

Communications with the Mid-America Arts Alliance and National Endowment for the Arts

The Legislative Research Department was asked by the Chair of the House Education Committee, to contact representatives from the National Endowment for the Arts and the Mid-America Arts Alliance to obtain clarification on the ability of a not-for-profit 501(c)(3) receiving pass-through monies from a state agency to qualify for federal programs in the same capacity that the Kansas Arts Commission is currently.

The following question was asked of Mary Kennedy McCabe, Executive Director of the Mid-America Arts Alliance: "The Governor of the State of Kansas has issued Executive Reorganization Order No. 39 abolishing the Kansas Arts Commission and providing funding as a pass through the Kansas State Historical Society to a 501(c)(3) arts organization. If the Kansas State Historical Society was a member of Mid-America Arts Alliance, could Kansas artists and art organizations receive grants and funding for programs as they are currently receiving with the Kansas Arts Commission as a member of your organization?"

MAAA Response: As the situation stands today, here is what I can share:

- The Executive Reorganization Order #39 abolishes the Kansas Arts Commission with no mention of a 501c3 created to take its place. While I understand it is the intention of the governor to replace the Kansas Arts Commission with a non-profit organization, that is not present in the ERO.
- Mid-America's bylaws prohibit membership in Mid-America so the Kansas State Historical Society cannot become a member of Mid-America Arts Alliance.
- Mid-America works in partnership with the six state arts agencies of our region, wherein we align our strategic plan with theirs to serve the arts and culture needs of the region. Since the KSHS's mission and vision make no mention of arts and culture it is difficult to ascertain how that partnership would occur. In the event a Kansas Arts Foundation is created as a 501c3 recipient of flow-through funds from the KSHS, we would need to understand the mission and vision of that 501c3 to determine if there is a partnership opportunity for Mid-America Arts Alliance and the newly formed entity.
- Since there is no indication of the purpose, plan, or budget of the Kansas Arts Foundation it is difficult to speculate what may, in fact, be the funding support and program impact Mid-America could provide in the state of Kansas. It is simply too hypothetical to comment at this time.

The following questions were asked of Laura A. Scanlan, Director of State and Regional Partnerships, of the National Endowment for the Arts: Can the newly formed (hypothetical) Kansas Arts Foundation as a 501(c)(3), housed within the state agency State Historical Society, receive funds from the NEA using the State Historical Society as the designated and financially supported state agency? This includes state funds passing through the State Historical Society to the Foundation to meet the requirements of the state financially supporting the Arts Foundation.

NEA Response

We have reviewed the Governor's Executive Order and without more specificity as to the role and purpose of the Historical Society vis a vis a 501c3 Kansas Arts Foundation, NEA is unable to respond explicitly to the questions posed. We can say, however, that the potential exists for

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Kansas to forfeit its ability to receive NEA funding depending on how the new entity is structured and how this restructure addresses the NEA requirements for a fully functioning State Arts Agency.

Some of our observations concerning the Executive Order which preclude our ability to provide a direct response include:

- The Executive Order is silent on a 501c3. For example, in section 2. of the Governor's Executive Order, the State Historical Society is designated as "the successor agency to which all powers, duties, and functions of the Kansas arts commission" pass on the effective date of the order.
- The relationship of the 501c3 to the State Historical Society is unclear.
- Is it unclear as to who will be the applicant to the NEA and who will be responsible for performing the responsibilities of the NEA Partnership Agreement and be accountable and responsible for appropriate use of federal funds.
- What staff will be responsible for developing and implementing the state plan, what will be their expertise, and to whom are they accountable?
- Will the funds received by the Historical Society be designated for the 501c3 or will management of the Historical Society determine what gets passed through to the 501c3 in any given year?
- How will the NEA be assured of appropriate oversight if the duties of the former state arts agency are transferred to the State Historical Society and yet the funding is simply passed-through this designated state agency to a separate nonprofit entity with different staff, separate bylaws and a separate board?

The bottom line is that without having the organizational structure, mission, and bylaws of the Historical Society and the 501c3 available for review by NEA's General Counsel, NEA is unable to comment as to whether the "hypothetical" 501c3 would be eligible to receive NEA funds.

The other question was: Must the matching 1:1 funds all come from the state government? For instance: If the State provides \$200,000 to the Arts Foundation (passed through the State Historical Society) and the Foundation is able to raise additional private funds in the amount of \$600,000. Is the match just to the state funds of \$200,000 or is the match to the entire amount of \$800,000?

NEA Response

- The funds utilized for the 1:1 match to NEA partnership agreement must be directly controlled and managed by the state and may include state appropriated, donated or trust funds.
- Private funds would qualify as donated funds but must be controlled by the designated state arts agency.
- In question here is which agency, the state agency or the 501c3, is controlling the funds.
- If the state does not provide state controlled funds for support of the State Arts Agency, all federal funds are at risk.

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- All of the issues raised above must be considered and addressed before NEA can make a determination as to whether or not an agency other than the Kansas Arts Commission is eligible to receive an NEA Partnership Agreement. That is, it is not just about match.
- We also have questions as to the board or council including whether it is independent.

Standards of Accountability for Receipt of an NEA State Partnership Agreement

The National Endowment for the Arts' investment in a state is predicated on a significant financial and programmatic commitment from state government to its arts council because in each case, state and federal funds are combined to support local programs and priorities.

Continued Federal investment is contingent on the State of Kansas providing financial support to its designated state arts agency. The agency must have the capacity to carry out the significant responsibilities of the NEA Partnership Agreement, including:

- The implementation of an NEA-approved state arts plan, developed as a result of a comprehensive and inclusive planning process that addresses the state's cultural priorities and those of the NEA, as stipulated in the Endowment's strategic plan.
- Fair funding decisions based on criteria that take into account artistic excellence and merit, as determined primarily through a panel process.
- Maintenance of sound fiscal and administrative procedures.
- Demonstration of leadership in arts education and in strategies for making the arts available and accessible to those in underserved communities throughout the state.

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