

LEGISLATION & REGULATION

GRANTS TO GOVERNMENT

BY JANE C. NOBER

The private foundation executive director was concerned. Members of her board were hoping to make grants to promote public housing and economic development but none of the groups involved were the typical 501(c)(3)s to which the foundation normally made grants. One possibility seemed to be making a grant to a local government agency, but the agency had no IRS tax-exemption letter. Would the foundation have to exercise expenditure responsibility?

The foundation director's concerns are understandable, but making grants to government entities is much easier than most foundation boards realize. Indeed foundations all across the country have made grants to school boards, government commissions and federal agencies. The tax code allows private and community foundations, as well as corporate giving programs, to make grants directly to government entities almost as if they were public charities. At a time when many grantmakers are interested in working with government to improve community welfare, knowing the rules can help maximize results.

Making Grants Directly to Government

The tax code allows private foundations to count grants to or for the use of a governmental unit toward meeting the annual payout requirement, as long as "the gift or contribution is made for exclusively public purposes." *Governmental units* generally include "a State,

a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia." A *political subdivision* may be a municipal corporation or a government division such as a transportation authority that has been granted at least one substantial sovereign power

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(the power to tax, police power or the right of eminent domain).

Determining whether an entity is a *government instrumentality* involves looking at such factors as whether it performs governmental functions, operates on behalf of one or more states or political subdivisions, operates under statutory authority and control by public authorities and depends on government funding.

Practical Pointer

It is a good idea to get written confirmation that a governmental grantee is indeed a governmental entity. A copy of the legislative act creating a board or commission or a letter from an authorized government official confirming the status of a subsidiary body may be useful. Grantmakers should refer any questions about the status of a potential grantee to their attorneys, who may supply an opinion letter or suggest a private letter ruling request to the IRS.

Experience from the Field

Once a grantmaker has assured itself that a potential grantee is a government entity, other concerns may be addressed. For the board of the Z. Smith Reynolds Foundation in Winston-Salem, North Carolina, notes Executive Director Thomas W. Lambeth, a fundamental question is why a private foundation should fund an otherwise tax-supported institution. The board is willing to commit funds when it sees a project where "private funds can demonstrate the value" so that public funds can be leveraged for continued support. For example, grants to North Carolina's Department of Public Instruction pilot project for public kindergartens in the early 1970s enabled educators to show the value of early education. The state eventually took on the funding of kindergartens for all children.

Making sure that government entities are committed to supporting projects after the foundation monies are gone is also a focus for The Miller Foundation of Kalamazoo, Michigan, says Arthur W. Angood, the foundation's executive vice president and chief operating officer. The foundation has recently provided funds to a local public school so that English teachers could buy computers and link their classes to one another, the local public library and a statewide library network. The board went forward with funding only after it felt confident that the project, if successful, would be expanded to other schools with the support of the local school district.

As part of its grant application process for government entities, the Hudson-Webber Foundation of Detroit insists on evidence that foundation funds will be matched or otherwise leveraged, includ-

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ing disclosure of other foundation or government funds that are pending, notes David F. Smydra, a consultant to the foundation.

Securing a commitment to common policy goals as well as future funding is also important, says Audrey Seymour, coordinator of the Peninsula Partnership for Children, Youth and Families, a project of the Peninsula Community Foundation of San Mateo, California. Seymour notes that grantmakers need to work not only with top government agency staff who influence policy but also department managers and others who will implement programs. Seymour works with a partnership that includes representatives of county and city government, schools, nonprofit organizations, foundations, businesses and high school students. Funders of the partnership are Peninsula, the William and Flora Hewlett Foundation, the Walter S. Johnson Foundation and the James C. Penney Foundation. The project is seeking to change fundamentally the way in which children's services are delivered.

Even if a grantmaker has secured monetary and philosophical commitments from current government personnel, high government turnover may threaten a collaboration's future. Jack Shakely, president of the California Community Foundation, recommends working agreements that "have everything spelled out and simple." Even with such documents in place, however, grantmakers should be ready to educate new staff and administrations.

One of the California Community Foundation's programs is the Save the Books Fund, established in 1986 to rebuild the Los Angeles Public Library's collection after an April 1986 fire. To date, the fund has raised \$10 million and disbursed \$6 million for books and periodicals to the Library Commission. With each turnover of the Library Commission, the community foundation has undertaken to educate new commissioners about the special role of the fund.

No Expenditure Responsibility

Many foundation managers mistakenly believe that because government entities do not generally have determination letters stating that they are 501(c)(3) organizations, the foundation will have to exercise expenditure responsibility (the monitoring process required by the tax code for certain grants). Happily, the tax code and Treasury regulations exempt grants to governmental units from this requirement.

Nonetheless grantmakers who fund government entities should take steps to assure themselves—and possible future auditors—that their funds are going to an appropriate charitable purpose. Documentation relating to the grant, including grant applications and signed letters of agreement, should be kept on file. All materials should make it clear that the funds are to be used for charitable purposes only.

Funders must remember that not everything government does is charitable. A grant to underwrite local tax breaks for corporations, for example, may help relieve the burdens of government but would be difficult to characterize as charitable—particularly if the grantmaker is a local company foundation. Like any other grant, a grant to government should not result in anything more than an incidental private benefit to the funder or anyone who is a disqualified person in relation to the funder.

Documentation and a clear charitable purpose may be helpful in responding to others besides the IRS. The California Community Foundation's Shakely cautions grantmakers who work with government entities to steel themselves against critics who may think they are making grants primarily to influence policy.

Government as Grantseeker

In an era of government budget cuts, grantmakers should expect government to become more savvy about securing

private sector support—and some grantmakers are helping governments develop expertise. The Hudson-Webber Foundation is helping city government develop ties to grantmakers by placing foundation consultant Smydra in the office of Detroit Mayor Dennis W. Archer, where Smydra serves as a foundation liaison for the city. His mission includes educating city agencies to be more receptive to foundation overtures, matching city government priorities to foundation interests and coordinating the expenditure of funds that are received.

Phillips Petroleum, which has been involved in conservation partnerships with the U.S. Fish and Wildlife Service and the National Fish and Wildlife Foundation has, with these groups and the Management Institute for Environment and Business, produced a comprehensive handbook on forming public-private partnerships for conservation. John C. West, executive manager of the Phillips Petroleum Foundation, says that working with government entities benefits all parties. "We from industry have access and know-how to work in the private sector, while government personnel know the public sector." In addition to enabling the parties to complement each other's expertise, West notes, partnerships can also break down stereotypes that government agencies have about industry and vice versa.

Robert P. Haigh, director of program development for the Pennsylvania Department of Public Welfare, has helped Pennsylvania attract some \$50 million in private support since 1988. Although much of the funding has been routed through existing nonprofits, he has watched his agency become more expert in coordinating the monies—while other government agencies become more interested in seeking private funds. He notes that private funders offer not only money but also ideas, insights and expertise.

With government budgets squeezed and social needs increasing, grantmakers can anticipate more funding requests from government entities. As many foundations and corporations have learned, working with government is not only possible but also a way of making a lasting impact on society. ■

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