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Reauthorization: S. 2724 (1990): Memorandum 06

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M E M O R A N D U M

TO: SANDY, LAURIE, KATHY, NICK
FROM: SUSAN
DATE: SEPTEMBER 20, 1990
SUBJECT: DURENBERGER QUESTIONS

Attached are the questions about the application of our NEA amendment which Carolyn Boos gave to me. They are based on the scenarios Senator Durenberger raised in the mark up. The answers reflect our previous discussion of the questions.

I want to give these answers to Carolyn so that she can provide them to her boss. Before I do so, however, I want to make sure that we are all in agreement about the accuracy of the answers.

Illustration #1

An organization (A) in one state borrows an exhibit from an organization (B) in another state. Organization (B) received money from the NEA to establish the exhibit. No NEA money is used in bring the exhibit to organization (A). The exhibit is an art exhibit that is theme-based, not artist-based. One work within the exhibit is found to violate obscenity laws in the state where organization (A) is located.

What repayment is required?

There is no repayment in this case, because no federal funds were involved in the exhibit in state (A). The individual or group found to violate the obscenity laws in state (A) would, of course, be subject to the criminal penalties already in place under the laws of the state.

What sanctions apply if organization (A) used NEA funds to bring the exhibit to its state?

In this case, organization (A)--which received NEA funds to exhibit the work found to be obscene--would be responsible for repayment of the NEA funds used to bring the exhibit to the state. In the event the organization does not repay the full amount, it would be debarred from further NEA funding until it repays. In addition, if organization (A) is a convicted defendant in the obscenity trial, it would be debarred from NEA funding for a period of at least 3 years.

Illustration #2

Organizations A, B, and C come together to work jointly on a project. Organizations A and B have received NEA funding, part of which will be used in the joint project. Organization C has never received any NEA funding. The joint project is found to violate child pornography laws in the State and all 3 organizations are convicted defendants in the suit.

What sanctions apply?

In this case, organizations A and B would be responsible for repayment, because they received the NEA funding. In addition, both organizations would be debarred from NEA funding for a period of at least 3 years. Failure to repay would result in permanent debarment.

Organization C, which did not receive or use NEA funds for the project, is not subject to sanctions under this amendment. Organization C would, of course, be subject to the criminal penalties already in place under the laws of the state.

What is the breakdown of responsibility for repayment for each organization involved?

Each organization (A and B) would have received a separate grant from the NEA, and each organization would be responsible for repayment of the full amount of NEA funds it used to support the project.

Illustration #3

An NEA grant was given to an artist to create a project of modern art and was shown at a museum in state (A). The art work was found to violate obscenity laws, and the artist was the convicted defendant in the case. The State Arts Board had no involvement in the project.

Is the state responsible for repayment in this instance, and what would be the chain of repayment?

No, the state is not responsible for repayment because it did not use NEA funds to support the project. The artist who created the work is responsible for repayment of the full amount received from the NEA for its creation. That artist would be debarred from NEA funding for at least 3 years or until the NEA funds are repaid--whichever is longer. The artist would be ineligible for any further NEA grants if he or she does not repay.

NEA AMENDMENT: ILLUSTRATIONS OF APPLICATION

An organization (A) in one state borrows an exhibit from an organization (B) in another state. Organization (B) received money from the NEA to establish the exhibit. No NEA money is used in bring the exhibit to organization (A). The exhibit is an art exhibit that is theme-based, not artist-based. One work within the exhibit is found to violate obscenity laws in the state where organization (A) is located.

What repayment is required?

There is no repayment in this case, because no federal funds were involved in the exhibit in state (A). The individual or group found to violate the obscenity laws in state (A) would, of course, be subject to the criminal penalties already in place under the laws of the state.

What sanctions apply if organization (A) used NEA funds to bring the exhibit to its state?

In this case, organization (A)--which received NEA funds to exhibit the work found to be obscene--would be responsible for repayment of the full amount of NEA funds used to bring the exhibit to the state. In the event the organization does not repay the full amount, it would be permanently debarred from NEA funding. In addition, if organization (A) is a convicted defendant in the obscenity case, it would be debarred from NEA funding for a period of at least 3 years.

Organizations A, B, and C come together to work jointly on a project. Organizations A and B have received NEA funding, part of which will be used in the joint project. Organization C has never received any NEA funding. The joint project is found to violate child pornography laws in the State and all 3 organizations are defendants in the suit.

Who is responsible for repayment?

In this case, organizations A and B would be responsible for repayment, because they received the NEA funding. In addition, both organizations would be debarred from NEA funding for a period of at least 3 years. Failure to repay would result in permanent debarment.

What is the breakdown of responsibility for each organization involved?

Each organization would have received a separate grant from the NEA, and each organization would be responsible for repayment of the full amount it used to support the project.

A grant was given to an artist to create a project of modern art and was shown at a museum in state (A). The art work was found to violate obscenity laws. The State Arts Board had no involvement in the project.

Is the state responsible for repayment in this instance, and what would be the chain of repayment?

No, the state is not responsible for repayment because it did not use NEA funds to support the project. The artist who created the work is responsible for repayment of the full amount received from the NEA for its creation. That artist would be debarred from NEA funding for at least 3 years and would be permanently debarred if the full amount is not repaid.

An organization (A) receives an NEA grant to develop an exhibition of art works and to present the exhibition in specified museums in five states (A, B, C, D, & E). Museum (D) is the defendant in the case, and one of the works in the exhibition is found to violate the obscenity laws of state (D).

Who is responsible for repayment?

Organization (A)--as the recipient of the NEA grant--is responsible for repayment of the portion of the grant earmarked for bringing the exhibition to state (D). In the event that funds were not specifically earmarked for this purpose, organization (A) must repay the full grant amount. If organization (A) does not repay the full amount, it will be permanently debarred.

In addition, because museum (D) is the defendant in the case, it would be debarred from NEA funding for at least 3 years.

A State Arts Board receives money from the NEA as part of the state block grant. The Board then gives \$100,000 of the NEA funds to a theater group for a performing arts series. Among the performances in the series is one in which an individual performer receives \$10,000 from the theater group. A criminal case is brought against the performer, and a court convicts the performer of violating obscenity laws.

What are the sanctions?

The performer must repay the \$10,000 and would be debarred from federal funding for a minimum of 3 years. If the performer does not repay the full amount, he or she would be permanently debarred and the theater group would be responsible for repaying. If the theater group fails to repay, it--too--is debarred and the State Arts Board would be responsible for repaying the \$10,000. If the State Arts Board does not repay, it would be debarred until it makes full repayment.

A State Arts Board receives money from the NEA as part of the state block grant. The Board then gives \$100,000 to a theater group for general support of a performing arts series. Funding is not earmarked for the individual performances included in the series. Among the performances in the series is one which is found to be obscene.

What are the sanctions ?

Variation #1

If the individual performer is the convicted defendant in the obscenity trial, he or she would be debarred for at least 3 years.

If the performer does not repay the full amount due, he or she would be permanently debarred and the theater group would be responsible for repayment of the full amount. In the event the theater group does not repay, it would be permanently debarred and the State Arts Board would be responsible for repayment. Failure of the Board to repay would result in its permanent debarment.

Variation #2

If the theater group is the convicted defendant in the trial, it is responsible for repayment of the full \$100,000 and would be debarred for at least 3 years. Failure to repay the full amount would result in the permanent debarment of the theater group, and the State Arts Board would be responsible for repayment of the full amount. Failure of the Board to repay would result in its permanent debarment.

Variation #3

If both the performer and the theater group were convicted defendants in the trial, they would both be debarred from NEA funding for at least 3 years. The full \$100,000 must be repaid. Either party may repay the amount, or repayment may be divided between the two. If the full amount is not repaid by either or both, they would be debarred from funding and the State Arts Board would be responsible for repayment. Failure of the Board to repay would result in its permanent debarment.