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Reauthorization: S. 2724 (1990): Report 09

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SUMMARY OF SANCTIONS PROVISION
Hatch/Pell/Kennedy/Kassebaum Amendment

1. When are sanctions applied?

Sanctions shall be applied when NEA funds are used to create, produce or support a project or production that is found to be obscene or to violate child pornography laws in a criminal trial (and all appeals of the conviction are exhausted) in a state in which the project was produced or which was described in the grant application as a site for the project.

2. What are the sanctions?

Sanctions include repayment of the NEA funds that supported the work found to violate obscenity or child pornography laws. In addition, a defendant or defendants convicted in the trial will be debarred from receiving additional NEA funding for at least 3 years or until the funds are repaid--whichever is longer. Failure to repay the amount due would result in permanent debarment.

3. Who is responsible for repayment and how much must be repaid?

The initial obligation to repay funds is with the individual or organization that actually created or produced the project found to be obscene. The amount to be repaid is that portion of the total NEA funds received by the individual or organization that were used to create or produce the project found to be obscene, provided that it is possible to separate the portion of the grant used for the work found to be obscene. If it is not possible to separate out the portion of the total funds used for the work, the entire NEA grant must be repaid.

If the Chairperson of the NEA determines that the individual or organization that created or produced the project found to be obscene is unable to or has not made repayment, and if such individual or organization did not receive its funds directly from the NEA, but was a subgrantee of another organization, agency or arts group or other entity that received funds directly from the NEA and passed funds on to such individual or organization, then such other organization, agency or arts group, or other entity is responsible for repaying the funds.

Repayment of funds by the individual or organization that created or produced the project found to be obscene must be made within 90 days of the exhaustion of final appeal of the conviction, unless such period is extended by the Chairperson of the NEA for up to two years. If an agency or arts group that subgranted funds to such individual or organization is required to repay funds, it must do so within 30 days of the original 90-day period.

4. Who is debarred from receiving further funds from NEA, and for how long?

Any individual or organization that received funds from the NEA, used them to create or produce the project found to be obscene, and was convicted in the criminal obscenity or child pornography trial, will be debarred from receiving further NEA funds for a period of not less than three years. If such individual or organization is required to repay funds as described above, then he, she, or it is debarred until it repays such funds. If an agency or arts group is required to repay funds, as described above, and does not make such repayment, it is debarred from receiving further funds until such funds are repaid.

5. Summary

The overall scheme of repayment and debarment is designed to assure that the person or entity which received NEA funds and used them in creating or producing the work found to be obscene or to violate child pornography laws must repay the funds used to create such work. If such person or entity does not make timely repayment of such funds, it is debarred from receiving further NEA funds until it does so. If the individual or organization actually making the obscene work does not repay the money, then an agency or arts group who received the funds from the NEA and passed them on to such individual or organization must repay the money. If it does not do so, it is debarred until it does so.

Any individual, organization, arts group or agency that used NEA funds to create a project or production that is found to be obscene or to violate child pornography laws, and is a defendant convicted at such obscenity or child pornography trial, is debarred for three years.

The Chairperson of the NEA is charged with promulgating procedures to ensure compliance with these sanctions.

6. Illustration

A State Arts Council 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 action is brought against the performer, and a court convicts the performer of violating obscenity laws.

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 debarred, unless he or she ultimately made repayment, and the theater group would be responsible for repaying. If the theater group fails to repay, it is debarred until it or the performer makes such repayment, and the State Arts Council would be responsible for repaying the \$10,000. If the State Arts Council does not repay, it would be debarred until it makes full repayment.