



DATE: August 15, 2011

TO: Linda Browning Weis
Chairman, Kansas Arts Commission

FROM: Laura A. Scanlan
Director, State and Regional Partnerships

RE: Kansas Arts Commission's Eligibility to Receive an
NEA FY-2011 State Partnership Agreement

In response to your letter and accompanying documents, I have outlined below the NEA's assessment of the Commission's eligibility to receive an NEA FY-2011 State Partnership Agreement award. NEA FY-2011 Partnership Agreements fund state arts agencies' FY-2012 programs and activities occurring between July 1, 2011 and June 30, 2012.

Organizational Entity and Capacity

- The Kansas Arts Commission has confirmed the designation of the Commission as the state arts agency for Kansas. NEA referenced the Kansas Arts Commission's enabling legislation and the overturn of Governor Brownback's Executive Order to abolish the Kansas Arts Commission in making this determination.
- The Kansas Arts Commission has demonstrated that it is governed by an independent board and has 12 gubernatorial-appointed commissioners.
- The Kansas Arts Commission has demonstrated the availability of shared staff to provide administrative, accounting, legal, and reporting assistance for the Commission.
- The Commission has not demonstrated the availability of staff having relevant experience to carry out the programmatic responsibilities of the agency in service to the strategic plan. The Commission submitted a draft description of duties for a transition consultant to be hired by the Kansas Arts Foundation to support the Kansas Arts Commission. NEA's concerns in light of this arrangement are:
 - NEA has no basis for evaluating the Kansas Arts Foundation's legal status or its governance structure vis-a-vis the Kansas Arts Commission.
 - NEA has no evidence that the Foundation has authority or funds available to hire resources for the Commission.

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Financial Support, Matching Funds and Financial Reporting

- The Commission has not provided a budget for its FY-2012 fiscal year, nor has the Commission provided evidence of the availability of state appropriated, designated or controlled funds to match an NEA Partnership Agreement award.
- The Commission has designated the Federal Grants Program Administrator in the Governor's Office as responsible for fulfilling the NEA's grant reporting requirements. The Administrator, Jennifer Cook, contacted the NEA on July 27, 2011 concerning the final report for the Commission's FY-2008 Partnership Agreement and the upcoming due dates for the Commission's FY-2009 and FY-2010 Partnership Agreements. We look forward to working with Ms. Cook now that she has access to the Commission's grant records as of August 11, 2011.

Planning and Programming

- The Commission provided a draft version of suggested enhancements to the Kansas Arts Commission's 2007-2011 Strategic Plan. The draft document referenced programs that will be eliminated such as the Poet Laureate program, arts management training, and public receptions.
- There is no mention of how the core grant programs, referenced on Page 6 of the original plan, will be administered or adjudicated for artistic excellence and merit. There is no mention of how these programs will be funded. Additionally, there is no reference of FY-2012 grant programs on the Commission's website.
- There is no mention of how cooperative agreements, partnerships, educational and capacity-building services, and communication resources for constituents will be administered and what funding exists for ongoing delivery of these services.
- Lastly, no evidence has been provided indicating that constituents and Commissioners were consulted in an effort to establish priorities for the current fiscal year or that they approve of the proposed enhancements to the plan.



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October 25, 2011

Caleb Stegall, Esq.
Office of Chief Counsel
Office of Governor Sam Brownback
State Capitol, 267-W
Topeka, Kansas

Dear Mr. Stegall:

Thank you for your response dated October 10, 2011 to my letter of October 6, 2011. I have reviewed carefully the information you provided. I appreciate your clarifying for me that the KAC gifts, grants and bequests fund ("the Fund) was not impacted by the Governor's line item veto. It remains unclear to me as to whether the state legislature voted to provide the KAC with the moneys in the Fund for FY 2012.

You originally asked: "is a showing by Kansas that sufficient moneys exist in the Fund to fully pay for the budgeted expenses of the KAC over the following fiscal year sufficient to allow those moneys in the Fund to qualify as matching funds for purposes of the Federal/State Partnership Grant?" The description of the Fund and review of the state statutes gave rise to the questions in my letter of October 10, 2011. An overarching issue was whether "providing access to a standing gift account that is already designated in the name of the KAC meets the NEA's eligibility requirement for being "financially supported by the state."

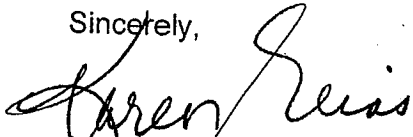
This arrangement contradicts the notion of a federal/state partnership, and does not meet the eligibility requirement of being "financially supported by the state." The nature of the Fund itself, an account made up mostly from grants, gifts and bequests from outside of the state government, that are placed in an account specifically designated for the KAC, creates the greatest impediment to the NEA's eligibility requirement. Despite the requirement of the Kansas Constitution that moneys from the Fund be "appropriated" by the Legislature before the moneys can be spent by the KAC, it appears that the State of Kansas cannot use the funds for any purpose other than KAC. Said another way, the State of Kansas does nothing to financially support the KAC -- other than to grant KAC access to monies already donated to KAC by outside sources. Indeed, although the Legislature must grant access to the account (referred to as an "appropriation"), there really is no commitment to financially support the KAC by the state, as the money in the account cannot not be redirected to another state entity for a non-arts purpose. Given such an arrangement, the State of Kansas appears to be acting solely as a fiscal agent for the KAC's receipt of gifts, grants and bequests deposited in the Fund.

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Finally, I understand from your email of October 10, 2011 that the federal grant funds are commingled with other moneys in the single Fund account. With respect to the NEA's questions about monitoring of the funds, including ensuring that other federal grant funds are not used to match the NEA funds, or even that NEA funds received in one year are not used to match NEA funds received in the next year, your response was that "management of the moneys in the Fund is entirely within the discretion of the KAC." The foregoing raises additional questions and concerns about accountability, as well as the potential need for greater monitoring or oversight by the federal funding entity to ensure that only eligible funds are used to match the NEA federal funds.

As a result, because the KAC has not demonstrated that it is "financially supported by the state," it remains ineligible to receive funding from the National Endowment for the Arts.

Sincerely,



Karen Elias
General Counsel

NEA's Determination Regarding the Kansas Arts Commission's Eligibility to Receive an NEA FY-2011 Partnership Agreement Award

The NEA acknowledges and commends the Commissioners of the Kansas Arts Commission for their diligence and voluntary commitment. It is evident that the Commissioners are addressing a wide range of complex issues in the aftermath of the state's withdrawal of an appropriation for the Commission and the elimination of Arts Commission staff.

Much of the information provided reflects the aspirations of the Kansas Arts Commission. The Commission has not demonstrated that it has a budget, that the state of Kansas is providing budgetary support, that program priorities have been identified and vetted with the public, that programs and services to constituents are operational, and that staff are on board with the expertise to adjudicate funding decisions that align with the requirements of NEA Partnership Agreement guidelines.

Based on the information provided, NEA has determined that the Kansas Arts Commission is deeply immersed in transitional activities and is not fully operational in ways that comply with NEA's eligibility requirements. Therefore, the Kansas Arts Commission will not receive an NEA FY-2011 Partnership Agreement.

NEA Recommendations Regarding Future Partnership Agreements

1. The Commission should focus its attention on fulfilling the reporting requirements of the FY-2008, FY-2009, and FY-2010 NEA Partnership Agreements. As a reminder, the due dates are as follows:
 - **NEA FY-2008 Partnership Agreement #08-6100-2024**, for the Commission's FY-2009 activities expired on December 31, 2009. NEA provided an extension for final reporting until March 31, 2011. *The submitted descriptive report had discrepancies that must be resolved by September 28, 2011.*
 - **NEA FY-2009 Partnership Agreement # 09-6100-2038**, for the Commission's FY-2010 activities, expired on June 30, 2011. The original grant period was extended for one year. *Final reports are due no later than September 28, 2011.*
 - **NEA FY-2010 Partnership Agreement #10-6100-2029**, for the Commission's FY-2011 activities, will expire on December 31, 2011. The original grant period was extended by six months. *Interim reporting is due September 28, 2011 and final reports are due no later than March 30, 2012.*
2. The Commission should submit a full "on-year" FY-2012 Partnership Agreement application and narrative for NEA panel review. *This application is due September 30, 2011.* A link to the NEA's FY-2012 Guidelines may be found here:
<http://www.nea.gov/grants/apply/Partnership/states.html>

NEA's Office of State and Regional Partnerships stands ready to assist the Commission and we thank you for your efforts towards reinstating the good work of the Kansas Arts Commission.

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