Grants in Aid Conditions
Federal Funds Controls on Use
First Amendment Restrictions

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Honorable Laurence E. Connolly, Jr.
House of Representatives
State House
Augusta, Maine

Dear Representative Connolly:

This responds to your request for an opinion as to whether there are any constitutional problems with the provisions of L.D. 1279, An Act to Prohibit Organizations from Lobbying if a Majority of their Funds are Derived from the State of Maine or the Federal Government.

A review of the law in this area indicates that as a general matter it would be permissible, under the Constitution, for the State to impose restrictions on lobbying on those receiving State funds. However, we believe that there would be severe constitutional problems with the State imposing limits on lobbying activities of organizations solely because those organizations receive support from the Federal government.

In Buckley v. Valeo, 424 U.S. 1 (1976), the United States Supreme Court reviewed the provisions of law which restrict campaign spending in Presidential campaigns and held that where the Federal government is contributing funds to Presidential campaigns, the Federal government may also legitimately restrict speech by restricting the amount of funds which could be spent in a Presidential campaign. On the broader issue, this case and others stand for the proposition that a governmental entity may impose certain restrictions on speech related activities, such as lobbying as a condition of receipt of financial benefit from the governmental entity imposing the restrictions. In this connection, we understand that federal grants sometimes specify that grant recipients not use grant funds for lobbying purposes. Further, the availability of certain federal tax benefits to some nonprofit organizations, is made dependent on agreement not to engage in lobbying or other such legislative advocacy activities. Cf. U.S.C. § 501(c)(3).

Thus, the State may condition distribution of part or all of the financial assistance it gives to organizations on a commitment of those organizations not to engage in lobbying activities. Accordingly, to the extent that L.D. 1279 would apply to recipients of State funds, we see no significant constitutional problem.

We do see a significant constitutional problem, however, in application of the provisions of L.D. 1279 to organizations which received federal funds but no State funds. The State has no capacity to control such organizations through having granted the organization financial assistance. Thus, the restriction on lobbying would have to be justified on other grounds than a restriction voluntarily entered into as a condition of receiving a state benefit. We see no relationship which would justify such state control.

Further, it is entirely possible that some organizations supported by federal funds may be explicitly intended to engage in legislative advocacy in implementing the federal grant or other financial assistance they receive. In such cases, problems would develop not only with the First Amendment of the United States Constitution, but also, potentially, with the Interstate Commerce Clause, Art. I § 8, or the Supremacy Clause Art. VI, of the United States Constitution, depending on the facts of the individual case.

Also, in singling out organizations supported primarly by Federal funds for special restriction to which organizations with other income sources are not subject, problems could develop with the Equal Protection clause of the United States Constitution, again depending on the facts of the case.

Very truly yours,

Joseph E. Brennan

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cc: Hon. Peter Truman