is unique. It is also finite, and residential improvements on land are in short supply. On the other hand, consumer goods are usually mass-produced, readily available look-alikes. The landlord-tenant relation is on-going and often indefinite in duration. Generally, a consumer transaction, in contrast, is a much less complicated one-time encounter. For one-third of the citizens in this County, rental housing satisfies a basic survival requirement, adequate shelter. Accordingly, problems arising from the landlord-tenant relationship, strike with immediacy. They literally reach people where they live. However, outside-the-home vexations, common to the consumer area, tend to be less compelling. For the consumer whose car has not been properly repaired, car pooling, mass transit, car rental, borrowing and social service agencies may provide a temporary solution while a complaint is pending. The cost and scarcity of alternate housing, the difficulty of moving furniture and the presence of community ties make temporary solutions more difficult in the landlord-tenant area.

2. Legal Distinctions

The law applied to these two separate subjects illustrates other significant differences. When one enters into a lease, contract rights and real property rights come into play. Like the land itself, property law (more particularly landlord-tenant law) is distinctive. Other than Title 8 of the Real Property Article and undisturbed common law, the landlord-tenant relation in Maryland is regulated most heavily at the local level. However, consumer law customarily involves a blend of contract- and tort-based considerations. Commercial transactions are covered in depth in two separate volumes of the Annotated Code of Maryland, and consumer protection legislation abounds on State and Federal levels. Law schools do not combine courses in these two subjects. Principles underlying each area differ greatly.

3. Differences Between OLTA and OCA

What about dissimilarities between OLTA and OCA? Montgomery County Code Chapter 29, which created OLTA, provides for impartial problem-solving. Landlords as well as tenants may file formal complaints. The Executive Director does not have the power to unilaterally dismiss a complaint; the case must first be presented to the Commission on Landlord-Tenant Affairs (COLTA), on which neither landlord members nor tenant members may boast control. COLTA serves as a check on the decisions of OLTA's Executive Director, and its decisions after administrative hearing carry the weight of a District Court judgment.

In OCA, merchants are not permitted to file complaints. OCA's Executive Director apparently has prosecutorial discretion, the authority to dismiss or move on complaints at will. The Advisory Committee seems to have no power to control OCA's Executive Director. Only two (2) of the nine (9) members on the Advisory Committee need be from the business community. The Committee cannot adjudicate grievances; OCA must go to court when seeking relief.

By virtue of obligations flowing from landlord to tenant and tenant to landlord, COLTA and OLTA handle disputes involving fault on the part of either landlord or tenant. Non-fault and educational requirements apply as well. For example, the landlord must notify the tenant facing eviction about certain counseling services available through OLTA. In any event, COLTA has authority to award actual damages; it cannot further penalize an offending landlord or tenant.

Except when operating under Chapter 11A, OCA, however, takes on the attributes of a consumer advocate agency. Its statutes permit OCA to react to actions constituting gross misconduct on the part of the merchant. Some of the remedies available against the merchants may be termed punitive. The statutory framework of OCA does not afford an appropriate atmosphere for an Office designed to be unbiased and totally objective in its dealings with landlords and tenants. Absorption of OLTA into OCA may invite widespread public perception of one-sidedness.

It is evident that many jurisdictions throughout the country (local governments in Virginia being cited most often) have successfully combined landlord-tenant and consumer affairs

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agencies. Let us hasten to add that in Virginia, where the landlord-tenant law is far from progressive, local landlord-tenant agencies exercise mostly advisory powers. OLTA, which served as the model for similar agencies in Virginia, Maryland and Washington, D.C., administers a comprehensive, path-breaking law. Our Office has placed Montgomery County in the forefront of landlord-tenant regulation. To cling to the approach of less responsive jurisdictions is to allow the County's role in landlord-tenant affairs to shift from innovator to imitator.

B. Adverse Effects

Other detrimental effects may well result from the proposed reorganization. OLTA loses the important visibility it has enjoyed. Citizens have learned to call OLTA, an independent department devoted exclusively to rental housing concerns, with their landlord-tenant questions. And the departmental status given OLTA makes it Executive Director quickly accessible to the County Executive. Through the plan suggested, landlord-tenant causes will simply receive less attention.

Uncertainty will reign supreme. It will take time to train OCA's department head in the ways of landlords and tenants. Cross-training of investigators will also take time. Meanwhile, complaints will be streaming in. The public will have to learn a new system. A director, with a vastly increased workload, involved in so many contrasting areas of the law, will be unable to maintain a level of excellence in each area. Sloppy, stop-gap methods are likely to ensue.

Demoralization will occur. Now in high spirits, OLTA's staff will meet an unknown future at OCA. With cross-training and no division chief for landlord-tenant matters, it appears that OLTA's extraordinary expertise, which has taken years to build, will be irrevocably diffused.

Cost advantages are not at all apparent. We assume that OLTA will, for quite some time, remain in Silver Spring, the hub of landlord-tenant activity—not in the corporate limits of Rockville, where OCA is located and where OLTA has no jurisdiction. OCA, then, will be in both Silver Spring and Rockville. Unless several positions allocated to OLTA are reduced—and we have been assured by your staff that this is not the case—long-range costs will approximate present operational expenses. In fact, short-term expenditures will increase. Coordinating efforts between the two cities will result in more phone calls, travel, filing systems and meetings. Consider also the substantial cost of rewriting several chapters of the County Code so that the absorption can take place. It is unclear how the plan will place OCA and OLTA under one roof (Page 18). Nor is it at all clear how, with one big lumbering office, instead of two smaller efficient ones, this plan will "lessen the burden of rising costs on our citizens" (Page 22).

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III. RECOMMENDATION

Given our present housing crisis, can the County risk losing OLTA's thoughtful and time-tested enforcement and educational programs by the maneuver under consideration? We think a common sense approach is called for. Placing DEP elements within OLTA would lessen the public's frustration in dealing with government on landlord-tenant matters. It is a realistic and desirable goal. But the rearrangement, as planned, does a disservice to the County that was first in the country to establish a local landlord-tenant agency. As written, the plan imperils the integrity of an Office that makes Montgomery County a sensitive trend-setter.

jpl

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Dept. of Housing & Community Development

1. Creates a non-merit director.

DEP

1. In transferring Environmental Construction and Environmental Planning offices from DCED to DEP, many functions are dropped from the functions statement.

2. In transferring functions from DEP to Health--also indicated functions of issuing licenses to solicitors, special parking, electrical appliance repair, etc. (See Health Department Functions).

3. In reviewing functions of DEP--unable to ascertain:

- a) Who enforces Rat Ordinance in residential and non-residential areas?

- b) Who inspects and issues licenses for townhouses? (This function for apartments was transferred to Consumer Affairs.)

- c) Who will operate the construction and demolition debris landfill?

4. In transferring responsibilities from DEP to Health, Rat Control has been "dropped through the cracks." Rat Control is assigned DEP by Chapter 39, Montgomery County Code, 1972, as amended. If Rat Control is to go to Health, there is no new legislation to cover it.

5. In transferring responsibility for Junk Dealers & Junk Yards from DEP to Health, Section 28-2 was appropriately changed. (See circle 81); but Section 28-8 on Rodent and Mosquito Control was overlooked.

6. I do not understand why the two offices of Environmental Planning and Environmental Construction are not answerable to the Deputy Director. If a deputy is truly a deputy, why are these two offices and the administrative staff not within the deputy's chain-of-command?

Health

1. What is happening to Environmental Lab in DEP? Stays in DEP?
2. Says very little in justification for moving Animal Control to Health.
3. Animal Control functions do not include following functions from functions when in DEP.
--Enforces the Rat Ordinance in residential areas.
4. Changes in the law as submitted by the Executive branch refer to the Director, Department of Health. Section 2-42, Montgomery County Code, 1972, defines the head of the Department of Health as the County Health Officer, not the director.

Maintenance Management

1. How can they "operate" common-use warehouse with only a staff of two?

Community and Government Relations

1. Emphasizes that the Publications and Graphics will have "oversight of publications of various kinds for which the County currently spends about \$1.3 million." Why doesn't the Information Office exercise the same oversight over the information activities in remainder of County (OFR, Transportation, Social Services, Health (newsletters) Recreation, DLC, Community Centers, Personnel)?

Executive Management: (No comments at this time).

DOT

1. Will other para-transportation activities come under the new Transit Division in that its supposed to coordinate all mini-bus operations (CAA, Elder Bus, etc.)? See the following extract from OLO Report 79-2.

Transportation. There is a clear need for public transportation to serve the up-County low-income communities. Besides providing low-income residents a means of meeting health, employment, recreation and other service needs, public transportation contributes to the assimilation of isolated low-income communities into the mainstream of County activities. Unfortunately, there appears to be no overall transportation policy to meet the needs of the up-County low-income communities, and the para-transportation services currently operating are uncoordinated and inefficient.

Recent Council discussions on the FY 80 DOT budget revealed the need to develop transportation criteria and policies whereby the needs, potential ridership, revenue and operating costs can be evaluated and transportation priorities established.

As for para-transportation services, there are several agencies besides CAA providing some form of transportation to low-income and other special categories of citizens: Elder Affairs, Health, the Housing Social Services element of DEP, and the Tenant Opportunities Program of HOC. The Department of Transportation is attempting to coordinate these individual transportation programs so as to improve efficiency and economy and reduce overlap. A recent DOT Transportation Resource Analysis indicated that a single manager to control these para-transportation operations would be more efficient.

2. What does "Emphasis on the Equipment Section Acting as a service agency to the County Government will be increased..." mean?

Employee Relations

1. Really should not be subordinate to Personnel Office. Potential for perceived "conflict" is recognized in the provision for an independent special investigator.

2. Since there will be "no decrease in accessibility to the CAO," then why not leave it directly under CAO so as not to create any perceived lack of accessibility?

3. I do not understand paragraph 4 (page 75).

4. The present structure undercuts the vitally important labor relations function. Grievances which are initiated by formally recognized employee groups should be directed to the chief spokesperson for the County in the meet and confer process, which is the Assistant to the Personnel Director for Labor Relations. The basic principle involved is that, in a labor relations meet and confer context, the parties immediately involved in the meet and confer process should be the parties who address grievances at the administrative level.

What does moving Employee Relations have to do with grievances "initiated by formally recognized employee groups."?