

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: Indian Policy (8)
Box: 8

To see more digitized collections visit:
<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:
<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

ISSUE PAPER

ISSUE: Should the President recommend that the Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations (42 U.S.C. 4273, Tab A, attached) to include a tribal chairman and a tribal council member?

SUBISSUE: In the interim, should the President request the Commission to invite the Assistant Secretary for Indian Affairs to attend Commission meetings as an observer?

BACKGROUND:

The Advisory Commission on Intergovernmental Relations was established by Congress in 1959 as the national, permanent Commission to monitor intergovernmental relations and make recommendations for change.

Congress has not expanded membership to other petitioning parties, such as townships and school districts, in recent years. However, the Administration supported expansion of the ACIR to include town officials at hearings held April 21, 1982, on H.R. 2016. (Tab B, attached).

Indian tribal governments have expressed their desire to be included in the ACIR in previous years. The National Tribal Chairmen's Association petitioned the House Subcommittee on Intergovernmental Relations to include at least one representative chosen from nominations from federally recognized tribes on May 4, 1982. (Tab C, attached).

Until 1970 when President Nixon established a policy of Self-Determination, tribal governments could conceivably be viewed by other units of government as quasi-governments because tribal governments did not have the true responsibility for delivering traditional governmental services to their constituencies. Since 1970 and the Self-Determination Act of 1975, tribes have been assuming increasing responsibility for these functions and will be assuming additional responsibility during the coming decades. The level of governmental function by tribal governments has, therefore, changed substantially in the past decade.

DISCUSSION:

The Self-Determination Act of 1975 provides for and encourages tribal governments to assume the responsibility for providing services for Indian reservation residents rather than having Federal civil servants set priorities and administer programs. This, coupled with the Nixon, Ford and Reagan Administrations' support of the government-to-government relationship between the Federal Government and Tribal governments has created a climate in which many tribes want to assume administrative and operational responsibility for their schools, health services, etc. However, many Indian leaders perceive a dichotomy of actions: tribal governments are encouraged and are assuming the same responsibilities borne by other local governments, yet many Indian leaders feel that their governments are not given equal recognition through membership in national forums such as the ACIR.

As more tribes assume greater responsibility for providing services to their constituencies, interaction between tribal governments and local and state governments on problems of mutual concern and interest are going to increase. This reality should be addressed at this juncture by the Executive and Legislative branches of the Federal government so that positive interaction between tribal governments and other jurisdictions is encouraged.

PROS:

1. States, counties and cities are represented on the ACIR. Recognition by the foregoing governmental units that tribal governments are fulfilling the same governmental obligations to their constituencies (Indian reservation residents) would have a three-fold psychological impact:
 - (a) it would underscore the Administration's support for the government-to-government relationship;
 - (b) it would provide the recognition and respect tribal governments desire among other units of government, i.e. signal recognition of the fact that tribal governments are achieving the level of maturity and responsibility already achieved by other units of government;
 - (c) it would indicate that all levels of government expect tribal governments to be as accountable to their constituencies and the taxpayers as any other unit of government.

2. Self-Determination could be speeded-up as tribes would learn from other governmental units through closer association in a national forum. Tribal leaders, like other local governmental leaders, will be facing new challenges and opportunities under the "New Federalism." Tribal interest in refining effective and efficient delivery systems will increase significantly in the next few decades as tribal governments take on even greater responsibilities than they have in the last decade. Membership on the ACIR would be one of the most cost-effective ways to assist tribes in strengthening their governmental structures to guarantee effective service delivery. The Bureau of Indian Affairs, which has responsibility for technical support to strengthen tribal government systems, is not equipped to provide the same degree of innovative problem solving as the ACIR.
3. Problems of counties, cities and tribes vis-a-vis the state and Federal governments are often very similar. Participation on the Commission would enhance awareness and foster cooperation in areas of mutual concern. As tribes move into private sector economic development, with associated issues of taxation, zoning, etc., tribal governmental decisions will have an increasing impact on non-Indian communities; thus, cooperation between contiguous communities will become increasingly important to all parties involved.

Historically, many Indian leaders have been reluctant to interact with local and state governments unless absolutely necessary. However, there is a growing body of examples of positive cooperation which can serve as models. This model base indicates an attitudinal climate exists for fostering positive cooperation.

4. Fostering the climate of cooperation could become a cost-effective way to encourage negotiated solutions to jurisdictional disputes, thus saving all units of government -- local, state tribal and federal -- the more costly route of litigation.

CONS:

1. Acknowledging tribal governments as governments is not fully accepted by the non-Indian populace in some areas of the country. This is due primarily to **DRAFT** misunderstanding about tribal governments, their constitutions and the historical and legal relationship between federally-recognized tribes and the Federal government.
2. In 1980, The Clary Institute of Washington, D. C. queried members of the ACIR regarding possible Tribal Government representation on the Commission. Responses were generally negative. The most frequent reason cited was that ACIR endorses Congress' original intent in enacting the statute: representation should be limited to general governments that are virtually universal, i.e. that exist in 45 or more states. Federally-recognized tribal governments are currently located in only 26 states. Opposition on that basis from ACIR members could be expected.

OPTION I: The President should recommend to Congress that the membership of the Advisory Commission on Intergovernmental Relations be expanded to include a tribal chairman and a tribal council member.

OPTION II: The President should not recommend to Congress that the membership of the Advisory Commission on Intergovernmental Relations be expanded to include a tribal chairman and a tribal council member.

RECOMMENDATION:

Procedure for Nominating Candidates

Several mechanisms, both national and regional, exist which could be utilized in the nominating process.

OPTION I: Consistent with the way the current 14 non-Federal members are selected, proposed legislation could call for selection of a tribal chairman member from a panel of at least six candidates submitted by the National Tribal Chairmen's Association. The tribal council member could be selected from a panel of eight candidates submitted by the National Congress of American Indians.

PROS: This option would be consistent with candidate nomination procedures for state, county and city members of the ACIR. The National Tribal Chairmen's Association (NTCA) is composed of tribal chairmen of many, but not all, Federally-recognized tribes. The membership of the National Congress of American Indians (NCAI) includes tribal council members, but not exclusively. Additionally, membership is

not limited to Federally-recognized tribes.

2. Option I would provide an opportunity for two major Indian organizations to act as a clearinghouse for Indian appointees to the ACIR. This could stimulate greater tribal participation in both organizations. The NTCA might thus evolve into the equivalent of the National Governors Association. The NCAI could conceivably become the national focal point for tribal council members in addition to its current functions.

CONS:

1. Not all Federally-recognized tribes are members of the National Tribal Chairmen's Association of the National Congress of American Indians. Some tribes may object that this diminishes tribal participation in the nomination process. Some tribes may additionally view this as an effort to force membership in the organizations.

OPTION II: Membership would rotate on a predetermined basis between designated regional intertribal organizations, with the affected intertribal organizations jointly presenting a panel of six tribal chairmen and eight councilmen.

PROS: The use of designated intertribal organizations would provide a more localized forum for tribal participation in the nomination process.

2. This mechanism would guarantee that representation would be rotated between regions of the country.

CONS:

1. Larger tribes could dominate smaller tribes with more frequent representation on the ACIR. This could diminish over-all interest by a large percentage of the tribes with smaller populations. The Navajos are the only tribe with 30,000+ population; 30-40 tribes have a population between 5,000 - 30,000, and approximately three-fourths of the tribes have a population under 2,500.

OPTION III: Membership would rotate on a predetermined basis between designated regional intertribal organizations, with the affected intertribal organizations jointly presenting a panel of six tribal chairmen and eight tribal councilmen candidates with an additional required rotation between tribes of varying populations.

PROS:

1. Option III would provide for localized tribal participation.
2. Geographical rotation would be guaranteed.
3. Smaller tribes would be guaranteed an opportunity to serve on the ACIR.

RECOMMENDATION:

SUBISSUE: In the interim, should the President request the Commission to invite the Assistant Secretary for Indian Affairs to attend Commission meetings as an observer?

PROS:

1. Participation of the Assistant Secretary for Indian Affairs as an observer until the Congress acted on expansion of the ACIR's expansion would indicate the Administration's commitment to the government-to-government relationship by providing immediate participation in national forums.
2. Inviting the Assistant Secretary as an observer on the ACIR would enable immediate dialogue to begin.
3. The Assistant Secretary, as an observer, could act as a clearinghouse to tribal leaders on innovative techniques being discussed and adopted by other units of government, which would have an immediate educational benefit in further strengthening tribal governments.

CONS:

1. Such a recommendation could impede tribal government membership on the ACIR, with Congress opting for a permanent observer status.

RECOMMENDATION:

CHAPTER 53. . ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Section

- 4271. Establishment
- 4272. Declaration of purpose
- 4273. Membership of the Commission; appointment of members; term
 - (a) Number of members; appointment; qualifications
 - (b) Political and geographic composition
 - (c) Term of office; reappointment; period of service
- 4274. Organization of the Commission
 - (a) Initial meeting
 - (b) Chairman and Vice Chairman
 - (c) Vacancies in membership
 - (d) Termination of service in official position from which originally appointed
 - (e) Quorum
- 4275. Duties of the Commission
- 4276. Powers and administrative provisions
 - (a) Hearings; oaths and affirmations
 - (b) Cooperation by Federal agencies
 - (c) Executive director
 - (d) Appointment and compensation of other personnel; temporary and intermittent services
 - (e) Applicability of other laws to employees
 - (f) Maximum compensation of employees
- 4277. Compensation of members
- 4278. Authorization of appropriations
- 4279. Receipt of funds; consideration by Congress

CROSS REFERENCES

This chapter is referred to in 42 USCS § 4243.

§ 4271. Establishment

There is hereby established a permanent bipartisan commission to be known as the Advisory Commission on Intergovernmental Relations, hereinafter [42 USCS §§ 4271 et seq.] referred to as the "Commission". (Sept. 24, 1959, P. L. 86-380, § 1, 73 Stat. 703.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USCS § 2371 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Other provisions:

Ex. Or. No. 11455 revoked. Ex. Or. No. 11455 of Feb. 14, 1969, 34 Fed. Reg. 2299, which formerly appeared as a note to this section, was revoked by Ex. Or. No. 11690 of Dec. 14, 1972, 37 Fed. Reg. 26815 (effective 30 days after Dec. 14, 1972 as provided by Section 6 of Ex. Or. No. 11690), which appears as 3 USCS § 301 note. Ex. Or. No. 11455 established an Office of Intergovernmental Relations under the supervision of the Vice President.

Office of Intergovernmental Relations; authorization of appropriations; compensation of director; appointment of personnel; experts and consultants. Act Dec. 30, 1969, P. L. 91-186, §§ 1-3, 83 Stat. 849, provided: "There is hereby authorized to be appropriated such sums as may be necessary for expenses of the Office of Intergovernmental Relations (referred to hereafter as the 'Office'), established by Executive Order Numbered 11455 of February 14, 1969.

"The Director of the Office shall be compensated at a rate of basic compensation not to exceed the rate now or hereafter provided for level IV of the Federal Executive Salary Schedule [5 USCS § 5315].

"The Director of the Office is authorized—

"(1) to appoint such personnel as he deems necessary, without regard to the provisions of title 5, United States Code [5 USCS §§ 101 et seq.], governing appointments in the competitive services; and

"(2) to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code [5 USCS § 3109], at rates not to exceed the daily equivalent of the rate now or hereafter provided for GS-18 [see 5 USCS § 5332]."

✓ Establishment of Presidential Advisory Committee on Federalism. Ex. Or. No. 12303 of Apr. 8, 1981, 46 Fed. Reg. 21341, provided:

"By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [5 USCS App § 1], an advisory committee on federalism policy of the United States, it is hereby ordered as follows:

"Section 1. *Establishment.* (a) There is established the Presidential Advisory Committee on Federalism. The Committee shall be composed of members from among private citizens of the United States, public officials from State and local governments, and members of the Legislative and Executive branches of the Federal government who shall be appointed by the President. The members shall serve at the pleasure of the President.

"(b) The President shall designate a Chairman from among the members of the Committee.

"Sec. 2. *Functions.* The Committee shall advise the President with respect to the objectives and conduct of the overall federalism policy of the United States.

"Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information

with respect to federalism issues as it may require for the purpose of carrying out its functions.

"(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the governmental service (5 U.S.C. 5701-5707) [5 USCS §§ 5701-5707], to the extent funds are available therefor.

"(c) Any administrative support expenses of the Committee shall be paid from funds available to the White House Office.

"Sec. 4. *General.* (a) Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended [5 USCS App § 1], shall be performed by the President, except that, the Administrator of General Services shall, on a reimbursable basis, provide such administrative services as may be requested.

"(b) The Committee shall terminate on December 31, 1982, unless sooner extended."

§ 4272. Declaration of purpose

Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

✓ It is intended that the Commission, in the performance of its duties, will—

- ✓ (1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;
- ✓ (2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
- ✓ (3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;
- ✓ (4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
- ✓ (5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
- ✓ (6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
- ✓ (7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive

INTERGOVERNMENTAL RELATIONS

42 USCS § 4273

fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.
(Sept. 24, 1959, P. L. 86-380, § 2, 73 Stat. 703.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2372 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

CROSS REFERENCES

This section is referred to in 42 USCS § 4275.

§ 4273. Membership of the Commission; appointment of members; term

(a) Number of members; appointment; qualifications. The Commission shall be composed of twenty-six members, as follows:

- (1) Six appointed by the President of the United States, three of whom shall be officers of the executive branch of the Government, and three private citizens, all of whom shall have had experience or familiarity with relations between the levels of government;
- (2) Three appointed by the President of the Senate, who shall be Members of the Senate;
- (3) Three appointed by the Speaker of the House of Representatives, who shall be Members of the House;
- (4) Four appointed by the President from a panel of at least eight Governors submitted by the Governors' Conference;
- (5) Three appointed by the President from a panel of at least six members of State legislative bodies submitted by the board of managers of the Council of State Governments;
- (6) Four appointed by the President from a panel of at least eight mayors submitted jointly by the National League of Cities and the United States Conference of Mayors;
- (7) Three appointed by the President from a panel of at least six elected county officers submitted by the National Association of Counties.

(b) Political and geographical composition. The members appointed from private life under paragraph (1) of subsection (a) shall be appointed without regard to political affiliation; of each class of members enumerated in paragraphs (2) and (3) of subsection (a), two shall be from the majority party of the respective houses; of each class of members enumerated in paragraphs (4), (5), (6), and (7) of subsection (a), not more than two shall be from any one political party; of each class of members enumerated in paragraphs (5), (6) and (7) of subsection (a), not more than one shall be

from any one State; at least two of the appointees under paragraph (6) of subsection (a) shall be from cities under five hundred thousand population.

- ✓(c) **Term of office; reappointment; period of service.** The term of office of each member of the Commission shall be two years; members shall be eligible for reappointment; and, except as provided in section 4(d) [42 USCS § 4274(d)], members shall serve until their successors are appointed. (Sept. 24, 1959, P. L. 86-380, § 3, 73 Stat. 704; Nov. 2, 1966, P. L. 89-733, §§ 1, 2, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2373 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (a), in para. (6), substituted "National League of Cities" for "American Municipal Association" and "; and" for ";;", in para. (7), substituted "Counties" for "County Officials"; and in subsec. (c), substituted "; members shall be eligible for reappointment; and, except as provided in section 4(d), members shall serve until their successors are appointed" for ", but members shall be eligible for reappointment".

CROSS REFERENCES

This section is referred to in 42 USCS § 4274.

§ 4274. Organization of the Commission

- (a) **Initial meeting.** The President shall convene the Commission within ninety days following enactment of this Act [enacted Sept. 24, 1959] at such time and place as he may designate for the Commission's initial meeting.
- (b) **Chairman and Vice Chairman.** The President shall designate a Chairman and a Vice Chairman from among members of the Commission.
- (c) **Vacancies in membership.** Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (4), (5), (6), and (7) of section 3(a) [42 USCS § 4273(a)(4)-(7)], each panel of names submitted in accordance with the aforementioned paragraphs shall contain at least two names for each vacancy.
- ✓(d) **Termination of service in official position from which originally appointed.** Where any member ceases to serve in the official position from which originally appointed under section 3(a) [42 USCS § 4273(a)], his place on the Commission shall be deemed to be vacant.

INTERGOVERNMENTAL RELATIONS

42 USCS § 4275

(e) Quorum. Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

(Sept. 24, 1959, P. L. 86-380 § 4, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2374 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

CROSS REFERENCES

This section is referred to in 42 USCS § 4273

§ 4275. Duties of the Commission

✓ It shall be the duty of the Commission—

✓ (1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of the purposes set forth in section 2 of this Act [42 USCS § 4272];

✓ (2) to consider, on its own initiative, ways and means for fostering better relations between the levels of government; ✓

✓ (3) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress or any committee of the Congress, and to any unit of government or organization as the Commission may deem appropriate.

(Sept. 24, 1959, P. L. 86-380, § 5, 73 Stat. 705.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section formerly appeared as 5 USC § 2375 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Other provisions:

Study and report to Congress of effect on funds available for housing and State and local bond markets of full deposit insurance for public funds; submission date; authorization of appropriations. Act Oct. 28, 1974, P. L. 93-495, Title I, § 101(f), 88 Stat. 1502, effective on the 30th day beginning after Oct. 28, 1974, provided:

"(1) The Advisory Commission on Intergovernmental Relations (hereinafter referred to as the 'Commission') shall conduct a study of the impact of this section on funds available for housing and on State and local bond markets.

rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended."

Other provisions:

Effective date and application of amendment made by Act Aug. 14, 1964. Act Aug. 14, 1964, P. L. 88-426, § 501(a), 78 Stat. 435, provided that the amendment made to this section by § 306(e) of such Act is effective on the first day of the first pay period which begins on or after July 1, 1964.

§ 4277. Compensation of members

(a) Members of the Commission who are Members of Congress, officers of the executive branch of the Federal Government, Governors, or full-time salaried officers of city and county governments shall serve without compensation in addition to that received in their regular public employment, but shall be allowed necessary travel expenses (or, in the alternative, a per diem in lieu of subsistence and mileage not to exceed the rates prescribed in the Travel Expense Act of 1949, as amended), without regard to the Travel Expense Act of 1949, as amended (5 U.S.C. 835-842), the Standardized Government Travel Regulations, or section 10 of the Act of March 3, 1933 (5 U.S.C. 73b), and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Unless prohibited by State or local law, members of the Commission, other than those to whom subsection (a) of this section is applicable, shall receive compensation at the rate of \$50 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, as provided for in subsection (a) of this section.

(Sept. 24, 1959, P. L. 86-380, § 7, 73 Stat. 706; Nov. 2, 1966, P. L. 89-733, § 5, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Travel Expense Act of 1949", referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 655. Similar provisions as reenacted appear as 5 USCS §§ 5701 et seq.

"Section 10 of the Act of March 3, 1933", referred to in this section, was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 648. Similar provisions as reenacted appear as 5 USCS § 5731.

Explanatory notes:

This section formerly appeared as 5 USC § 2377 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (b), substituted "Unless prohibited by State or local law, members" for "Members".

§ 4278. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [42 USCS §§ 4271 et seq.].
(Sept. 24, 1959, P. L. 86-380, § 8, 73 Stat. 706.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

This section formerly appeared as 5 USC § 2378 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

§ 4279. Receipt of funds; consideration by Congress

The Commission is authorized to receive funds through grants, contracts, and contributions from State and local governments and organizations thereof, and from nonprofit organizations. Such funds may be received and expended by the Commission only for purposes of this Act [42 USCS §§ 4271 et seq.]. In making appropriations to the Commission the Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.
(Sept. 24, 1959, P. L. 86-380, § 9, as added Nov. 2, 1966, P. L. 89-733, § 6, 80 Stat. 1162.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

This section formerly appeared as 5 USC § 2379 prior to the general revision and enactment of Title 5 by Act Sept. 6, 1966, P. L. 89-544, § 1, 80 Stat. 378.

SECRETARY OF THE ARMY

SECOND SESSION

ON

TO ADD REPRESENTATIVES OF TOWN OFFICIALS TO THE MEMBERSHIP OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

AND

TO EXPAND THE MEMBERSHIP OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS TO INCLUDE ELECTED SCHOOL BOARD OFFICIALS

APRIL 21, 1982

Printed for the use of the Committee on Government Operations



94-258 O

TAB B

THE WHITE HOUSE

WASHINGTON

April 20, 1982

Dear L.H.

As a member of the Advisory Commission on Intergovernmental Relations, I would like to express -- on behalf of the Administration -- support for adding three members to the Commission to represent towns and townships. I understand that the House Intergovernmental Relations and Human Resources Subcommittee will be holding hearings on this matter on April 21, 1982.

In your deliberations, I would suggest you give consideration to the uniqueness of towns and townships. In my opinion, exclusion of towns and townships -- one of the fastest growing facets of our system -- distracts from the effectiveness and fairness of the Commission.

As noted in a recent statement by our fellow Commission member, Congressman Clarence J. Brown: "Over sixty million people live in townships, and over half of our country's population reside in communities under 50,000... Yet no local officials, county or city, presently serving on ACIR represent an area of under 50,000 population."

If it is the intent of Congress that all general purpose governments be represented on the Commission, then exclusion of towns and townships is contrary to that intention.

The Administration would like to be on record as favoring the inclusion of towns and townships, and for nominations to be provided by the National Association of Towns and Townships.

I thank the subcommittee for its consideration of this position.

Cordially

Rich
Richard S. Williamson
Assistant to the President
For Intergovernmental Affairs

The Honorable L. H. Fountain
U. S. House of Representatives
Washington, D.C. 20515

TABC

MAY 05 1982



NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 910 • 1010 Vermont Avenue, N. W. • Washington, D. C. 20005 • 4949
202 - 737-7011

May 4, 1982

The Honorable L.H. Fountain
House of Representatives
Chairman, Subcommittee on Intergovernmental
Relations
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Sir:

I have been informed that a hearing on the membership make-up of the Advisory Commission on Intergovernmental Relations was held by your subcommittee in April.

We are aware that the ACIR members are appointed by the President based on nominations from the National Governors Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors and the National Association of Counties. There are no representatives from Indian tribal governments.

American Indian tribal governments are recognized by the Administration and the Congress as having a special and unique governmental status in their relationship with the United States. It is important to the Indian Nations that their government to government relationship with the U.S. be officially recognized by all who have intercourse with Indian affairs. It is equally important that tribal governments have representation at every level at which intergovernmental affairs are discussed.

Therefore, the National Tribal Chairmen's Association, on behalf of its' membership composed of federally recognized Indian tribes petitions your committee to amend the Congressional action of 1959 which established the ACIR, to allow at least one representative chosen from nominations from the federally recognized tribes, to be seated on the ACIR for a 2-year term and subject to reappointment for a like term.

I would be happy to discuss this further with you at anytime, or you may call our NTCA President, Chief Phillip Martin, of the Mississippi Choctaw Tribe.

Our local Washington NTCA telephone number is 737-7011, and our NTCA Presidents telephone number is (AC 601) 656-5251. We would certainly appreciate a discussion on this important matter.

Sincerely,

Elmer M. Sevilla
Executive Director

○

DRAFT

ISSUE PAPER

ISSUE: Should the President move the White House liaison for Federally-recognized tribes from the Office of Public Liaison to the Office of Intergovernmental Relations?

BACKGROUND: National Indian organizations and national leaders of the Indian community have expressed the desire throughout the Administration for the White House liaison for Federally-recognized tribes be placed in the Office of Intergovernmental Relations. The Administration's decision has been to have all representatives of the Indian community maintain liaison through the Office of Public Liaison. Additionally, the Administration, through the Cabinet Council on Human Resources, has created a White House Working Group on Indian Policy which is chaired by the Assistant Secretary for Indian Affairs. The establishment of the Working Group has been viewed favorably by a majority of the Indian community as an indication of the Administration's commitment to the Indian community. Open communication and cooperation have been developed between the White House Office of Public Liaison, the White House Office of Policy Development, and the Assistant Secretary for Indian Affairs, fostering coordination of Administration objectives.

DISCUSSION: The underlying question in moving the White House liaison to the Office of Intergovernmental Relations is whether the Administration will more effectively enhance the policies of government-to-government relationships and Self-Determination with Federally-recognized tribes.

In the last decade, following President Nixon's Indian Policy Statement in 1970 and passage of the Self-Determination Act of 1975, tribal governments have been assuming increasing responsibility in providing traditional governmental services to their constituencies. The trend among most tribes is to achieve not only greater self-determination but self-sufficiency as well, within the confines of the responsibility for Indian lands and natural resources. As more tribes assume greater responsibility in moving toward these two goals, interaction between tribal governments and local and state governments on problems of mutual interest will increase. Tribal governments will increasingly be addressing parallel issues with the states and local governments. Tribal governmental decision will have an increasing impact on adjoining non-Indian communities as tribes develop their economies; thus, communication and cooperation between tribal governments and state and local governments will become increasingly important to all parties.

PROS:

1. Moving the White House contact point for Federally-recognized tribes would support and extend the Administration's commitment to government-to-government relations. It would indicate to the tribal governments that tribal governments are recognized as the governments that have the primary role of serving their constituencies (indian reservation residents).
2. Contact through the Office of Intergovernmental Relations would indicate that the Administration recognizes that tribal governments are achieving the level of maturity and responsibility already achieved by other units of government.
3. Self-Determination could be speeded-up by indicating to the tribes that the same degree of direct consultation with the White House will be developed between tribal governments as currently exists between the Federal government and state and local governments. Tribes would continue to strengthen their governments to maintain effective communication.

CONS:

1. State and local governments might object.
2. The addition of approximately 500 governmental units at one time would create an impact upon the current staff of the Office of Intergovernmental Relations.

3. Indian contact points within the White House would be divided between two offices. Indian groupings such as Urban Indians would have to be served by another White House liaison office in order not to dilute the government-to-government relationship.

RECOMMENDATION:

Department of the Interior
Office of the
Assistant Secretary - Indian Affairs
Washington

7/27

Bill:

These two issue papers came in last night. I thought you should have good opportunity to review before 2 p.m. meeting today -- they will be handed out then.

Also, hope you'll help hold group firm on getting package to Cabinet Council (Bob Carleson) this Sat. at latest.

Thanks, Lo Anne

Addition to Policy Statement - Insert in Part II C, after first paragraph:

This Administration will call upon Congress to repeal House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now-discredited policy of termination of the Federal-tribal relationship. A lingering threat of termination has no place in this Administration's policy of self-determination for Indian tribes. Further, this Administration will recommend legislation which will allow tribes now under state jurisdiction, criminal or civil, to elect whether to remain under state jurisdiction or to return to Federal jurisdiction.

DRAFT

ISSUE

Should the President recommend to Congress a Concurrent Resolution repealing House Concurrent Resolution 108 of the 83rd Congress?

BACKGROUND

House Concurrent Resolution 108 of the 83rd Congress was adopted on August 1, 1953. It provided in part,

"It is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship."

67 Stat. B132.

The resolution was a general statement of policy and had no legal effect on future Congresses. Nevertheless, it dominated Indian affairs for several years and led to the passage of several termination acts affecting specific tribes. The termination legislation ended the government-to-government relationship and the trust relationship between the United

States and the affected tribes. Federal services to the tribes and to individual members were discontinued. Indian trust lands were conveyed to Indians in fee or sold.

The drive for termination began to abate in the late 1950's as some members of Congress came to recognize problems resulting from the termination legislation, such as the large amounts of Indian land that were rapidly passing out of Indian ownership. A resolution repudiating H.R. Con. Res. 108 was introduced in 1957 but did not pass. S. Con. Res. 3, 85th Cong. The executive branch also retreated from a policy of forced termination; the moderation in policy was announced by Secretary of the Interior Seaton in September, 1958. A change of direction from termination to self-determination developed gradually during the 1960's, culminating in the Presidential message of July 8, 1970, and enactment of the Indian Self-Determination Act in 1975.

President Nixon's 1970 message, among other things, called upon Congress to pass a new Concurrent Resolution expressly renouncing, repudiating and repealing the termination policy expressed in H.R. Con. Res. 108. President Nixon saw his proposed resolution as an affirmation by the legislative branch that the historic relationship between the Federal government and the Indian tribes would not be abridged without the consent of the Indians.

A resolution repudiating the termination policy was introduced in 1971, but, like the 1957 resolution, failed to pass. S. Con. Res. 26, 92nd Cong.

In 1977, the American Indian Policy Review Commission urged Congress to specifically repudiate H.R. Con. Res. 108 by joint resolution.

DISCUSSION

Congress has never formally repudiated the termination policy expressed in H.R. Con. Res. 108. Nevertheless, Congress has, through enactment of the Indian Self-Determination Act of 1975, adopted a new statement of policy which may be viewed as superseding the policy enunciated in H.R. Con. Res. 108.

Moreover, Congress has specifically restored several terminated tribes to their former status. The first of several restoration acts, the Menominee Restoration Act of 1973, repealed earlier legislation terminating the tribe and "reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to [the termination] act." 25 U.S.C. §903a(b). At the time of its consideration and passage, the Menominee Restoration Act was seen

as a symbolic reversal of the termination policy. Subsequent legislation has restored the Siletz Tribe in Oregon, the Wyandotte, Peoria, and Ottawa Tribes in Oklahoma and several bands of Paiutes in Utah.

Pros:

- ° Recommendation of a repealing resolution would signal the Administration's repudiation of termination and decrease the likelihood that the proposed Administration Indian policy, which envisions increased responsibilities for tribes and fewer Federal dollars for Indian programs, will be viewed as a termination policy.
- ° Enactment of a repealing resolution will not impose any costs on the Federal government.

Cons:

- ° H.R. Con. Res. 108 has no legal effect and Congress has essentially repudiated the policy, albeit not formally. The time and effort spent on such a legislative proposal would be better spent on proposals for substantive legislation.

- ° Repealing resolutions have been introduced in the past, once following President Nixon's specific recommendation in 1970. However, they have failed to pass and a new resolution may well fail also, particularly if it is seen as inconsequential.

Recommendation:

DRAFT

ISSUE

Should the President recommend legislation enabling tribes currently under state jurisdiction to initiate retrocession of state jurisdiction to the Federal government?

BACKGROUND

In 1953, Congress enacted Public Law 83-280, which granted criminal and civil jurisdiction over Indian country, with certain reservations excepted, to five states and allowed other states to assume such jurisdiction. Passed in the same year as H.R. Con. Res. 108, expressing the termination policy, P.L. 280 had a less extreme effect than termination but was consistent with the termination philosophy in that it effected a transfer of responsibility from the Federal government to the states. In 1958, Alaska was added as a "mandatory" state. Statutes preceding P.L. 280 had granted certain states (e.g., New York, Kansas, Iowa) jurisdiction over certain reservations.

Tribal consent to state assumption of jurisdiction under P.L. 280 was not required, and several "optional" states assumed some degree of jurisdiction prior to an amendment of P.L. 280 in 1968 which imposed a condition of tribal consent upon future assumptions of state jurisdiction. The 1968 amendment also authorized states to retrocede to the Federal government all or part of the jurisdiction they had previously assumed. No provision was made, however, for tribes to initiate retrocession.

Since 1968, various bills have been introduced to authorize tribes to initiate retrocession. S.2010 in the 94th Congress was one such bill upon which extensive hearings were held in 1975. A retrocession provision was included in the Criminal Code Revision bill introduced in the 96th Congress. Section 161(i) of S.1722, 96th Cong. These bills have received widespread tribal support. The Departments of the Interior and Justice have also strongly supported the concept of tribally-initiated retrocession, although they have expressed concern that the bills make adequate provision for transfer of jurisdiction in an orderly manner, after consultation with appropriate federal, state and local officials.

DISCUSSION

Previous Federal support for retrocession provisions has stressed the desirability of giving tribes which have been placed under state jurisdiction, usually without their consent, the opportunity to elect between Federal and state jurisdiction. The continuing inability of tribes to initiate retrocession has been seen as a lingering effect of the termination policy of the early 1950's which is inappropriate to the present-day policy of self-determination. The Federal position has favored giving state and local governments a voice, but not a veto, in retrocession decisions.

Indian tribes in general have long been opposed to P.L. 280 and have been supportive of legislative efforts to allow tribes to initiate retrocession.

The past testimony of state officials indicates that states are likely to oppose retrocession bills, at least unless state consent to retrocession is required. It also indicates that states may attempt to persuade Congress to deal comprehensively with various Indian jurisdictional issues of concern to the states in the context of a retrocession bill.

Enactment of a retrocession bill will undoubtedly impose costs upon the Federal government. In 1980, the Deputy Assistant Secretary for Indian Affairs testified that, while it was difficult to estimate the precise cost, the maximum cost to the Department of the Interior, assuming a whole-sale reacquisition of Federal jurisdiction, would be a \$10.5 million one-time start up cost and \$8 million annual costs thereafter. The Department of Justice would also incur additional costs. It may perhaps be assumed that the 1980 estimate of costs to DOI could be lowered by judicious application of an Administration policy requiring tribes to contribute more tribal funds toward their own governmental programs. The costs incurred by the Department of Justice in enforcing federal criminal laws would, of course, not be subject to such adjustment.

Pros:

- ° Recommendation of retrocession legislation would be an affirmative act furthering an Administration policy of self-determination and would signal the Administration's intent to abolish lingering effects of the termination policy.
- ° Such a recommendation would be received very favorably by Indian tribes.

Cons:

- ° Such a proposal, if enacted, will impose costs on the Federal government.
- ° Despite Federal and tribal support in the past, retrocession bills have failed of enactment.
- ° States are likely to oppose such legislation unless they are given veto authority over retrocessions and they may attempt to burden the legislation with provisions relating to other Indian jurisdictional issues.



White House Working Group
on Indian Policy

July 27, 1982

REVISED AGENDA

- I. Review of revised Draft Statement
- II. Discussion and decision on Action Item Issue Papers
 - A. Commission on Development of American Indian Reservation Economies
 - B. Expansion of the Advisory Commission on Intergovernmental Relations to include Indian representatives
 - C. Recommendation to move White House liaison for Federally-recognized tribes to the Office of Intergovernmental Relations
 - *D. Recommendation on repealing H.R. Con. Res. 108
 - *E. Recommendation of legislation enabling tribes currently affected by P.L. 83-280 to initiate retrocession of state jurisdiction to the Federal government

* New Action Items