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Sue Martin

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United States
National Commission on
Libraries and Information Science

6 November 1989

To: Jerald C. Newman, Chairman
From: Sue Martin^{slm}, Executive Director
Subject: Advisory Committee to NCLIS for the White House
Conference

This memo is a confirmation and elaboration of our conversation of November 2, in which I reported to you information that had just come to my attention regarding the White House Conference Advisory Committee and its status as described by the Federal Advisory Committee Act. I was unable to reach you on November 3 to continue our conversation.

You are aware of the memo to Dan Carter by Mary Alice as NCLIS' Designated Federal Official to the Advisory Committee, regarding her concerns that the Advisory Committee may be operating outside its charter, and his response, which raised additional questions. Because of this increasing confusion surrounding the question of the Advisory Committee's WHC Executive Director Selection Subcommittee meeting, I became very concerned, and felt that I needed higher level informed advice that I could then provide to you. Thus, Mary Alice Reszetar, Shelly Weinstein, and I met with officials at GSA and the Department of Education. (Shelly has been a consultant for NCLIS on the White House Conference since August; she is an expert on the Federal Advisory Committee Act.) At GSA we talked with Charles Howton, of the Committee Management Secretariat, and David Fisher, general counsel. At the Department of Education, we met with Will Haubert and Steve Winnick from the Office of the General Counsel, and Ann Bailey, who is the Department of Education's Committee Management Officer (CMO). The following is a summary of the information and advice we received from these consultations so you will have soundest reading of the current situation.

We learned that we have major problems on our hands, according to all interpretations. We have been advised that this is the kind of situation that sometimes leads to public embarrassment for top-level agencies, in this case the White House, Department of Education, GSA, and NCLIS. Basically, the law provides that NCLIS is the Federal decision-making agency responsible for the White House Conference, and therefore is the agency that Congress, OMB, and GSA hold accountable for the operations and management of the Advisory Committee. While there are some

things that NCLIS can delegate for advice and assistance, it cannot delegate its authority for conference direction; procurement, contracting, personnel, and oversight responsibilities. The Advisory Committee's primary functions are just that -- advisory to the Commission. The WHCLIS law provides that the Advisory Committee is operational to the extent of selecting its own and the Conference chair, establishing subcommittees, prescribing functions for staff, and providing delegate selection guidelines to those states that elect not to have pre-White House Conference activities. As Ann Bailey put it, the Advisory Committee is a committee of NCLIS, and should be supported by NCLIS staff; the White House Conference staff are in a different category, and in the opinion of general counsel and the committee management officers, there is ambiguity about the relationship of the conference staff to the Advisory Committee. However, that staff reports directly to the Commission.

Despite Dan Carter's claims to the contrary in his memo to Mary Alice of October 23, the Advisory Committee is not unique among advisory committees; in fact, its structure and mandate are rather typical. Most advisory committees have some mix of advisory and operational elements in their charge, and it is the relative weight of these elements that causes the government to determine that a committee is primarily one or the other. In the case of our advisory committee, it has only three one-time operational mandates, and it is described therefore as being primarily advisory. In particular, it cannot be either one or the other, "on a case by case basis," as Dan Carter suggests. The definition of federal advisory committees is reserved to GSA, and because of the above-mentioned specifics they have defined the NCLIS Advisory Committee as primarily advisory.

Dan Carter further indicated that the Committee is authorized to appoint staff members. The paragraph he referred to is confusing, but, we were advised, must be read in the light of Section 3(d) of the law, which states that the Commission is authorized to engage personnel to assist "the Commission and the Advisory Committee" (emphasis mine). We may want further clarification from general counsel, but the law's provision for the Advisory Committee chairman is focused primarily on the establishment of subcommittees, and the prescribing of tasks for the staff which have already been hired by the Commission.

In the area of fiscal authority and responsibility, Vivian Terrell advised me on November 2 that Dan Carter instructed her to send a memo under her name to the Department of Education, giving him sole signatory authority for White House Conference financial and fiscal documents. That memo was sent on July 24, to Education's Budget Office, Payroll Office, Personnel Office, Finance Office, and the National Finance Center. Education's Budget Office refused to grant such authority. Mary Alice, who had initially been told by Dan Carter and Vivian that Dan alone

would have signatory authority, was later advised by Vivian that she could also act as signatory, but she was not informed about what had transpired. I was not informed about either the request or the rejection until November 2. As a result of this intended or unintended misrepresentation, I also have been signing off on budget documents as NCLIS Executive Director, without being aware that this was the result of the Budget Office's nonacceptance of Dan Carter's signature.

Therefore, since July, almost \$250,000 in purchase orders have been signed by Dan Carter, a civilian employee without properly authorized signatory authority. Such authorization is very rarely delegated by the agency head, and then only under unusual circumstances, with the written concurrence of general counsel. The Commission, and the Commissioners, are responsible and accountable for the White House Conference, operationally and fiscally. Since the Advisory Committee is primarily advisory to NCLIS, its members cannot be given the fiscal authority reserved to the NCLIS, a federal agency.

NCLIS is not only responsible for the funds, it is the employer of the White House Conference staff. No delegation of personnel authority from NCLIS has occurred to allow the Advisory Committee to hire or administer staff; if such delegation could occur, the delegation must be voted upon by the entire Commission. (This interpretation is consistent with a Justice Department interpretation to NCLIS of several years ago.)

At both meetings, the counsels and committee management officers suggested that the Advisory Committee chairman is acting outside of his authority and outside the Committee charter, and, they stated repeatedly, needs to be "reined in" by the Commission, with the NCLIS chairman assuming the responsibility and the lead role. We were told that NCLIS is operating illegally and may be subject to legal action, both in fiscal and personnel matters. As I mentioned earlier, we were also advised that a GAO audit of events to date would most likely prove very embarrassing to NCLIS and to the White House.

It was suggested that all voting Commissioners discuss this situation at a meeting, perhaps closed, and determine how they want to ensure that the operation of the Advisory Committee works smoothly and without conflicting with existing statutes, regulations, and authorities. Mary Alice, as the Designated Federal Official, is regarded as key in this process; also, the concerned federal agencies regard the NCLIS executive director as the appropriate federal official to be the Committee Management Officer, and further advise that it is not possible for the NCLIS executive director to be separated from the WHCLIS process. Specifically, WHCLIS is an NCLIS function, and the senior federal employee of NCLIS has specific responsibilities for which I am accountable as C.M.O.

During the meeting, the Education general counsel brought to our attention an issue which is of serious concern to them. As you will recall, at the April Advisory Committee meeting, the members of that committee were urged to go home and lobby their Congressmen for funds for the conference. This is in the minutes of that meeting, which Dan Carter had sent to Education. As we are now aware, it is against the law for either full or special federal employees to lobby Congress. The general counsel at Education brought this to Dan Carter's attention, and told him that some action would have to be taken to ensure that the record show that the misguided lobbying action has since been terminated; specifically, they asked Carter to consult with the Office of Government Ethics. According to general counsel, Dan Carter later informed counsel that there was no need to do so, because, as far as he was concerned the matter was resolved, and there was no problem. General counsel was concerned that their advice was not being heeded. They are not satisfied with Carter's response to their perception of an infraction of ethics rules; they had assumed that Carter had brought the matter to the attention of the Commission. As a result, the General Counsel is preparing to bring this matter to the attention to the Office of Government Ethics and the Commission. NCLIS, as the parent body, is responsible.

I am suggesting action in several areas for your consideration:

- 1) I am enclosing a draft memo to Dan Carter from Mary Alice, responding to his most recent memo about the Advisory Committee's WHC Executive Director Selection Committee meeting. Counsel at both GSA and Education have seen this draft, and concur that it be sent. I do not want to send it without your prior knowledge and approval. Please read it and let me know your response as quickly as possible. There are some additional important issues which impact on the selection process that are more detailed, and that we can talk about when we meet.
- 2) You and I need to work together to ensure that the NCLIS fiscal responsibility is carried out. I have written a memo to the Education offices which received Vivian Terrell's memo of July 24 requesting signatory authority for Carter; my memo rescinds that order and requests, until further notice, signatory authority be reinstated as it existed prior to this unfortunate incident, i.e. for myself and Mary Alice. I will also need to talk with you about the appropriate way to handle Vivian's response to Dan Carter and her actions, which were extremely serious transgressions and cannot be overlooked.
- 3) A natural outgrowth of these conversations is the need to involve the Commission completely in decisions regarding

WHCLIS. I recommend that we immediately send the Commissioners the recently drafted guidelines for the states' pre-White House Conference activities, for their comment and approval. That is within the area of responsibility of the Commission, and the Advisory Committee has already signed off on the language. We could send them via overnight mail requesting response by a date certain, as was done with the Advisory Committee.

- 4) I hope that you will come to Washington at your earliest convenience to meet with the Education general counsel, myself, and others as necessary and appropriate, hopefully this week. Will Haubert at Education would be pleased to meet with us on Tuesday afternoon or Wednesday morning. Other meetings can be arranged as needed. Please let me know your travel plans so we can have a government travel order prepared and executed before you leave New York.

These incidents are regrettable and troubling. However, I feel certain that if we meet at the earliest possible time, consider the options, and decide what steps must be taken by NCLIS to correct this matter, NCLIS will be able to ameliorate the situation and move on to a productive and successful White House Conference. I look forward to speaking with you within a few hours.