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National Endowment For Democracy

Number: B-248111

Date: 1992-09-09

Matter of: National Endowment For Democracy File: B-248111 Date: September 9, 1992

Federal Assistance Grants Purpose availability Democracy programs The National Endowment for Democracy may use grant funds to carry out certain activities that clearly are consistent with the Endowment's purposes as described in the National Endowment for Democracy Act. Since the activities in question are identified, or closely related to functions identified, in the legislative history of the Act as functions envisioned for the Endowment, they are not "programs" within the Act's prohibition against the Endowment directly carrying out programs. Federal Assistance Grants Terms Purpose availability The National Endowment for Democracy Act provides the authority for the National Endowment for Democracy to use grant funds to carry out authorized activities directly even if the use is not within an "item of expenditure" listed in the grant agreement between the Endowment and the United States Information Agency. Nevertheless, future grant agreements should be modified to contain the "items of expenditures" which clearly capture the authorized activities of the Endowment.

DECISION

The National Endowment for Democracy Act provides for the National Endowment for Democracy (Endowment) to receive an annual grant from the United States Information Agency (USIA) to finance private sector democracy programs. To receive the grant, the Act requires the Endowment to agree that grant funds be used only for activities consistent with the Endowment's purposes described in the Act, and to otherwise comply with the Act's requirements, one of which is that the Endowment not carry out programs directly. USIA has asked whether these restrictions prohibit the Endowment from using grant funds to finance five specific activities. For the reasons stated below, we conclude that the Endowment may use grant funds to perform these activities directly.

BACKGROUND

On November 18, 1983, the Endowment was established as a private, nonprofit District of Columbia corporation to promote democratic institutions abroad. The Endowment's purposes are set forth in the Endowment's articles of incorporation, and are repeated in section 502 of the National Endowment for Democracy Act. Pub. L. No. 98-164, tit. V, 97 Stat. 1017, 1039 (1983), 22 U.S.C. Sec. 4411 (1988). These broad principles include: encouraging free and democratic institutions throughout the world through private sector initiatives; strengthening democratic electoral processes aboard; and facilitating exchanges and cooperation between democratic groups abroad and American political parties,

business, labor, and other private sector groups. The Endowment is not an agency or instrumentality of the United States government. Id.

Under section 503 of the Act, USIA "shall make an annual grant to the Endowment to enable the Endowment to carry out its purposes as specified in [the Act]." 22 U.S.C Sec. 4412(a). Section 503 requires that the grants be made pursuant to a grant agreement which requires that grant funds only be used for activities consistent with the purposes specified in section 502, and that the Endowment otherwise comply with the requirements of the Act. Id. These requirements are restated in section 504 of the Act, which also prohibits the Endowment from carrying out programs directly. 22 U.S.C. Sec. 4413(a) and (b).

In 64 Comp.Gen. 582 (1985), we concluded that USIA has the responsibility to ensure that the Endowment, as a USIA grantee, complies with the requirements of the Act. In this oversight capacity, USIA asked whether the Act prohibits the Endowment from expending USIA grant funds for five activities: publishing the Journal of Democracy; holding biennial world conferences; conducting a series of breakfast discussions with participants in democracy movements; developing a library and database of information about democracy movements; and awarding fellowships. USIA also provided us with the views of the Endowment's counsel who has advised the Endowment that it may finance these activities with USIA grant funds. The counsel's advice was based on its conclusions that the activities are consistent with the Endowment's purposes and are not programs.

DISCUSSION

Both USIA and the Endowment's counsel assert that determining whether the Endowment may use USIA grant funds on these activities involves a two step inquiry. The first inquiry is whether the activities are consistent with the Endowments's broad purposes specified in its articles of incorporation and the Act. The second inquiry is whether the activities are "programs" that the Act prohibits the Endowment from carrying out directly. We consider each of these inquiries in turn.

The Activities Are Consistent With the Endowment's Purposes

The Endowment's counsel concludes that each of the five activities in question is clearly consistent with the Endowment's purposes. The counsel's conclusion is based on the argument that "each activity enhances the Endowment's ability to effectively make and administer grants to private sector groups that advance the goals set forth in the Act." The counsel also argues that the determination to this effect made by the Endowment's Board of Directors is entitled to deference.

We believe it self-evident from the Endowment's description of the five activities in question that they are consistent with the Endowment's purposes as described in section 502 of the Act, 22 U.S.C. Sec. 4411(b). The Journal of Democracy is a publication containing various types of articles and reports on democratic developments and thus provides a mechanism for promoting democratic ideas and introducing potential grantees to the Endowment. The Endowment's breakfast discussion series features democratic activists and provides an opportunity for exchanges of information and ideas among the Endowment, present and potential Endowment grantees, and other parties involved in the issue of democratic development. The Biennial World Conference is, in some respects, a larger, more formal gathering with essentially the same objectives as the breakfast discussion series. The library and database to be located in the

Endowment's offices is a long-term project intended to provide Endowment staff, grantees and others with resource materials on democracy, activities by Endowment grantees, the history on the Endowment, and the democracy promotion activities of other organizations. Finally, the proposed fellowships would benefit the fellows (by introducing them to America's democratic institutions) and the Endowment (by providing a source of ideas and advice during and after the fellowship).

The Endowment May Carry Out The Activities Directly

Having concluded that the activities in question are consistent with the Endowment's purposes, the Endowment's counsel concludes that none of the five activities at issue here constitute "programs" to which the 22 U.S.C.ec. 4413(b)(1) prohibition against the Endowment carrying out programs directly applies. The counsel states that neither the Act nor its legislative history provides meaningful guidance on what constitutes a "program" the Endowment may not directly carry out under section 4413(b)(1). Instead, counsel argues that its working understanding of section 4413(b)(1) is that the prohibition was intended to allay concerns that the Endowment would be involved in covert operations and to ensure that the Endowment did not become a programming agency in competition with its own grantees. [1] The counsel also argues, in effect, that to interpret "programs" broadly would unreasonably restrict the Endowment's activities to the ministerial act of awarding grants to private sector groups. We agree with counsel on this last point. In fact, we have urged the Endowment to engage in more thoughtful planning of its programs, evaluation of grant applications, and administration of its grants. Promoting Democracy: National Endowment For Democracy's Management of Grants Needs Improvement (GAO/NSIAD-91-162, Mar. 14, 1991).

However, unlike the Endowment's counsel, we find that the legislative history of the Act provides insight into the types of activities the Endowment could conduct without running afoul of the Act's prohibition against carrying out programs. The House and Senate committee reports on the Act identify specific functions that Congress expected the Endowment to perform.

"Among the functions envisioned for the Endowment are the following: (a) To perform general oversight functions relating to its activities to insure that the charter's purposes are being met; (b) to evaluate grant proposals from the private sector and to support the collaborative efforts of private sector grantees to design programs which combine their experience and institutional perspectives; (c) to provide scholarships and fellowships which carry out the purposes of the Endowment and support programs designed to teach democratic concepts; . . . (e) to serve as an intermediary between private sector groups and as a clearinghouse for inquiries and proposals in order to bring groups together and to create new opportunities for democratic assistance."

H. Rep. 130, 98th Cong., 1st Sess. 87 (1983); S. Rep. 143, 98th Cong., 1st Sess. 55-56 (1983).

Of course, the proposal to offer fellowships is specifically enumerated in the House and Senate Reports as an Endowment function. All of the other four activities in question closely relate to one or more of the functions enumerated in the House and Senate reports. For example, the biennial world conferences, the breakfast discussion series, the proposed library and data base, and the Journal of Democracy closely relate to the Endowment's general oversight

function by facilitating its acquisition of the ideas and information needed to evaluate private sector grant proposals and grantee performance. In different ways, these four activities also support the collaborative efforts of grantees and serve the Endowment's function as an intermediary and clearinghouse to create new opportunities for democratic assistance.

Whatever activities constitute a "program" the Endowment may not carry out directly under section 4413(b)(1), they certainly cannot be the "functions" Congress envisioned for the Endowment. Accordingly, we conclude that none of these activities is a "program" subject to the restriction in 22 U.S.C. Sec. 4413(b)(1).

USIA Grant Agreement With the Endowment

Finally, USIA asks our advice on whether its current grant agreement with the Endowment needs modification should we conclude that the Endowment may use USIA grant funds to conduct the five activities previously discussed. USIA's current grant agreement with the Endowment provides funding for two "Items of Expenditure." These items are "Administrative Expenses of the Endowment" and "Grants for Programs of Private Sector Groups". USIA points out if any of the five activities may not be considered administrative, then the grant agreement may have to be modified to incorporate a new "item of expenditure."

With respect to the Endowment's use of USIA grant funds under the existing grant agreement, we are advised that the library and database and the fellowships are in the planning stage but that the Endowment already has used USIA grant funds to support the other three activities.

The Biennial World Conferences have been primarily financed with private contributions and we would not object to USIA's conclusion that the Endowment's publication of the Conferences' proceedings constituted administrative support for which USIA grant funds were available as "Administrative Expenses of the Endowment". We have a similar view with respect to the Endowment having used grant funds to pay some of the salaries and most of the office expenses (but none of the production or marketing costs) to support publication of the Journal of Democracy.

We are less clear from the information provided us on whether the same "administrative support" classification would be reasonable in the case of the Endowment having used USIA grant funds for the breakfast discussion series. Nevertheless, the grant funds were available for the breakfast series since it is an activity consistent with the Endowment's purposes as set forth in the Act. USIA grant funds are statutorily available to the Endowment for it to use in any manner consistent with the statutory purposes so long as the use does not conflict with a provision of the Act. That other restrictions do not apply to the Endowment's use of grant funds is evident from the language of the Act. For example, the grant agreement may not impose conditions on the Endowment other than those in the Act, 22 U.S.C. Sec. 4412(a), and otherwise applicable limitations on the purposes for which USIA may use appropriated funds to not apply to the Endowment, 22 U.S.C. Sec. 4412(b).

Nevertheless, the grant agreement serves a useful purpose as a reflection of the common understanding between USIA and the Endowment on how the Endowment will use the grant funds. Therefore, to the extent USIA agrees with the Endowment that it may perform certain activities directly and those activities are not

clearly administrative, it would be prudent for future grant agreements to add "items of expenditures" that clearly capture the desired activities.

ADDITIONAL MATTER: USIA OVERSIGHT OF ENDOWMENT ACTIVITIES

Several aspects of this matter reflect USIA's and the Endowment's view that USIA's oversight role is limited to ensuring that USIA grant funds are properly used. Some of the activities in question have been financed with the Endowment's private funds for several years, but were only questioned because of the possible use of USIA grant funds to finance them. In addition, USIA stated that its inquiry is limited to the use of grant funds because USIA views its oversight role under 64 Comp.Gen. 582 (1985) as limited to ensuring the proper use of USIA-provided grants. [2]

We believe that USIA's oversight role is not so limited. In 64 Comp.Gen. 582, we stated that USIA is responsible for seeing that the Endowment complies with all relevant statutory restrictions. 64 Comp.Gen. at 587. Although some of these statutory restrictions relate directly to using USIA's grant funds, other requirements are more general. For example, the prohibition against the Endowment carrying out programs directly, and the requirement for the Endowment to fund only programs of private sector groups which are consistent with the Endowment's purposes, apply to Endowment's use of funds regardless of their source. See 22 U.S.C. Sec. 4413(b).

The admonition in sections 503(a) and 504(a) of the Act, 22 U.S.C. Secs. 4412(a) and 4413(a), that USIA may make grants to the Endowment only if the Endowment agrees to comply with the Act's requirements does not limit its application to the Endowment's compliance when using USIA grant funds. In our view, USIA's oversight of the Endowment's activities therefore should include whether all the Endowment's activities comply with the requirements of the Act, not simply those activities financed with USIA grant funds.

1. Counsel's view of the purposes of 22 U.S.C. Sec. 4413(b)(1) implies that an activity would not be a program for purposes of section 4413(b)(1) simply because it does not relate to a covert operation and no grantee or potential grantee is willing to perform the activity. We are not persuaded by the counsel's arguments or our own research that section 4413(b)(1) was enacted only to address the two concerns advanced by counsel, or has the limited application implied by counsel's view.

2. USIA's initial request also restated the analytical framework advocated by the Endowment as including the question of whether the Endowment's activities not funded by USIA grants are consistent with the Endowment's purposes. USIA later withdrew this question as "outside the scope of [USIA's] interest."