

FLEET ADMIRAL CHESTER W. NIMITZ  
MEMORIAL NAVAL MUSEUM COMMISSION

Staff Report  
to the  
Sunset Advisory Commission

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Program Evaluation  
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## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of administration. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Other Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state administration of the activity. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the Sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Other Alternatives and Constraints section combines the Sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the function, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the Sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission is a nine-member commission created in 1969 to foster and commemorate the memory of Admiral Nimitz and the era of supreme U.S. naval power. Staff for the commission currently consists of an executive director and six full-time employees. Day-to-day operations of the agency are supervised by an executive committee consisting of a commission member, the executive director, and a representative of the Admiral Nimitz Foundation.

Under the commission's direction the Center has expanded from a single building into a complex containing several buildings, a Japanese garden and a unique history walk. Trails and walks have been built, traffic patterns improved, buildings stabilized and renovated, grounds landscaped and new exhibits created. As a result of these improvements visitor attendance has grown from 10,000 a year to over 55,000.

The review of the operations of the agency indicated that since its creation a great deal of time and effort on the part of public and private individuals has gone into the development and shaping of the museum. Methods used to secure materials and permanent exhibits for display have been both economical and inventive and have worked to the advantage of the state. Shifts in state policy concerning operations of state museums in general and the Nimitz Museum in particular have caused difficulties in determining the proper role and scope of a museum of this nature. These shifts in policy have placed financial strains upon the operation of the museum which have been difficult to overcome. During the review, several areas of concern were developed where agency procedures and practices could be improved.

The agency reports a major frustration has been the inability to get sufficient

funding from private, federal or state sources to implement the major objectives established by the commission. The most significant private financial assistance to the commission to achieve these objectives has been supplied by the Admiral Nimitz Foundation, a group of individuals dedicated to raising funds and providing other support necessary to develop and operate the Nimitz Center. In many instances, the interests of the private foundation created to assist the commission cannot be separated from the interests of the public entity, nor is there any perception of a need to do so on the part of the commission members, the foundation directors or the agency's staff. As a result, several issues have been raised concerning the commission's compliance with conflict-of-interest provisions contained in Article 6252-9b, V.A.C.S. The nature of the relationship between the Fleet Admiral Chester W. Nimitz Naval Museum Commission and the Admiral Nimitz Foundation does not appear to be consistent with a recent attorney general's opinion concerning transactions between public entities and private nonprofit foundations created for the public entity's benefit. It was determined that there was no contractual arrangement between the Nimitz Commission and the foundation. Instead an executive committee consisting of a member of the commission and a member of the foundation has been formally empowered by each organization to act on its behalf. A contractual agreement would be particularly appropriate since officers and employees of the commission, as a part of their regular duties, have provided services to the foundation in the absence of any contract or compensation for these services.

The review also showed that although the commission is authorized by statute to accept all gifts and donations the commission's financial statements reflected no income from these sources prior to 1979. During this period some members of the commission also served as directors of the foundation and in fund raising efforts no

distinction was made between these two roles. While the efforts of the foundation are commendable and the tax exempt status of the foundation would encourage the donors who wished to assist the commission's efforts, some formal effort should have been made during that period by individuals holding dual membership on the commission and the foundation to make donors aware of the choice that existed between the foundation and the commission.

Although the commission and its staff has exhibited ingenuity in acquiring materials and exhibits at the least possible cost, several problems were noted in the area of funds management and control. Issues identified in the course of the review include the following: 1) the absence of a written accessions policy which can result in increased costs to the state in terms of storage, conservation and maintenance; 2) the lack of documentation transferring ownership of donated property to the state; 3) the absence of an orderly system of record keeping and storage for museum artifacts; and 4) the lack of regular and planned conservation efforts to preserve objects on display, especially those in outdoor locations.

Review of the cash flow process revealed no problems in the handling of and accounting for admission revenues. However, the review showed that the utilization of these revenues has not been in accordance with rider provisions contained in the General Appropriations Act passed by the Sixty-fifth and Sixty-sixth Legislatures.

Verification of records concerning the agency's investment in fixed assets revealed that the agency has inappropriately entered items on loan from the U.S. Department of Defense onto the state property inventory.

Public notification requirements for meetings of the commission and its committees have not been fully observed and public attendance at these meetings is minimal. Other efforts to inform the public concerning the Admiral Nimitz

Center are shared by the commission and the Admiral Nimitz Foundation.

The commission has recommended in a resolution that it be abolished and administration of the museum be transferred to the Texas Parks and Wildlife Department. Two bills introduced, but not passed in recent legislative sessions, would have abolished the commission and transferred the functions to either the Texas Parks and Wildlife Department or the Texas Historical Commission.

The review of administration of museums of this nature by other states indicated that only two other states operate a museum of this type through an independent commission. The Nimitz Center is the only museum in Texas operated in this manner. Texas and other states operate museums and other historic structures through state universities, historical commissions, or agencies involved in natural resources. In Texas, the Parks and Wildlife Department appears to be the best choice as an agency capable of operating the Nimitz Center. This choice is based on the agency's administrative structure and funding mechanism as well as its experience in operating facilities similar to the Nimitz Center.

#### **Need to Continue Functions**

As with other functions undertaken by the state, public support of the Admiral Nimitz Commission should be continued only when there is evidence of a continuing need to preserve artifacts and information associated with Fleet Admiral Chester W. Nimitz and the era of supreme U.S. naval power. The state has made a substantial investment in the development of the Nimitz Center, broad based support through statewide donations has been achieved, and the number of visitors to the center has increased, reflecting the historical importance of Admiral Nimitz. It may be concluded that there is a need to continue the function.

If the operation of the museum is discontinued, the following results would occur: a) annual General Revenue Fund expenditures of approximately \$100,000 per

year would be eliminated; b) the State Purchasing and General Services Commission would take possession of all state property and either disperse the center's collections or determine how the center is to be operated; c) construction and renovation work on the Nimitz Hotel would be left unfinished; d) the ownership status of the Ruff property would be left in doubt; and e) 13 years of community and public support for the Nimitz Center would be terminated.

### **Alternatives**

If the legislature determines that the commission and/or the commission's functions should be continued, the following alternatives could be considered:

**1. CONTINUE THE COMMISSION AND ITS FUNCTIONS WITH MODIFICATIONS.**

This approach would maintain an independent commission to administer the Admiral Nimitz Center. The review indicates that the maintenance of a separate commission would require the following changes in the agency's policies and procedures:

- a) commission activities and foundation activities, however similar in nature and purposes, should be separated to avoid any sense of a state agency being guided or directed by a private entity;
- b) the executive director for the agency and all commission members should be prohibited from holding dual membership on the commission and the Nimitz Foundation;
- c) there should be a clear contractual determination concerning the use of commission facilities and the services provided by commission staff to the Admiral Nimitz Foundation;
- d) the commission should institute policies and procedures which ensure adequate documentation of the location, condition and ownership of state property;
- e) the commission should institute an accessions policy clearly related to the center's current themes which does not impose additional costs in terms of storage and display space beyond that presently planned;

f) the agency should institute systematic procedures to preserve all artifacts presently owned by the state which are directly relevant to the center's themes and dispose of all others.

2. **ABOLISH THE ADMIRAL NIMITZ COMMISSION AND TRANSFER THE ADMINISTRATIVE FUNCTIONS TO ONE OF THE FOLLOWING AGENCIES:**

a) The Texas Historical Commission

This approach would eliminate the independent Nimitz Commission and transfer the commission's functions to the Texas Historical Commission. The Historical Commission currently has the capability to provide museum services needed by the Nimitz Center and has had experience in operating facilities of this type. The commission is supported through general revenue appropriations and administers federal grants. Although the Historical Commission operates the Sam Rayburn House as a museum, the commission's primary focus is on the provision of museum services rather than on day-to-day operation of museums. The Historical Commission's administrative structure is not designed to accommodate the operation of multiple facilities. If the legislature adopts this alternative, all of the organizational and administrative changes contained in the preceding alternative should be made.

b) The Texas Parks and Wildlife Commission

Under this alternative the independent Nimitz Commission would be eliminated and the commission's responsibilities would be transferred to the Parks Division of the Texas Parks and Wildlife Commission. The Parks Division has a range of experiences in administering and developing historical sites and museums including the Eisenhower birthplace, the San Jacinto Battleground, the San Jose Mission and the Lyndon B. Johnson State Park. The administrative structure of the Parks and Wildlife Department is designed to accommodate the operation of multiple facilities in many locations. The Parks Division currently operates over 20 state parks, recreational areas and historic sites and structures within a 100 mile radius of Fredericksburg where policies and procedures are already in effect regarding admissions, maintenance and allocation of funds for renovation and other site development. Parks Division's programs are supported by park concessions fees and oil and gas royal-

ties deposited to the State Parks Fund. For these reasons, this alternative appears to be the most reasonable. If the legislature adopts this alternative, all of the organizational and administrative changes contained in the first alternative should be made.

## II. BACKGROUND

### Historical Perspective

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum, like most museums, results from the conviction that a particular environment or group of artifacts have important lessons to teach. On December 12, 1963, a group of Fredericksburg citizens, concerned that little was being done to memorialize Fleet Admiral Chester W. Nimitz, a native son, formed the Nimitz Memorial Shrine and conceived the idea of restoring the Nimitz Hotel to its former appearance and converting it into a center to honor the Admiral. On February 5, 1964 the name was officially changed to the Fleet Admiral Chester W. Nimitz Museum, Inc. The original goals of the corporation were as follows:

- 1) To raise a minimum of \$1 million dollars in Fredericksburg, the State of Texas and the United States of America;
- 2) To secure these funds to purchase and restore the famed and historic Nimitz Hotel Building to its original "ship shape";
3. To place in the museum items of historical interest relating to the life and career of Fleet Admiral Chester W. Nimitz, and his illustrious grandfather who founded the hotel in 1852;
- 4) To place in the museum items of historical interest relating to the achievements of all the servicemen and women of the United States, including the Commander-in-Chief, President Lyndon B. Johnson, who is also a native of Gillespie County;
- 5) To create a museum of great magnitude and scope, of interest to people of all nations; and
- 6) To establish a foundation for the maintenance and perpetuation of the museum and its contents as a memorial shrine for all people to visit and cherish.

Operated first by a volunteer staff and later by a salaried director, the local committee realized after several years that a successful development was beyond their means. In 1969, the Sixty-first Legislature established the Fleet Admiral

Chester W. Nimitz Memorial Naval Museum Commission to administer the Chester W. Nimitz Memorial Naval Museum in Fredericksburg and commemorate the memory of the era of supreme U.S. naval power and the men and women who made it possible. The commission is composed of nine members appointed by the governor with the advice and consent of the senate and employs an executive director and six full-time employees to carry out the provisions of the Act.

Commission activities are supported by general revenue appropriations, admission fees and private gifts, grants and donations. In 1979, appropriations to the commission were \$99,510 and admission fees amounted to \$11,832. All commission funds are deposited in the State Treasury.

### **Comparative Analysis**

To determine the pattern of museum administration within the United States, a survey of the 50 states was conducted.

The administration of publicly owned museums is currently performed by 47 states, including Texas. Three states, Georgia, Hawaii, and New Hampshire, do not administer or fund public museums.

From the standpoint of organizational patterns, 16 states perform the function of museum administration through a state historical society or commission, five states through the State Department of Education, and the remaining states through various agencies including the Department of State, Department of Conservation, and Department of Natural Resources. In four states, museums are administered by non-profit, public corporations receiving state assistance. In Texas, as in six other states, more than one agency is responsible for museum administration. In three states, including Texas, independent decentralized governing boards have been established for the administration of a museum or museums.

Museums in 19 states, including Texas, commemorate the accomplishments of individual public figures. Commemorative museums in each of these states receive general revenue appropriations. Thirteen of these states, including Texas, also collect an admission fee to finance the cost of museum administration. Of the 19 states with museums dedicated to individual public figures, museums in eight states are governed by policy-making boards. Board members in six of these states undertake fund raising activities on behalf of their museums, and board members in two states with commemorative museums, North Dakota and Texas, also serve on private foundations associated with the museums.

### **III. REVIEW OF OPERATIONS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints regarding agency operations.

#### **Objectives and Organization**

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission was created by the Sixty-first Legislature in 1969 to foster and commemorate the memory of the era of supreme U.S. naval power upon the seas. To achieve this objective, the act authorizes the commission to administer the Fleet Admiral Chester W. Nimitz Memorial Naval Museum in Fredericksburg, to act in any other capacity relative to preserving naval documents, relics, and other items of an historical interest, to accept on behalf of the State of Texas donations of money, property, and historical relics, and to acquire property and historical relics by purchase within the limits of funds available.

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission is a nine-member body appointed by the governor with the advice and consent of the senate for six-year terms. There are no other statutory qualifications for commission membership. The commission is authorized to employ and discharge a director and other employees in order to meet its responsibilities within the limit of funds available. Staff for the commission currently consists of an executive director plus six full-time employees and several part-time and seasonal employees.

The executive director of this agency acts not only as chief administrative officer, but also serves as museum curator with responsibilities for locating and obtaining exhibits, planning and interpreting exhibits, and ensuring the preservation and safety of all items acquired by the museum. An executive committee is responsible for policy decisions in the interim between full commission meetings and is composed of a commission member, and a director of the Admiral Nimitz Foundation, which provides financial support to the center.

The primary sources of revenue for the commission, currently, include general revenue appropriations, admission fees and gifts, grants and donations. Prior to 1977, no admission fees were charged. Admission fees are presently set by the commission at \$1.00 for adults and \$.50 for children.

Currently, the Admiral Nimitz Center is composed of four units: 1) the Nimitz Steamboat Hotel, presently undergoing extensive interior and exterior renovation, which contains the main space for exhibiting the center's collections; 2) the Museum of the Pacific War which consists of the museum's collections and exhibits of personal memorabilia of Admiral Nimitz and his family and other items from the period of the Pacific War; 3) the Garden of Peace, an oriental garden dedicated to international peace and friendship, constructed with general revenue funds, foundation funds and funds raised by popular subscription in Japan; and 4) the History Walk of the Pacific War, an outdoor display of weapons and other relics from the Pacific War. Other facilities belonging to the commission include the Nauwald Building which contains a gallery for visiting exhibits and administrative office space, the hotel's original bathhouse, the Nimitz Barn which contains a vault for museum collections and the caretaker's quarters, and the Ruff House, an early Texas residence located adjacent to the History Walk and used for seminars, meetings and community functions.

## **Evaluation of Agency Activities**

The review of the commission's operations centered on the agency's single program, administration, to determine whether agency objectives have been met. To make this determination, the evaluation focused on whether the commission has complied with statutory provisions, whether these provisions facilitate accomplishment of the objectives, whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the commission's task, and whether procedures provide for fair and unbiased decision-making.

### **Administration**

The general objective of the commission's administration program is to ensure maximum efficiency in the use of the resources available to the agency. The review centered on a review of control systems established by the agency to ensure that appropriated funds were expended in a manner consistent with law and good management practice.

The review of the commission's system of assuring that appropriated funds are expended in the most efficient manner centered on the agency's 1) policies and procedures related to the acquisition, management, and maintenance of property; 2) bid procedures; 3) the cash flow process for receipts; and 4) financial relationships - commission and foundation.

### **Policies and Procedures -**

#### **Acquisition, Management and Maintenance of Property**

Under the commission's direction, the center has expanded from a single building into a complex containing several buildings, a Japanese garden and a unique history walk. Trails and walks have been built, traffic patterns improved,

buildings stabilized and renovated, grounds landscaped and new exhibits created. As a result of these improvements, visitor attendance has grown from 10,000 a year to over 55,000.

The review of commission policies and procedures regarding acquisition of property shows that the agency's first two planning documents indicate that the agency originally intended to purchase all property presently owned by the commission plus other property which the commission was eventually unable to obtain. Agency minutes indicate that property acquisition took a major portion of the commission's time, attention and financial resources for the first seven years of the commission's existence. During that time, the commission was involved in the following transactions. The commission acquired a 14-foot strip of land immediately adjacent to the center and the Nauwald Building in 1975. In that same year, the foundation acquired and the commission subsequently purchased interest in five town lots known as the Ruff property. The Japanese Peace Garden was also constructed during this period with the assistance of funds borrowed by the foundation from Fredericksburg banks. This loan was secured by the foundation's remaining interest in the Ruff property. These major land purchases prompted the Sixty-fifth and Sixty-sixth Legislatures to prohibit the expenditure of general revenue or admission fees for the purchase of any additional building or land, and the operation and maintenance, repair and renovation of any land or buildings, acquired by any means after August 31, 1977.

The actions taken by the legislature regarding acquisition of major property components of the center can be attributed to a lack of a definite plan as to the ultimate scope of the museum. The commission's original master plan has been modified twice since its origination: once in 1972 and again in 1977. However, the use of the Ruff property and the construction of the Japanese Peace Garden were

not included in a master plan prior to completion of the projects, leaving the legislature with little or no control over the decisions to enter into major construction commitments. Major projects reflected in the current master plan which remain to be accomplished include restoration of the Nimitz Hotel, the acquisition of land and construction of a nature walk, and payment for the remainder of the Ruff property presently owned by the foundation. To avoid past problems such as those above, these remaining projects should be undertaken only after the legislature has been informed of all costs associated with the acquisition, construction and future maintenance of these projects and specific authorization and/or funding has been approved.

The commission and its staff has exhibited ingenuity in attempting to acquire materials and exhibits at the least possible cost through donations of time, materials, equipment and transportation. Assistance has been received from individuals, the United States Navy, as well as individuals and organizations in the Republic of China, Australia and Japan.

In relation to management of acquired property, a number of concerns have been encountered. First, there is no written accession policy which provides limitations on the size or scope of the museum's collections based on the museum's purpose. Currently, the museum accepts all donations that relate to the Pacific War or Admiral Nimitz. Under the agency's informal procedures, the commission approves all major items that are acquired and the executive director is given the authority to accept all other donations. The policy of the commission in accepting all donations whether or not they have exhibit or research value places a potential burden on the state in the form of future costs for long range storage, conservation and maintenance. Second, the review indicates that although the agency has

developed a legal document which transfers ownership of property donated to the museum, this document is used only when a donor asks for such a document. Interviews with personnel of the commission produced a file which contained only a small number of documents in relation to the total holdings of the museum. Use of those forms for all items of property is especially important in the case of the Admiral Nimitz Center since items donated to the center are entered on the state's property inventory as state property, and the state and donor should be fully protected as to the title to this property.

In addition to these concerns, the state auditor, in a management letter dated July 23, 1979, noted that "...during a test-check of fixed assets, we noted that a vast majority of inventory items were not numbered." The auditor also noted the following deficiencies: 1) lack of an orderly system of storage; and 2) items which could not be located because of an inadequate description reflected in the inventory listing. The review of agency files documenting the center's collections also indicated that the agency does not attempt to document the location of objects within the museum complex. While no losses have been substantiated as a result of these deficiencies, the current inadequate documentation makes it difficult to easily determine the loss of any state property.

Also in the area of property management, verification of the agency's statements and records concerning investment in fixed assets showed discrepancies in the values assigned to both land and other assets. The agency currently states that for a total outlay of \$68,000 in appropriated funds, the commission has acquired property valued at \$500,000 and other assets including museum display items valued at \$277,703. However, the state audit reports for fiscal years 1972 through 1978 indicate that the agency has spent approximately \$184,000 on the

acquisition of land and buildings valued at \$174,475 and other fixed assets, including museum items, furniture and equipment valued at \$150,225. The discrepancy between the totals reported by the agency and the state auditor is due, in part, to the fact that the auditor does not consider obsolete combat material on loan to the commission from the U.S. Department of Defense or the Secretary of the Treasury to be state property since title of ownership is retained by the federal government. The agency has entered these items onto the state property inventory although precedent indicates that whenever an item is added to the state inventory list, this item, does, in fact, become state property and can be removed from the state inventory accountability only by placing the item on "bid for sale". The agency should have accounted for museum display items on loan by excluding these items from the state's inventory and providing for separate accountability and documentation.

A final concern has been encountered relating to the actual maintenance of acquired property. Regardless of the type of items contained in a collection, a museum is responsible for seeing that each object is exhibited or stored in a safe environment and preserved to ensure the longest possible life. Currently, numerous items, including tanks, guns and other military hardware, on loan to the Admiral Nimitz Center from the U.S. Navy are displayed without shelter at the Center's Pacific History Walk. The life expectancy of these items is anticipated to be relatively short if no preservation efforts are instituted. While the agency indicated that there are future plans to preserve these artifacts by painting them, there was little evidence that an overall preservation program was presently in effect, although the commission has secured funds in excess of \$7,000 for preserving maritime exhibits of the museum.

### **Bid Procedures**

Despite the initial difficulties associated with the creation of a new agency with no central headquarters in Austin, the agency has generally established administrative and contract purchasing procedures consistent with most state agencies. However, the review of the use of bid procedures by the agency showed that in one instance the agency has not complied with the state bid procedures. State statutes require that an agency which is involved in building repair, renovation and construction projects comply with provisions of the State Purchasing and General Services Act. These provisions allow an agency to be exempted by the State Purchasing and General Services Commission if there are no advance working plans and drawings involved. The commission has been involved for several years in restoration work concerning the Nimitz Hotel. The agency was exempted from the provisions of Article 601b on part of the work in the hotel, however, additional work was undertaken by the commission which required working plans and drawings and could not be exempted. The commission proceeded with the construction without involving the State Purchasing and General Services Commission and was not in compliance with state statutes.

### **Cash Flow - Receipts Process**

Review of the cash flow processes revealed no problems in the handling of and accounting for admission revenues. However, in 1977, the Sixty-sixth Legislature attached a rider to the commission's appropriations stating that the funds from all admission fees were to be used only for maintenance and operation of the museum. The agency reports that for fiscal year 1978, approximately \$10,000 in admission revenues were allocated to maintenance and operations and \$8,900 was used to defray expenditures for seasonal and part-time help as well as

travel. Under the agency's bill pattern, the line item appropriations for maintenance and operation does not include expenditures for personal services and travel.

### **Financial Relationships - Commission and Foundation**

The agency reports a major frustration has been the inability to get sufficient funding from private, federal or state sources to implement the major objectives established by the commission. The most significant private financial assistance to the commission to achieve these objectives has been supplied by the Admiral Nimitz Foundation, a group of individuals dedicated to raising funds and providing other support necessary to develop and operate the Nimitz Center.

The commission is authorized by statute to accept all gifts and donations and are authorized to expend any such funds that are received. The Admiral Nimitz Foundation was created for the purpose of receiving grants and donations. Members of the commission also served as directors of the foundation and in fund raising efforts there was no distinction made between these two roles. In most instances when gifts or donations were made to commission members who were acting in the capacity of foundation directors, it was generally assumed by the person receiving the donation that they were being made to the foundation due to the tax exempt status of the foundation. Between 1974 and 1978, the foundation recognized \$205,172 in revenue and expended or committed \$122,590 to benefit the commission. During this period, the commission showed no income from gifts and grants. In 1979, the foundation began to deposit all its funds to the state treasury withholding only a small amount of funds for fund raising efforts and small purchases for the commission. While the efforts of the foundation are commendable and the tax exempt status of the foundation would encourage donors who wished to assist the commission's efforts, some formal effort should have been

made during this period by members of the foundation/commission to make donors aware of the choice that exists between the foundation and commission. After September 1, 1979, the process of informing donors was required by Article V, Section 18 of the General Appropriations Act. The commission indicated that it was unaware of this provision, but would take immediate steps to comply.

### Summary

The review of the operations of the agency indicated that since its creation, a great deal of time and effort on the part of the public and private individuals has gone into the development and shaping of the museum. Methods used to secure materials and permanent exhibits for display have been both economical and inventive and have worked to the advantage of the state. Shifts in state policy concerning operations of state museums in general and the Nimitz Museum in particular have caused difficulties in determining the proper role and scope of a museum of this nature. These shifts in policy have placed financial strains upon the operation of the museum which have been difficult to overcome.

During the review, several areas were identified where agency procedures and practices could be further improved. The evaluation of the commission's activities centered on the controls established by the agency to ensure that appropriated funds were utilized in an efficient manner. Review of commission policies and procedures regarding acquisition, maintenance and management of the agency's property indicate that the commission's emphasis on property acquisition prior to 1977 resulted in the legislature prohibiting further physical plant expansion after August 31, 1977.

Any further expansion, in accordance with the current master plan should be undertaken only after authorization or funding by the legislature. The review also

showed that the agency's policy of accepting all donated items resulted in increased costs to the state in terms of storage, conservation, and maintenance. Deficiencies noted in the property management area included the lack of documentation transferring ownership of donated property, the absence of an orderly system of storage and documentation of the location of objects, and inadequate maintenance of displays, especially those at the Center's Pacific History Walk. Verification of records concerning the agency's investment in fixed assets indicated that the agency has inappropriately entered items on loan from the U.S. Department of Defense onto the state property inventory.

Review of the cash flow process revealed no problems in the handling of and accounting for admission revenues. However, the review showed that the utilization of these revenues has not been in accordance with rider provisions contained in the General Appropriations Act passed by the Sixty-fifth and Sixty-sixth Legislature.

The review also showed that although the commission is authorized by statute to accept all gifts and donations, the commission's financial statements reflected no income from these sources before 1979. During this period, some members of the commission also served as directors of the foundation and in fund raising efforts no distinction was made between these two roles. While the efforts of the foundation are commendable and the tax exempt status of the foundation would encourage donors who wished to assist the commission's efforts, some formal effort should have been made during this period by individuals holding dual membership on the commission and the foundation to make donors aware of the choice that existed between the foundation and the commission.

#### IV. OTHER ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing the function; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

The review of how museums are administered in other states indicated that only two additional states operate state-supported museums through a separate and independent commission. In almost every state, museums of various types are operated under the auspices of state universities. In 16 states, museum administration is the function of a state historical commission. Other states administer museums through state departments of education, state, conservation, and natural resources. Texas has several agencies which are similar in nature to those of other states. These include the University of Texas System, Texas Historical Commission, and Parks and Wildlife Department.

Criteria used to establish the potential for consolidation include whether the agency currently operates similar facilities, whether the administrative structure is established for operating the museum in its present location, whether the agency has had experience providing the types of services needed by the Nimitz Center and the potential for generating funds or utilizing existing fund sources to support the facility.

In the case of the University of Texas System, museums are operated in conjunction with general academic programs in Austin, San Antonio and El Paso. It does not appear that placing the Nimitz Center under the direction of the UT

System would provide significant benefits because of the distance from a general academic institution. In addition, the primary purpose of the university administrative structure is directed toward operation of academic programs rather than toward developing a museum which would memorialize a particular public figure.

The Texas Historical Commission is responsible for providing leadership, coordination, and special services needed for historical activities within the state. The commission serves as the official liaison with federal agencies for various historical preservation programs. Other activities include on-site consulting services to museums, work on archeological sites, and providing preservation information and publications to interested parties. In addition, the THC operates three historic sites, the Carrington-Covert House (Austin), the Gethsemane Church (Austin), and the Sam Rayburn House (Bonham). The Austin properties are being used for agency offices and the Sam Rayburn House is maintained as a historic house museum. The commission employs 47 individuals to implement its programs and general revenue appropriations and federal grants account for the majority of the commission's revenues. The Historical Commission's experiences in operation of the Sam Rayburn House and in providing museum consulting services would be beneficial if the Nimitz Center were placed under its direction. In addition, it is possible that federal funds could be directed to the Nimitz Center to perform some of the reconstruction of the Steamboat Hotel.

While Texas does not have a department of natural resources, as some other states do, the Texas Parks and Wildlife Department has similar functions. Its Parks Division is responsible for ensuring that the natural and historic resources of the state are preserved. This division operates 28 state recreation areas, 32 state parks, 15 state historical parks, three natural areas, three fishing piers, 18 historic

sites and four historic structures. The State Parks Fund receives revenue from concession fees and oil and gas royalties from department-owned land to finance the general up-keep of the state's park system. The Parks and Wildlife Department appears to most closely fit the criteria for consolidation of the Nimitz Center operations. The department has its own dedicated source of funds and a well established method for allocating those funds. The department's administrative structure is designed to facilitate the operation of parks and other sites which are not geographically close together. Further, the department has had experience in developing and maintaining historic sites and structures and in operating museums.

#### Summary

Only two other states operate a museum through an independent commission. The Nimitz Center is the only museum in Texas operated in this manner. Texas and other states operate museums and historic structures through state universities and historical commissions. The Texas Parks and Wildlife Department is also similar in function to departments of natural resources which operate museums in other states. In Texas, the Parks and Wildlife Department appears the best choice as an agency capable of operating the Nimitz Center. This choice is based on the agency's administrative structure and funding mechanism as well as its experience in operating facilities similar to the Nimitz Center.

## V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

### Conflict of Interest

Commission members, as appointed state officers, and commission employees are subject to statutory standards of conduct and conflict of interest provisions included in Article 6252-9b, V.A.C.S. The agency reports that copies of this statute have not been provided by the agency to all commission members or new employees. However, the executive director indicated that copies of the statute will be provided to all commissioners and employees in the future.

Conflicts of interest may also arise from relationships established between the agency and private entities. Recent attorney general's opinions have attempted to clarify approaches which are permissible in this area. In summary, Attorney General's Opinion H-1309, issued in December of 1978, indicated that while officers and employees of a public entity are not absolutely prohibited from serving as directors of an affiliated private entity, their ability to transact business between public and private entities is severely limited and great care should be taken to outline by contract the benefits and responsibilities of each. Relationships involving the use of the state employees in the conduct of the activities of the private entity can be clarified and placed within an area that constitutes

permissible action on the part of a state agency by clear contractual agreements. During the course of the review, it was determined that there is no contractual arrangement between the Nimitz Commission and the private Admiral Nimitz Foundation. An agreement of this type would be particularly appropriate in the case of the commission because employees of the state agency regularly perform staff functions for the Foundation as part of their duties of employment. These duties include accounting and record-keeping, corresponding, telephone answering, and operation of the Foundation bookstore. The Foundation and commission share the same telephone number and post office box. In order to clearly delineate the responsibilities and roles of the two agencies, the commission should enter into contractual agreements with the Foundation. If the business transactions were conducted in this manner, any appearance of a potential conflict of interest could be eliminated.

#### **Open Meetings - Open Records**

Although the commission reports that seven meetings were held during fiscal years 1976 through 1977, a verification with the Secretary of State's Office, the Texas Register Division indicated that notices for three were not filed with that office. Minutes were available for all seven meetings.

Section 1 of Article 6252-17, V.A.C.S. provides that the Open Meetings Act is applicable to any governmental body at which any public business or public policy over which the governmental body has supervision or control is discussed or considered. Commission minutes dated May 8, 1976 note the formation of an executive committee consisting of commission and foundation representatives. Currently meetings of this committee are held on a weekly basis. There is no record of notices being posted with the Secretary of State's Office for any of these

meetings. Minutes are available for meetings occurring since April 13, 1978. The commission has indicated that these weekly meetings will be discontinued.

All agency records, including personnel records, are considered open, as reported in the self-evaluation report and verified during the review. There is no formal plan to ensure the privacy of individuals employed by the commission.

### **Employment Policies**

At present the commission's staff is not working under an Affirmative Action Plan. A plan was approved by the Governor's Equal Opportunity Office in 1973, however that plan expired a year later in 1974 and has not been renewed or updated.

### **Summary**

Several issues have been raised concerning the commission's compliance with conflict of interest provisions contained in Article 6252-9b, V.A.C.S. The nature of the relationship between the Fleet Admiral Chester W. Nimitz Naval Museum Commission and the Admiral Nimitz Foundation does not appear to be consistent with a recent attorney general's opinion concerning transactions between public entities and private nonprofit foundations created for the public entity's benefit. It was determined that there is no contractual arrangement between the Nimitz Commission and the foundation. Instead an executive committee consisting of a member of the commission and a member of the foundation has been formally empowered by each organization to act in its behalf. A contractual agreement would be particularly appropriate since officers and employees of the commission, as part of their regular duties, have provided services to the foundation in the absence of any contract or compensation for these services.

The commission has also not fully complied with the public notification requirements concerning full commission meetings or meetings of the executive committee of the commission.

The agency's original affirmative action plan expired in 1974 and the agency has not implemented any formal or information guidelines in this area since the expiration of the original plan.

## VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members of the board.

The review indicated that no rule changes have occurred since the original rules were adopted.

### Agency Activities

The review of agency activities indicated that public notification requirements verified with the Secretary of State's office, have not been observed for almost half of the full commission meetings and none of the executive committee meetings held during the period under review. Agency minutes indicate that attendance at these meetings is generally confined to commission members and staff and directors or other representatives of the Admiral Nimitz Foundation.

The commission informs the public of its activities through press releases issued periodically by the executive director. Additional publicity for the center has been secured through mention of the center in other tourist publications such as the National Geographic Society map, the AAA map (American Automobile Association) and in directories such as those published by the American Association

of Museums and the American Association for State and Local History. Between 1976 and 1978, the commission also printed 328,000 brochures and leaflets at a cost of \$5,961 to be distributed free of charge to visitors to the center. These materials are designed to serve as guides for visitors since the center does not provide organized tours or other means of interpreting the exhibits to visitors. Brochures have been distributed to nearby tourist facilities such as the Lyndon B. Johnson State Park to acquaint visitors with the Center.

Unlike other museums, the Admiral Nimitz Center has not attempted to involve the public in the center's activities by recruiting and training volunteers to assist in the museum shop, to provide guided tours, and to assist in bringing the museum's interpretive message to school students and personnel.

The Admiral Nimitz Foundation also engages in activities designed to increase the public visibility of the commission through its fund raising efforts and publications concerning Admiral Nimitz and the Pacific War.

### **Public Membership**

The review of the commission indicated that the general public's point of view is reflected in the composition of the commission whose membership is drawn from the general public at large. However, the review showed that members of the commission also hold foundation memberships. To avoid any possibility of conflicts these overlapping memberships should be discontinued. The review also showed that the Admiral Nimitz Commission held seven commission meetings between December 15, 1975 and June 29, 1979. Four of these meetings were held in Fredericksburg and the remainder held in San Antonio. Fifteen commission members were eligible to attend the meetings held during this period. Six of these individuals attended 100 percent of the meetings during their tenure on the

commission, however six commissioners did not attend at least half of the meetings they were eligible to attend and four of these members never attended any commission meetings.

### **Summary**

While the members of the commission are all public members, some members also serve as members of the Nimitz Foundation and this dual role should be prohibited to prevent an appearance of any of conflict of interest. Public notification requirements for meetings of the commission and its committees have not been observed and public attendance at these meetings is minimal. In other areas, efforts to inform the public concerning the Admiral Nimitz Center are shared by the commission and the Admiral Nimitz Foundation and have served to inform the public of the activities of the Commission.

## **VII. STATUTORY CHANGES**

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public and statutory changes recommended by the agency for the improvement of the function performed.

### **Past Legislative Action**

The enabling legislation of the Admiral Nimitz Commission has been amended only once since the creation of the agency in 1969. Senate Bill 463, Sixty-second Legislature (1971), amended the act by allowing the commission to exercise the power of eminent domain within the boundaries of the City of Fredericksburg until January 1, 1976. Although the commission requested this amendment, this power was never exercised.

### **Proposed Legislative Action**

Apart from the legislation mentioned above, two other bills have been proposed but not enacted into law. House Bill 1927, Sixty-fifth Legislature (1977) would have abolished the commission and placed the museum under the jurisdiction of the Parks and Wildlife Department. House Bill No. 1482, Sixty-sixth Legislature (1979) would have transferred the administration of the museum to the Texas Historical Commission and abolished the Nimitz Commission.

In its self-evaluation report, the commission recommends that consideration be given to abolishing it and transferring its functions to another agency such as the Parks and Wildlife Department or the Historical Commission.

### Summary

After the enactment of the commission's enabling legislation in 1969, the Act has been amended only once. This amendment gave the commission the power of eminent domain within the City of Fredericksburg effective until January 1, 1976. Additionally two bills were introduced but not passed. These bills would have abolished the commission. One would have transferred its functions to the Parks and Wildlife Department; the other would have transferred its functions to the Texas Historical Commission. The commission has recommended in a resolution that it be abolished and the administration of the museum be transferred to the Texas Parks and Wildlife Department.