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State Humanities Committees (1979-1982): Report 04

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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 for public programs exclusively. 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.

*Supply name of 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. Most existing humanities entities have preferred a name including "Council," but other names could be designated here.

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 very large populations, 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 each 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, but terms of different lengths could be established here. 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 Council 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 committees. 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. Alternatively, the Chairperson could be appointed by the Governor and a longer term could be established.

Subsection (i) continues the present policy of all private citizens' humanities committees 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 committees 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 would 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 a meeting of the Council 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 for programs that "make the humanities accessible, useful, and meaningful to as broad a public as possible."

Subsection (b) states an objective of both NEH and state humanities programs, as provided 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 to both NEH and the state humanities programs 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 in establishing state arts councils, that freedom of expression is essential in nurturing cultural activities.

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) provides for compliance with the reporting requirements for Federal funds, as stated in Section 7(f)(2)(A)(vi) of the NFAH legislation.

Subsection (k) 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 state 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 state arts councils by state authorizing legislation.

Subsection (a) provides for the appointment of personnel for the Council, subject to the constitution and laws of the State, which may vary considerably from State to State. This subsection also makes clear that Council staff members 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 it is appropriate for the state council to request the assistance of other state agencies in the conduct of its program. Some states may wish to delineate in more detail the availability of assistance from other units of state government.

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

Subsection (e) provides authority to accept private donations, as necessary to utilize an offer of matching from 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. As provided in subsection (j), regulations, such as application procedures and criteria for award of funds, are determined by the Council, consistent with the Senate directive that the Council be "the central, policy-making organ of a state humanities agency."

Subsection (k) establishes the authority of the Council as an agency of state government with regard to the adoption of necessary regulations under applicable state legislation, such as an 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 other Federal sources. The state legislature retains the authority to make commitments for additional state contributions and other types of commitments if those are required 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 a majority of the Council. This provision should be made consistent with provisions of state personnel system laws. 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 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 applicable to all state agencies 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. Prohibitions on Council members could also be extended to members of the immediate family living in the same household. Another possible provision would be prohibition on receipt of compensation from grant funds by a Council member 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. Advocacy of particular views on public issues with Council funds is also prohibited.

Section 11.

This section provides for an orderly transition in the financial and administrative obligations and responsibilities of the private citizens committee 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' committee 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, should 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. It should be noted that enactment of this legislation does not meet the requirement of section 7(f)(2)(A)(iii) that a certain amount of newly-appropriated State funds be provided to the Council in order for the State to be eligible for Federal funds. Nor does this legislation constitute an application for funds, which is addressed in separate guidance available from the Endowment.