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5-29-1981

## State Humanities Committees (1979-1982): Correspondence 06

Donald Gibson

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NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20508



May 29, 1981

Sandy Crary  
c/o Senator Clairborne Pell  
325 Russell Senate Office Building  
Washington, D. C. 20510

Dear Sandy:

As we discussed last week, I am sending along a draft copy of the model statute which was developed by our staff for state humanities councils, as well as section-by-section analysis of the statute. I would welcome an opportunity to discuss this with you.

I hope you understand how much we all appreciate the work you are doing on behalf of the state humanities program.

Cordially,

A handwritten signature in black ink, appearing to read "Don", written over a horizontal line.

Donald Gibson  
Acting Director  
Division of State Programs

Enclosure

DG:kg

\* PUBLIC HUMANITIES ACT

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Section 1. Short Title

This Act shall be known and may be cited as the "                     \* Public  
Humanities Act."

\*Supply name of State.

Section 2. Legislative Findings and Declaration of Purpose

The Legislature finds and declares--

(a) That encouragement and support of the humanities, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the state government;

(b) That a high civilization must not limit its efforts to science and technology alone but must give full value and support to the other great branches of man's scholarly and cultural activity in order to achieve a better understanding of the past, a better analysis of the present, and a better view of the future;

(c) That democracy demands wisdom and vision in its citizens and that it must therefore foster and support a form of education designed to make people masters of their technology and not its unthinking servant;

(d) That the general welfare of the people of the state will be promoted by giving further recognition to the humanities as a vital part of our culture and heritage and as an important means of expanding the scope of our community life and our educational programs;

(e) That it is the policy of the state to cooperate with private contributors, private and public institutions, and professional and nonprofessional organizations concerned with the humanities to insure that the role of the humanities in the life of our communities will continue to grow and to play an ever more significant part in the educational experience of our citizens;

(f) That in order to implement these findings, it is desirable to establish a state council on the humanities and to provide such recognition and assistance as will encourage and promote the state's cultural progress.

### Section 3. Definition

The term "humanities" includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, and theory of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of life in this state.

### Section 4. Establishment of Council == members == terms of office == chairperson -- compensation

(a) There is hereby established within the state government a state council on the humanities, referred to in this Act as the "Council."

(b) The Council shall consist of 20 members, including the chairperson. The initial members of the Council shall be the members of \_\_\_\_\_\*\* as of the date of the initial appropriation of funds by the state legislature to the Council. As vacancies occur as a result of the expiration of the terms of the initial members of the Council, the Governor shall appoint their successors until the Governor has appointed all of the members of the Council.

\*\*Supply name of private citizens committee receiving NEH humanities funds as of December 4, 1980.

(c) Ten (10) members of the Council shall be broadly representative of the major fields of the humanities and academic institutions and shall be appointed from among private citizens who by reason of their achievement, scholarship, or creativity in the humanities are especially qualified to serve.

(d) Ten (10) members of the Council shall be broadly representative of the general public of the state and shall be appointed from among private citizens who by reason of their knowledge of community and state interests are especially qualified to serve.

(e) In making these appointments, the governor shall request and consider those recommended for membership by persons or organizations involved in civic, educational, business, labor, professional, cultural, ethnic, and scholarly fields, as well as those with knowledge of community and state interests.

(f) The membership shall include both men and women and shall have broad geographic and culturally diverse representation.

(g) Each member shall hold office for a term of four years. No member shall be eligible for reappointment for a one year period following the expiration of his or her term. Any vacancy occurring on the Council other than by expiration of term shall be filled by the governor by the appointment of a qualified person for the unexpired term, and shall maintain the distribution of Subsections (c) and (d) of this Section.

(h) The Council shall, by majority vote, elect a Chairperson once a year at a regular time to be determined by the Council. The term of office of the Chairperson shall be one year. The Chairperson shall be eligible for re-election to no more than one additional term. Upon expiration of his or her term, the Chairperson shall serve until a successor shall have been elected.

(i) All members of the Council, including the chairperson, shall serve without compensation, but each shall be reimbursed for actual and necessary traveling and other expenses incurred in the performance of official duties.

#### Section 5. Meetings of Council -- quorum

(a) The Council shall meet at the call of the Chairperson, but not less than twice during each calendar year.

(b) Eleven (11) members of the Council shall constitute a quorum.

(c) All meetings of the Council shall be open and public, and all persons shall be permitted to attend any meeting of the Council.

(d) Unless there are extraordinary circumstances, all meetings are to be preceded by at least eight days public notice, and shall be held in various places throughout the state so as to encourage broad and diverse attendance.

(e) The chairperson shall vote only in case of a tie on any question voted on by the Council.

#### Section 6. Duties of the Council

The duties of the Council shall be--

(a) To make the humanities accessible, useful, and meaningful to as broad a public as possible;

(b) To foster, through grants to groups, public understanding and appreciation of the humanities;

(c) To insure that the benefit of its programs will also be available to our citizens where such programs would otherwise be unavailable due to geographic and economic reasons;

(d) To stimulate and encourage throughout the state public interest and appreciation of the humanities;

(e) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state;

(f) To encourage and assist freedom of expression essential for the well-being of the humanities;

(g) To assist the communities and organizations within the state in originating and creating their own programs in the humanities;

(h) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in humanities activities and to make recommendations concerning the appropriate methods to encourage public appreciation of the humanities in order to meet the legitimate needs and aspirations of persons in all parts of the state;

(i) To submit a report to the governor no later than ninety (90) days after the end of each fiscal year and at such other times as the governor requests or the Council deems appropriate;

(j) To approve for each year a program and a budget, by majority vote, such programs to be carried out by the chairperson as chief executive officer of the Council.

#### Section 7. Powers of the Council

The Council has the powers necessary to carry out the duties imposed upon it by this Act, including, but not limited to, the power--



(a) To appoint such administrative, technical, and other personnel, subject to the constitution and state personnel system laws of this state, as may be necessary for the performance of its powers and duties, and to define their duties and supervise and direct their activities;

(b) To hold hearings, make and sign any agreements, and perform any acts which may be necessary, desirable, or proper to carry out the purposes of this Act;

(c) To request and obtain from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties under this Act;

(d) To appoint such advisory committees as it deems advisable and necessary to the carrying out of its powers and duties under this Act;

(e) To accept any gifts, donations, or bequests for all or any of the purposes of this Act;

(f) To propose methods to encourage private initiative in the humanities;

(g) To advise and consult with national foundations and other local, state, and federal departments and agencies on methods by which to coordinate and assist existing resources and facilities, with the purpose of fostering endeavors toward the use of the humanities both nationally and internationally for the benefit of the public, in the best interests of this state;

(h) To accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem;

(i) To award direct grants to organizations in accordance with such regulations as the Council may prescribe;

(j) To adopt regulations in accordance with the provisions of the Administrative Procedure Act of this state necessary for proper execution of the powers and duties granted to the Council by this Act;

(k) To establish grant application criteria and procedures;

(l) To establish one or more secondary offices in various locations within the state if it determines that such office or offices are needed to properly carry out the provisions of this Act;

(m) To accept, on behalf of the State, and expend any federal funds granted by act of Congress or by executive order for all or any of the purposes of this Act; except that the Council may expend such funds only upon appropriation by the legislature if the federal funds require matching state contributions or capital outlay or create a commitment for future state funding.

#### Section 8. Executive Director

The Council shall have an executive director with experience and a continuing interest in the humanities, who shall be appointed by and serve at the pleasure of the Chairperson, and whose compensation shall be fixed by the Chairperson, all subject to the consent of a majority of the Council. The Director shall assist the Council in the carrying out of its work, be responsible for the management and administration of the Council staff, and perform other duties as directed by the Council.

Section 9. Conflict of interest

If any member of the Council is an employee, member, director, or officer of any organization that has applied to the Council for a grant, such member shall not communicate with any other member of the Council or any member of an advisory panel regarding such grant application, such member shall not be present when such is considered by the Council or panel, and such member shall receive no monetary compensation from such grant, if funded.

Section 10. Interference by Council prohibited

In carrying out its duties and powers under this Act, the Council shall never by action, directly or indirectly, interfere with the freedom of expression of the established or contemplated cultural programs in any local community or institution, nor shall it make any recommendations that might be interpreted to be a form of censorship.

Section 11. Transfer of functions

(a) All state appropriations heretofore made to \_\_\_\_\_\*\* to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the State Council on the Humanities established by this Act for the same purposes for which originally appropriated.

(b) Payments for liabilities for expenses of personnel service, maintenance, and operation heretofore incurred by \_\_\_\_\_\*\* and for

liabilities incurred and to be incurred in completing its current affairs shall be made on vouchers or certificates approved by the Chairperson of the Council on audit and warrant of the state comptroller.

(c) All rules, regulations, acts, determinations and decisions of \_\_\_\_\_\*\* in force at the time of the initial appropriations for the State Council on the Humanities shall continue in force and effect as rules, regulations, acts, determinations and decisions of such Council until duly modified or abrogated by the State Council on the Humanities.

(d) Any proceeding or other business or matter undertaken or commenced by or before the \_\_\_\_\_\*\* and pending on the effective date of this Act may be conducted and completed by the State Council on the Humanities in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the \_\_\_\_\_\*\*.

(e) No existing right or remedy of any character shall be lost, impaired or affected by reason of this Act.

\*\*Supply name of private citizens committee receiving NEH humanities funds as of December 4, 1980.

Section 12. Plan == administration of act == custody and expenditure of federal funds

This section and sections one to eleven, inclusive, of this Act, shall constitute the plan of the state as required by Section 7(f) of the National Foundation of the Arts and the Humanities Act of 1965 (Public Law 89-209). The Council shall be the sole agency of the state for the administration of Section 7(f) of said Act. The state treasurer shall be custodian of funds received by the state under section 7(f) of said act, and said funds shall be expended solely by the Council on projects approved by it which carry out the objectives of section 7(c) of said Act and which are designed to bring the humanities to the public.

## SECTION - BY - SECTION ANALYSIS

### PUBLIC HUMANITIES ACT

#### Section 1.

In several states, legislation establishing a state arts council is known as the "Arts and Humanities Act." In some states, the arts council funded by the National Endowment for the Arts is known as the "arts and humanities council," although none of those councils receives funds from the National Endowment for the Humanities. State legislation for arts councils was enacted prior to the 1980 amendments to the National Foundation on the Arts and the Humanities (NFAH) authorization and does not meet the conditions established in 1980 for distribution of NEH funds to state humanities councils. One of those conditions is use of the Federal funds exclusively for public programs. The short title suggested here helps to distinguish the new humanities agency established in compliance with the 1980 NFAH amendments from previously established councils.

#### Section 2.

Subsection (a) affirms the viewpoint of various state legislatures and the U. S. Congress that the funding of cultural activities is primarily a matter for the private sector and local groups, but that it is appropriate for governmental units, including state government, to assist in this support.

Subsections (b) and (c) are consistent with the legislative findings of Congress in establishing the NFAH. Federal funds for the newly-established state humanities agencies may not be used for objectives other than those authorized for NEH.

Subsections (d) and (e) affirm the importance to the general welfare of humanities programming for a broad public. One of the conditions for the award of NEH funds to a state humanities agency is an exclusive focus on public programming with those Federal funds.

#### Section 3.

Federal funds awarded to state humanities councils may be used only for public programs in the humanities. The definition here is consistent with the definition in the NEH authorizing legislation. The state humanities programs were originally established to provide programs especially tailored to the needs and interests of each state. The last clause of the definition thus specifies that the humanities be related to the special conditions of life in the state.

#### Section 4.

Subsection (a) provides for the establishment of the state council, as required for Federal funding in section 7(f)(2)(A)(i) of the NFAH legislation.

Subsection (b) provides for 20 members. Based upon the experience of existing state humanities councils, this size is necessary for a membership sufficiently representative of the diverse population groups in a state and of the various humanities disciplines and types of academic institutions. In states with a very large population, it may be desirable to provide for a larger membership on the council. The provision for the initial membership on the council and appointments by the governor to fill vacancies meets the requirements for Federal funding of Sections 7(f)(2)(A) and 7(f)(2)(A)(ii) of the NFAH legislation.

Subsection (c) continues the present policy of NEH regarding the private citizens' committees that 50% of the membership represent the fields of the humanities, as defined in Section 3 above, and academic institutions, including colleges and universities, humanities research libraries and institutions, and museums conducting interpretive programming in the humanities. As the Federal funds may not be used for any purpose other than humanities programming, substantial representation from the humanities is essential.

Subsection (d) continues the present policy of NEH regarding the private citizens' committees that 50% of the membership be broadly representative of the general public in the state. As the Federal funds are restricted exclusively to public programming in the humanities (Section 7(f)(2)(A)(iv)), substantial representation from the public (non-academic) sector of the population is essential.

Subsections (e) and (f) establish procedures for open solicitation of nominations for membership and objectives for broad diversity of membership on the council.

Subsection (g) provides for the term of membership most commonly found on private citizens' committees. The term of four years is short enough to ensure a continual infusion of fresh ideas and broad perspective on the council, with increasingly broadened responsibility for council duties among the population. The term is long enough to ensure sufficient experience and maturity on the council to properly fulfill its duties. The procedure for filling vacancies ensures an orderly transition in committee membership with maintenance of the membership distribution for Subsections (c) and (d).

Subsection (h) provides for election of the chairperson by those most familiar with the needs of the council and the responsibilities of the chairperson. This practice is followed by some state arts councils and all private citizens' humanities councils. The election by the council

helps to implement the guidance in the Senate Report to the NFAH legislation that the Council shall continue to be "the central, policy-making organ of a state humanities agency rather than merely an advisory adjunct." (S. REP. No. 96-557, 96th Cong., 2d Sess. 7 (1980). Limiting the possible service of the chair ensures that he or she will be fully accountable to the Council.

Subsection (i) continues the present policy of all private citizens' humanities councils and many state arts councils. This policy also responds to guidance in the Senate Report (p. 7) that the state humanities councils should continue "the public, 'citizen-steward' character of the existing councils."

Subsections (b) through (i) fully meet requirement (2) of the NEH guidance, "Plan for Compliance with the NEH Authorizing Legislation by State Humanities Councils Operating as State Agencies," which implements Section 7(f)(2)(A)(ii) of the NFAH legislation.

#### Section 5.

Subsection (a) provides for a minimum of two meetings per year, to help ensure that the Council functions as "the central, policy-making organ of a state humanities agency rather than merely an advisory adjunct," as directed in the Senate Report (p. 7).

Subsection (b) establishes a normal quorum of over 50% of the membership, to ensure that actions by the council are fully accountable to the public and adequately maintain the role of the council as "the central, policy-making organ."

Subsection (c) provides for public meetings to further ensure the accountability of the council for its expenditures of public funds. Although the NFAH legislation requires the private citizens' humanities councils to provide "public access to information" (Section 7(f)(3)(G)), the legislation is silent with regard to state agencies. In those states which have separate legislation requiring open meetings of groups spending public funds, this subsection may be redundant, but it might still be appropriate to remove any doubt concerning the applicability of the requirements to the state humanities agency. Consistent with separate state legislation, this subsection could also provide for exceptions to open meetings, such as discussions of individual personnel matters.

Subsection (d) includes a public notice requirement essential to make meaningful the provision for open meetings in Subsection (c). The requirement that meetings be held in various places in the state ensures that the opportunity for attendance at meetings will be available to all citizens, regardless of geographical location or economic means.

Subsection (e) follows a well-established practice in many organizations and institutions, recognizing the special power and role of the chairperson.



## Section 6.

Subsection (a) states the Congressional stipulation (Senate Report, p. 7) that the councils use Federal funds only to fund programs that "make the humanities accessible, useful, and meaningful to as broad a public as possible."

Subsection (b) states one of the objectives of both NEH and state programs, as included in Section 7(c)(5) of the NFAH legislation. This provision for grant-making continues the practice of the private citizens' committees (as well as the NEH) and reaffirms the limitation to public programming with the Federal funds.

Subsection (c) states the objective of Section 7(c)(7) of the NFAH legislation, which applies both to NEH and to the state humanities councils funded by NEH.

Subsection (d) implements the Finding of Section (2)(a) of this Act that government-funded grants should not be the only support for the humanities, but should be made in partnership with broad public support.

Subsection (e) makes explicit an area of programming of special interest in the states concerning cultural heritage.

Subsection (f) states an important principle, already recognized by many state legislatures, that freedom of expression is essential in nurturing a broad public appreciation and understanding of the humanities.

Subsection (g) implements the Finding of Section (2)(a) of this Act that government funding should encourage and not replace private support for the humanities.

Subsection (h) recognizes the important role of the state council in assisting the private sector in utilizing and developing resources in support of the humanities.

Subsection (i) states a requirement for reporting to the governor that is standard for state arts councils and similar agencies and ensures effective and regular communication with the governor of the state.

Subsection (j) implements the stipulation by Congress for Federal funds that the humanities council continue to be "the central, policy-making organ of a state humanities agency rather than merely an advisory adjunct." (Senate Report, p. 7) Designation of the chairperson as the chief executive officer of the Council is consistent with legislation establishing some arts councils.

## Section 7.

Section 7 lists a variety of powers necessary for carrying out the duties of the Council in Section 6. Similar or identical powers have been

granted to various state arts councils by state authorizing legislation.

Subsection (a) provides for the appointment of personnel for the council, subject to the separate laws of the state, which may vary considerably from state to state. This subsection also makes clear that the personnel are the employees of the council, as the central policy-making body of the state agency.

Subsection (b) provides basic authorities for the conduct of business by the state council.

Subsection (c) makes clear that the state council will be able to draw on the expertise of other state agencies in the conduct of its program.

Subsection (d) makes clear that the Council may, as needed, establish advisory councils for the review of specialized applications or other purposes.

Subsection (e) provides the authority needed to accept private donations, as necessary to utilize an offer of matching from the NEH through its gifts-and-matching program and as necessary to meet the requirements for cost-sharing of Federal grants.

Subsection (f) makes clear that it is appropriate for the Council to explore and encourage private support for the humanities.

Subsection (g) authorizes the Council to work with other agencies with similar interests, at all levels of government, to ensure maximum use of available resources for support of public programming in the humanities.

Subsection (h) clarifies the authority of the Council to accept volunteer support, which may, in some states, be restricted by separate legislation.

Subsection (i) provides for the basic grant-making authority of the Council. According to subsection (k), regulations, such as application procedures and criteria for award of funds, are to be determined by the Council, consistent with the Senate direction that the Council be "the central, policy-making organ of a state humanities agency."

Subsection (j) establishes authority of the Council as an agency of state government with regard to the adoption of necessary regulations under the state Administrative Procedure Act.

Subsection (l) provides explicit authority to establish additional offices for the council in various locations in the state, as needed. This provision is included in the authorizing legislation of the California state arts council, for example, and may be appropriate in other large states.

Subsection (m) clarifies the authority of the state council to accept funds from NEH, or any other Federal sources. The state legislature retains the authority to make commitments for additional state contributions and other commitments if those are a requirement for receipt of Federal funds.

#### Section 8.

This section makes clear that the executive director is the employee of the Council, to be appointed by the chairperson, subject to majority approval of the Council. This provision should be made consistent with provisions of state personnel system laws. This direct accountability of the executive director to the council is established in the authorizing legislation for some state arts councils. This accountability to the Council is consistent with the Senate guidance that the Council remain the central, policy-making body of the state agency.

#### Section 9.

Some state arts councils are subject to conflict-of-interest rules in the legislation establishing the council. In some states, separate legislation may sufficiently regulate conflict-of-interest with respect to council members, but inclusion of the provision here would eliminate any possible uncertainty about the applicability of those provisions. Although the NEH requires the private humanities committees to adopt a conflict-of-interest policy as part of its plan for compliance with the Federal legislation, there is no explicit requirement for state agencies in this regard.

Additional conflict-of-interest provisions could be included here, including prohibitions on conflict-of-interest by members of the Council staff. An additional restriction could extend all prohibitions on council members to members of their immediate family living in the same household. Another possible provision would be prohibition on receipt of compensation from grant funds of any kind from the state council by a council member during the entire term of membership and for a period of six months or a year after termination of membership for any reason.

#### Section 10.

This section explicitly prohibits interference with the private institutions conducting humanities programming, consistent with similar provisions in some state arts council legislation and the Federal legislation authorizing NEH.

#### Section 11.

This section provides for an orderly transition in the financial and administrative obligations and responsibilities of the private citizens council when it is designated as a state agency. The precise situation

in the states will vary, requiring modification of these provisions. It seems likely that the private citizens' council will have Federal grant funds remaining, as well as outstanding obligations, at the time of its designation as a state agency. In such situations, the Chairperson, acting on behalf of the Council, and with its approval, could develop specific agreements with the state comptroller or other appropriate official to establish the transition for financial obligations and assets.

Subsections (c), (d), and (e) ensure that the on-going business of the council will not be disrupted unnecessarily, but that there will be an orderly transition in the receipt and processing of applications and other business of the council.

Section 12.

This section meets requirements for Federal funding stated in Sections 7(f)(2)(A), 7(f)(2)(A)(i), and 7(f)(2)(A)(iv) of the NFAH legislation.