

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: National Endowment for the Humanities--
Authority to Fund Private Endowments

File: B-149441

Date: February 17, 1987

DIGEST

Proposal from National Endowment for the Humanities (NEH) to condition grant awards to state humanities councils upon the councils providing matching funds that would endow the councils with a capital fund that would provide a source of income to the councils is not authorized since NEH grant legislation does not provide authority to make such grants. Matching funds are required under the NEH grant legislation and such matching funds are subject to the same restrictions on their use as the federal grant funds.

DECISION

The General Counsel of the National Endowment for the Humanities (NEH) has requested our opinion on whether it would be legal for the Endowment to offer a merit award on a matching basis to a state humanities council pursuant to 20 U.S.C. § 956(f)(4)(A) (1982). The terms of the award would require obligation and expenditure of the federal funds awarded during the grant period but would allow the non-federal monies raised in response to the matching offer to be deposited in an endowment fund. We find that non-federal funds used to match a NEH merit award cannot be deposited for investment purposes unless such investment is an authorized grant purpose. A matching requirement contemplates that both

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federal and non-federal funds will be used to support authorized grant activities. While NEH's program authority is very broad, we do not find that it allows the establishment of a private endowment with either federal or matching non-federal funds.

Background

The NEH was created as an independent agency by the National Foundation on the Arts and the Humanities Act of 1965. 20 U.S.C. §§ 951 et seq. The Endowment supports research, education, and public activity in the humanities.

In 1976, Congress specifically established a state grant-in-aid program for the humanities. 20 U.S.C. § 956(f). Under the state grant program the Endowment provides funding assistance to the states through state humanities councils which then regrant the funds for projects in the humanities to organizations and groups through a competitive review process. See NEH, Introduction to State Programs, p. 3. These councils need not be formally designated as state government agencies, so long as their governing boards reflect a certain level of state participation. 20 U.S.C. § 956(f)(2)(B). It is our understanding that, at present, none of the existing state councils are part of the state government. If they were, they would be funded under a different provision with somewhat different requirements, but these requirements would not materially affect this decision. See 20 U.S.C. § 956(f)(2)(A).

Not less than 20 per centum of NEH's program appropriations must be earmarked for the state grant program. 20 U.S.C. § 960(a)(B). Out of this sum, every state and each grant recipient receives a basic allotment. 20 U.S.C. § 956(f)(4). If funds remain after the basic allotments are made, the statute provides that 34 per centum of the excess is available at the discretion of NEH's Chairperson to award to state and regional groups and entities that apply. 20 U.S.C. § 956(f)(4)(A).

The Endowment would like to use the discretionary funds to make "matching merit awards" to assist the state councils in establishing and building endowments, the income from which would provide operating support in

future years. Citing 42 Comp. Gen. 289 (1962) for the proposition that interest earned by a grantee on funds advanced by the United States belong to the U.S. rather than to the grantee and must be returned, except as otherwise provided by law, NEH's legal office has concluded that an endowment could not be created by an outright award of funds to a state council.

Instead, the Endowment is considering an alternative approach. Under this alternative, a matching merit grant would be awarded. The federal funds would be used to support an approved project or program, while the non-federal monies used to match the federal funds, would be deposited in an endowment fund. Whether these non-federal funds may be used to establish an endowment is the issue for consideration here.

Discussion

We have frequently been called upon to decide whether a grantee may retain interest earned on grant funds. See, e.g., 64 Comp. Gen. 96 (1984), and cases cited therein. We have agreed that interest can be retained where advanced grant funds have been applied to grant purposes. See, e.g., 64 Comp. Gen. 103 (1984). As we understand NEH's submission, however, the Endowment's legal staff has concluded that an outright award of funds for the purpose of creating a private endowment would be prohibited. We agree.

Under the state grant program, the NEH Chairperson, with the advice of the National Council on the Humanities, is authorized to establish and carry out a state grant program by providing "not more than 50 per centum of the costs of existing activities which meet the standards enumerated in [20 U.S.C. § 956(c)] * * *." 20 U.S.C. § 956(f)(1). In turn, section 956(c) provides the NEH Chairperson, with the advice of the National Council on the Humanities, with a number of broad authorities to support the humanities, including supporting research, awarding fellowships and grants, initiating, supporting and fostering programs in the humanities. See 20 U.S.C. § 956(c). Although the authority to support the humanities is broad, an applicant for a grant must submit a plan providing that the grantee will spend grant funds solely on program objectives, and this plan must be approved by the Endowment. Absent some other statutory authorization, we do not think these

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authorities encompass the establishment of a private endowment fund with federal funds. We find no indication that the Congress intended to provide funds that would be invested by the councils rather than applied to programmatic efforts. See 42 Comp. Gen. 289 (1962).

Since direct grant funds are not available for this purpose neither may non-federal funds raised in response to a matching requirement be used for a non-authorized grant purpose. A matching requirement contemplates that both the grantor agency and the grantee will share the costs of achieving the specified grant purpose at the budgeted level. See B-214278, January 25, 1985. If the matching share is not used to pay for the project costs, the grant could not be funded at all, since the grantor agency's contribution is limited to 50 percent of the project costs. See 20 U.S.C. § 956(f)(1), quoted above. This concept is embodied in OMB Circular A-110; Attachment E, and is clearly recognized by the Endowment in an explanation of this principle it provided to grantees.

"It is a statutory requirement that for every dollar in outright funds provided * * * by the Endowment, an equal amount of cash or in-kind cost-sharing contribution must be used to support budgeted project activities during the grant period." (Emphasis added.) NEH, Introduction to State Programs, p. 8

Non-federal monies that are to be invested to generate future interest income are not "supporting budgeted program activities during the grant period" and cannot be considered as matching funds.

Conclusions

We find that the establishment of a private endowment does not come within the program authority of NEH's state grant program. Hence, neither federal monies nor matching non-federal monies under the grant program may be used for this purpose.

for 
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