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A STUDY OF AN ISSUE IN COMPLIANCE PLANS:

ROTATION OF TERMS OF STATE COUNCIL MEMBERS AND OFFICERS

*Sandy - 1/15 only a
draft - 9/21 send the personal
final when 1/15
ready*

INTRODUCTION

Length of term and frequency of rotation of council members and officers recently became an issue of concern to some state councils when NEH notified them that their policies were not in compliance with the Endowment's regulations. The problem was discussed at the meeting of the Federation's House of Delegates in Washington, D.C., May 7, 1982. The House agreed with a recommendation from the Massachusetts delegation that the Federation should collect information regarding rotation policies and practices and how interpretation of the law affects them. We have received letters from and spoken with several councils, studied the latest proposals and bylaws, and reviewed the pertinent legislative and regulative documents. A study was deemed appropriate for us to undertake because the issue has never been taken up by Congress and NEH has found it necessary to hold orientation meetings in order to ensure conceptual stability of the program. The following report is offered with a view toward clarifying the present situation regarding the institutional needs of the councils and providing data and concepts on which to base any needed recommendations or action.

LEGISLATION, PROCEDURES, AND STATISTICS

Section 7(f) of the law (PL 89-209, as amended through Dec. 4, 1980) authorizes the NEH Chairman to establish humanities programs in each State. Subsection 3 of Section 7(f) lists the conditions with which each state program must comply to qualify for federal assistance. An application for NEH assistance from a state program must include a plan indicating that the grant recipient will or can comply with those conditions. The two relevant provisions require that the plan:

- (C) establishes a membership policy which is designed to assure broad public representation with respect to programs administered by such grant recipient;
- (D) provides for a membership rotation process which assures the regular rotation of the membership and officers of such grant recipient;

The pertinent section of the Procedures Manual published by the Division of State Programs in May, 1981 refers to the section of the law regarding rotation of members and officers and elaborates as follows:

- (5) The plan must provide "for a membership rotation process which assures the regular rotation of the membership and officers" of each committee. (Section 7(f)(3)(E))

This requirement, continued from 1976, ensures a routine and continuous infusion of new council membership, thereby strengthening the opportunities for flexibility and imagination in council actions and ensuring ever-widening citizen involvement in the program. The plan should provide rotation schedules permitting both continuity and systematic change. The preferred pattern would have maximum terms of membership of four years, with at least one year between terms of any individual, but the Endowment will accept, as the maximum allowable time of service, three years with opportunity for a single additional three-year term resulting in a period of service of six years. Any terms longer than this will be approved only with a showing of extraordinary circumstances. Officers should have terms no longer than a maximum of two years.

The following statistics strongly suggest that most councils' provisions for membership and officer terms and for re-election policies are in accord with these NEH Procedures.

Data on membership rotation practices of 36 councils are available. Thirty-five elect members for either 3 or 4-year terms, and one has 2-year terms. In most cases, members can be re-elected, immediately or with an interval (usually of one year). Of the 18 with 3-year terms, 16 can re-elect immediately, and 2 require an interval of one year. Of the 17 with 4-year terms, one can re-elect immediately, 12 require an interval, usually of one year and 4 states do not allow members to be re-elected after serving one term. Note: some state councils provide for a third term after an interval. Also to be noted: nearly all states specify a maximum of two terms as members.

Data on officer rotation policies of 31 councils are available. All elect for either 1-year or 2-year terms. Of the 21 with one-year terms, 20 allow for incumbents to be re-elected for a maximum of one more term; the other does not allow re-election. Of

the eight 2-year terms, six do not allow re-election, one allows re-election for one more term, and one does not specify a maximum number of terms.

Gubernatorial appointees are not included in these figures; they serve at the pleasure of the Governor, a term usually equal to that of the Governor's own tenure. One council recently made provision for keeping gubernatorial appointees as active members until July 31 of the year (the end of the council's fiscal year) following replacement of the appointing Governor, and another provides that gubernatorial appointees serve until replaced by the appointees of the succeeding governor. Gubernatorial appointees can be, and are, sometimes elected to membership upon completion of their appointed term, under the council's regular membership rules. Individuals who once served as regular members can be (and are) sometimes made members by gubernatorial appointment following expiration of their regular term. Either of these cases makes it possible for gubernatorial appointees to serve longer than anyone else.

COMMENTS AND INTERPRETATIONS

I. There appears to be general agreement among the reported practices and policies. However, opinions regarding the merits of length of term as member and as officer vary in an interesting way. We see this by dividing the reasons for relatively shorter terms from the reasons for the longer terms into two groups. Paraphrased and condensed for purposes of illustration, the reasons for relatively shorter terms are:

Shorter terms give more citizens a chance to participate as members and therefore provide broader public accountability.

Shorter terms give more members a chance to become officers.

New members and officers bring a larger variety of views to deliberation on and deciding about policies, as well as the possibility of new and wider contacts with individuals and organizations in the states.

Shorter terms allow service by those whose private lives preclude participation for longer terms.

Graduation of former members is one of the ways the councils carry out their basic function of improving statewide awareness of the importance of the humanities.

Relatively shorter terms prevent control of a council over a long period of time by any small group of people.

Representative reasons for relatively longer terms are:

In a time of critical relations with institutions and organizations in the state the councils need to be perceived as stable organizations.

Effective officers and members would be replaced just as they are getting efficient and recognized in the state.

This sort of limitation by NEH interferes with the autonomy of the councils and their ability to respond to the circumstances of their states.

Continuity of management should be as much a function of council membership as of tenure of staff members.

Time is needed to build strong experienced council leadership.

When cast in these terms, this classification of the reasoning permits a modest generalization: the arguments for the shorter terms seem to stress the effects of rotation on council programs and purposes, and the arguments for the longer terms stress the effects of rotation on council operations and survival. One correspondent, however, suggested a compromise: some members should serve longer terms than others. Thus a "core" and continuity would be preserved, while wide representation and participation could still be served. The mechanics suggested seem feasible, but are too detailed to be discussed here.

Ila. It should be noted that Section 7(f)(3)(E) does not refer explicitly to a length of terms of members and officers or what conditions should govern re-election policies. Policy and practice on these matters have depended on interpretation by the Endowment such as that provided in the Procedures Manual just cited. One of the basic interpretations of this section of the law, on which NEH policy seems to be based, was issued by the National Council on the Humanities.*

*Comments of the National Council on the Humanities Regarding the "Plan". Required of State-Based Committees by the New Legislation. NEH, undated, p.6.

The intent of this stipulation is to insure a routine and continuous refreshment of the committee membership, thereby strengthening the opportunities for flexibility and imagination in committee actions and insuring ever-widening citizen involvement in the program. For these reasons, the Council suggests that the plan provide rotation schedules permitting both continuity and regular change. A reasonable and common pattern would have maximum terms of membership of four years, staggered, with at least one year between terms of any individual, and would establish maximum service of two years in any committee office. (Obviously, the plan would also contain such rudimentary procedures as election of officers by democratic processes, including a secret ballot.)

It is clear that the intention of the legislation is to insure that any group of individuals not maintain control of the committee, even inadvertently. Yet the Council notes, with real concern, that in some states the committee has retained the same chairman for several terms.

The "pattern" suggested above ("maximum terms of membership of four years, ... and establish maximum service of two years in any committee office.") was not included specifically in the latest reauthorization legislation passed in 1980. It was, however, referred to in that law's legislative history; in Senate Report 96-557, the Senate Committee on Labor and Human Resources stated:

STATE HUMANITIES PROGRAMS

The Committee wishes to acknowledge the positive changes that have evolved in the State Humanities programs since these programs were given legislative authority by Congress in 1976. Humanities programs became operational in all States in 1975. The membership of the humanities committees in the states has been broadened significantly. A membership rotation process has been instituted which helps to assure a broad public representation and a periodic infusion of fresh ideas. (The Committee notes, however, that in spite of the improved membership and rotation policies, the actual selection of new committee members remains the prerogative of the State committee itself.)

The "membership rotation process" referred to favorably is presumably the four-year and two-year plan described in the National Council report.

Later in that same Report (on p. 7) the following statement was made:

Should a State elect to establish a State Humanities Council, the Chief Executive Officer of the State will be entitled to appoint new members to the council as the terms of current members expire. The Committee understands an average member's term of service to be two years with opportunities for a single additional two-year term.

There would appear to be, on the face of it, a difference between the length of terms referred to here and that implied by the favorable reference to the "membership rotation process."

III. Another question is raised by a statement in the National Council statement quoted earlier, namely, the reference to the legislated requirement as a rationale for rotation. The Council said, "It is clear that the intention of the legislation is to ensure that any group of individuals not maintain control of the committee, even inadvertently." As the money being used is tax money, the government has a duty to act as a steward of its use and to insure that the councils do likewise.

Considering that the councils are organizations connected closely with educational and cultural institutions of varying power and influence, it is reasonable to suppose that this reflects at least a desire to prevent an excessive number of council members representing the larger and more celebrated institutions. But in the context of the current social, economic, and political climate of opinion we might also ask whether this language of "control" and the requirement it refers to reflects fear of political and/or ideological influences resulting from extended tenure of members and officers.

It seems germane and fair to ask how the legislation's intent to prevent control of the councils for a long term by a group of individuals applies to the National Council. According to Sec. 8(C), council members "shall hold office for a term of six years, ... No number shall be eligible for reappointment during the two-year period following the expiration of his term." Thus, it is legally possible for an individual to be a National Council member for 12 out of a period of 14 years.

IV. It should also be pointed out that the language used in shaping the policy and during the present controversy is open to a variety of interpretations. For example, what does it mean, in practical terms, for council membership to be representative? Does rate of turnover assure flexibility and imagination? Are there particular qualities

of leadership needed by a council officer that require considerable council experience? Are members or officers ever really irreplaceable? Other questions could, of course, be posed, but these are enough to suggest that there are theoretical and conceptual problems underlying the controversy which should be discussed thoughtfully.

V. A last question may also be asked: are council and staff members adequately aware of the intricate relations between the councils and NEH which have come about over the last several years and which this issue of rotation brings out? Though still dependent on NEH for most of their direct financial support, the councils are autonomous organizations. They are, of course, affiliated with NEH, but are not adjunct agencies, and as the distinctive character of the relationships between the councils and the Endowment is appreciated, all concerned will be better able to identify their special rights and responsibilities.

There can be no doubt that the councils are right to seek ways to build and maintain their own vitality, particularly if they are to secure continuing non-federal support. Non-profit organizations are different from either governmental or business groups in that their strength must be located in their boards of directors rather than in their staffs, if they are to survive. In order to have that strength there must be the opportunity for sufficient length of service by those board members and officers who can give leadership and weight to the council and its operations in its state. The converse must be that undue frequency of rotation weakens the board and promotes inappropriate staff control.