



**NATIONAL
ASSOCIATION
OF
DEVELOPMENTAL
DISABILITIES
COUNCILS**

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TO: Bobby Silverstein
Staff Director
Senate Subcommittee on the Handicapped

FROM: Susan Ames-Zierman
Executive Director, NADDCC

DATE: August 19, 1988

RE: American Law Division, Congressional Research Service memo regarding advocacy, education and "lobbying" by Developmental Disabilities Councils

Thank you for sending me the Congressional Research Service's response to your inquiry on our behalf regarding activities permissible for DD Councils with funds appropriated under the Developmental Disabilities Assistance and Bill of Rights Act. Please express my appreciation to Mr. Maskell for his thorough research on this issue. Overall, Mr. Maskell clarifies many points in question and he tends to interpret the DD Act as over-riding most OMB Circular A-122 and appropriations rider limitations on communicating with and influencing policy-makers, including Members of the U.S. Congress. This should be most helpful to DD Councils by eliminating the "chilling effect" of some interpretations of what *are* appropriate Council activities.

He states: "The Act clearly expresses Congress' intent that the funds made available under the Act to grant recipients be used to communicate and advocate to the legislators and administrative policy-makers the recipients' ideas, recommendations and findings. ...Such activities, which might arguably be prohibited for some federal grant recipients under OMB Circular A-122 is therefore expressly authorized and required for grant recipients under the DD Act. ...Congress has clearly authorized and required that the funds made available under this program be used for advocacy and for communications of studies, findings *and* opinions which would result in educating and influencing policymakers concerning the rights, abilities and needs of developmentally disabled persons." (NB: In stating that the DD Act permits activities not permitted under A-122, it is not mentioned whether the DD Act also permits activities not permitted under the appropriations riders, to be addressed below.) I do have a few suggestions and some questions, the answers to which would clarify and be even more responsive to Councils' concerns.

(1) The first deals with the Mr. Maskell's assumption regarding the organizational status of DD Councils. At the moment, there is only one DD Council which is a non-profit organization and, while others may choose to become non-profits in the future, the majority of Councils are, and will likely remain, within state government, with the funds "flowing through" a fiduciary agent (i.e., designated state agency) authorized in state law. Thus, by and large, Councils do not come under the aegis of the OMB circular.

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Suggestion: It would be helpful for the memo to have two sections: Federal Executive Branch Restrictions on "Lobbying" (applicable to non-profits under A-122, applicable to most P&As and possibly some Councils in the future) and Congressional Restrictions on "Lobbying" (applicable to any federal grantee, public or private, non-profit or otherwise.) This leads to my next suggestion.

(2) Of the four programs authorized by the DD Act, two are formula grants to states (the Basic State Grant Program and the Protection and Advocacy System Program). The Basic State Grant Program (Part B) authorizes DO Councils and is the subject of my inquiry. The memo refers to these two state grant programs in tandem without noting that their authorities differ regarding "educating policy-makers." While there are similarities in the advocacy roles of Councils (Part B) and Protection and Advocacy Agencies (Part C), their essential purposes are different. Thus, when Mr. Maskell's memo refers to "grant recipients" under the law, it is sometimes unclear to which program he is referring. Because of the non-profit issue, above, it makes a great deal of difference, since most P&As are non-profit organizations and most DD Councils *are* not. It would be helpful if Parts B and C could be distinguished. The overall result may be the same in terms of activities allowable for both programs; however, the utility of the memo in educating the constituent organizations would be greatly enhanced by this clarification.

(3) One of the most confusing aspects of this issue is the distinction between DIRECT and GRASSROOTS activities. It appears that the term DIRECT is intended to define the "who" of the communication to policy-makers on pending legislation. In other words, using the analogy given with federal officials, people directly involved with the funding, (i.e., administrators) may communicate directly to members of Congress as opposed to encouraging others (i.e., the grassroots, the general public) to so communicate. In our program, who are the allowable DIRECT communicators? There are many who might be considered direct, but ARE they?

a. Council staff. Most Council staff are currently paid with funds appropriated by the Basic State Grant Program and most are state civil servants. Unless otherwise prohibited in state law, is it correct to assume that Council staff *are* considered among those who are appropriate direct communicators?

b. Council members. Council members serve ex-officio or as unsalaried volunteers (i.e., not paid by the DD Act except for reimburseable expenses) and are appointed by Governors to fill certain "mandated" slots identified in the DD Act. Each Council member represents a segment of the population beyond themselves; that is their purpose on the Council. Is it correct to assume that, at minimum, all Council members on behalf of the Council *are* permitted direct communication to members of Congress under the appropriations rider and the DD Act? It seems so. (Note the confusion here in the case law. On the one hand, salaried federal officials are considered DIRECT communicators but *are* prohibited from generating or mobilizing support. On the other hand, unsalaried Council members are a part of the "recipient" agency and have an advocacy mandate. This is confusing.)

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c. Grantees of the Council. In order to implement the State Plan, DO Councils provide grant and/or contract funds to other organizations to accomplish various plan objectives. Are communications considered direct when made at Councils' initiation by the Councils' "extended family," so to speak, including subgrantees implementing state plan strategies? What about the people these organization serve, their members or "clients," some of whom are "recipients" of DD funded services or activities?

d. Other categories of individuals in this extended family are the members of organizations whose representatives sit on Council, those in the Council's network for state-level advocacy with the legislature, interested people and organizations who subscribe to Council publications, employers who are assisting in (and may be funded for) the development of supported employment programs as a result of Council activities, etc. Are their communications, if initiated by the Council, considered direct or grassroots?

e. Finally, what about the participants in the consumer forums and surveys mandated in the Act, to assist in the development of policy recommendations for the 1990 report? These individuals are the ultimate beneficiaries of the program's mandate and have the greatest interest in providing input to policy-makers.

When do these people or groups cease being directly involved and become "the general public" or "the grassroots"? I'm sure you see our dilemma.

(4) Another distinction made in Mr. Maskell's memo is the nature of the activity performed by the "recipient," in this case the DD Council. It appears that almost any individual or group could receive information from the Council about pending bills as long as the Council did not ask them to communicate a particular position to their members of Congress. While this is helpful, it limits advocacy. Thus, knowing which of the above-named individuals or groups can be mobilized and considered directly communicating, becomes essential. Is there a distinction about the type of information which can be communicated to others by the Council (ie., with or without instructions to voice a particular opinion), depending whether an individual or group is considered a direct communicator? In other words, is mobilization permitted for some of the individuals/groups above while only the provision of information permitted for others?

(5) Another related area is the Council mandate to engage in outreach activities - to minorities, to the unserved and underserved, to community providers and informal networks and general public education. In doing so, a variety of educational and public information methods are used to change attitudes, to inform, to seek assistance with the legislature, to mobilize, etc. The memo states that the use of federal funds to support "publicity or promotional activities with regard to referenda or ballot measures" (an activity which might be contemplated or attempted by some Councils) violates A-122, but does not mention whether these activities *Are* precluded under appropriations language. Please clarify this point.

(6) Is the permission under the IRS laws for non-profits to provide results of non-partisan analysis, study or research also given under the appropriations rider? From everything Mr. Markell said, it would appear so.

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(7) Since the OMB circular prohibits communications by non-profits regarding legislation at the federal or state level, some restrictions of which are over-ridden by the DO Act, if Councils were to become non-profits, is it a correct assumption that the DD Act requirements would currently over-ride the circular for state-level advocacy? (It is, I believe, clear that the appropriations rider permits and the DD Act requires state level advocacy.)

(8) Although the appropriations rider for HHS does not currently state "unless otherwise authorized by law," as do other appropriations bills, the memo encouragingly says that "it STILL MIGHT NOT bar activities authorized by permanent law which involve only direct communications to Congress on public policy issues relevant to the grant purposes to educate and inform (Congressional) members and staff on these issues." Other than appropriations language which could include that phrase in FY 1990, what can be done for FY 1989 to ensure that Councils can appropriately mobilize their constituencies in preparation for the January 1990 report and otherwise implement their mandates next year? Could some interim measure be taken, such as policy issuances from ADD? Some other expression of interpretation of Congressional intent? If DD Councils (members and/or personnel) receive a written request for input from a Member of Congress (as is suggested in the case of federal executive branch employees, and officers)? (If so, what would "through official channels" mean for Councils?)

There *are* many national policies of critical interest to people with developmental disabilities and, thus to DD Councils who represent their interests. The disability community is a small one, but one with great needs. Councils, as advocates, wish to be as effective as possible in carrying out their Congressionally mandated role and to appropriately reach out, as all advocates must do, to garner support for the vision of a comprehensive system of services for all people with developmental disabilities. Yet lack of specificity on these issues and various interpretations of appropriate Council activity by the administration and some designated state agencies, continue to have a chilling effect on some Councils' ability to be effective in the way Congress has designed. We look forward to your further response.

Thank you in advance for this additional assistance.

Attachment

P.S. I have taken the liberty of making some changes to the text of the memo at your suggestion.