



Department of State
Memorandum
Office of the General Counsel

TO: Sandy Shaughnessy, Director, Division of Cultural Affairs
FROM: Lynn Hearn, General Counsel *LH*
Staci Bienvenu, Assistant General Counsel *SAB*
DATE: September 10, 2009
RE: **Rule Authority Application Issue under Section 265.286, F.S.**

Issue

Does the Division of Cultural Affairs (Division) have the statutory authority to adopt a rule which would allow “a local or state governmental entity, school district, community college, college, university, agency of state government, or artist engaged in or concerned with arts and cultural activities” to submit more than one grant application per annual grant cycle?

Brief Answer

No, because such a rule would violate the single application requirement in section 265.286(9), Florida Statutes.

Discussion

In 2009, the Florida Legislature substantially amended section 265.286, Florida Statutes, relating to the award of grants by the Division. Ch. 2009-72, § 8, Laws of Fla. (effective May 27, 2009). Previously, the law broadly identified the entities eligible for art grants as “any non-profit corporation, local or state government entity, or artist engaged in or concerned with the arts.” § 265.286(2), Fla. Stat. (2008). The amended law now lists the specific entities that may be awarded art and cultural grants: “eligible grantees *must be a non-profit, tax-exempt Florida corporation, [a] local or state governmental entity, school district, community college, college, university, agency of state government, or artist engaged in or concerned with arts and cultural activities.*” § 265.286(8)(a)-(b), Fla. Stat. (2009) (paragraph numbers omitted; emphasis added).

The 2009 amendments also, for the first time, imposed a limitation on the number of grants an applicant can apply for: "In order to equitably distribute limited state funding, applicants may apply for and be awarded only one grant per annual grant cycle, except for cultural facilities, a cultural endowment, or touring program grants and individual artist fellowships." § 265.286(9), Fla. Stat. (2009). Pertinent parts of the Florida Senate Bill Analysis and Fiscal Impact Statement for Bill PCS/SB 1780, as it relates to the amendment of section 265.286, provide that the bill "creates a consolidated cultural grants program" and that "[c]onsolidation will reduce the number of applications received by the division; result in fewer grants funded. . . . Restricting applicants to one application . . . will provide a more equitable distribution of limited funds [and result in] fewer grants to be administered and the potential reduction of 1.00 FTE in FY 2009-2010. . . ."

Thus, in short, subsection (8) of section 265.286 lists the entities/artists that are eligible to receive grants, while subsection (9) restricts each eligible entity/artist applying for a grant to submitting only one application and, if approved for funding, to receiving only one grant per annual grant cycle. The question presented is whether the application and grant restriction in subsection (9) applies to each individual potential grantee in subsection (8). The answer to this question depends on whether the terms "applicants" and "grantees" refer to the same entities. Neither term is defined in section 265.286 or elsewhere in chapter 265.

When a term is not defined in statute, it is appropriate to resort to the plain meaning of the term. Merriam-Webster Dictionary defines "applicant" as "one who applies" and defines "grantee" as "one to whom a grant is made." Additionally, statutes relating to the same subject must be construed together, or *in pari materia*, to harmonize the statutes and to give effect to legislative intent. *E.g., Florida Dep't of State, Division of Elections v. Martin*, 916 So. 2d 763, 768 (Fla. 2005). Applying these principles to the present section of law, it is apparent that the "applicants" referred to in subsection (8) and the "grantees" referred to in subsection (9) relate to precisely the same entities. Whether one is an "applicant" or a "grantee" is merely a question of timing, *i.e.*, an applicant becomes a grantee once a grant award is made. There is no statutory basis to interpret these terms as having different meanings. Therefore, the restriction in subsection (9) that applicants may apply for and receive only one grant per annual grant cycle must apply to each of the grantees listed in subsection (8). Any rule providing otherwise would be contrary to the statute.

Conclusion

The terms "applicants" and "grantees" must be construed in harmony with each other to give effect to legislative intent. The purpose of the single application requirement in subsection 265.286(9) is to "equitably distribute limited state funding." Viewed as a whole, the statute allows for no other interpretation than that the single application and grant requirement applies to any and all eligible grantees listed in the statute. Therefore, a rule allowing multiple applications for any of the listed grantees would violate the single application requirement of subsection 265.286(9), Florida Statutes (2009).

c: JuDee Pettijohn
Don Blancett