

**National Assembly of State Arts Agencies
Assembly 2008
Chattanooga, Tennessee**

Art and Religion

The Devil Is in the Details

Briefing Session
September 13, 2008

Presenters:

David J. DeVries, Pennsylvania Office of General Counsel

Philip Horn, Pennsylvania Council on the Arts





Duncannon, PA



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Photo credits: Evan Horn



History and religion mix in Duncannon

MURAL'S MESSAGE



ABOVE: Project coordinator Angel Sligh climbs scaffolding to continue work on a mural along South Market Street. BELOW: A close-up shows the mural's religious imagery, including Christ on the cross, a Bible and angels.

GARY DWIGHT MILLER, The Patriot-News

State grant paid for part of community project

BY DEB KINER
AND DOTTIE ALDRICH
Of The Patriot-News

DUNCANNON • A community mural depicting Duncannon and topped by Christ on the cross, a Bible and angels, was partially funded by state money.

No one has complained about the religious imagery on the mural, which is being installed in panels on a three-story building along South Market Street. But the Pennsylvania Council on the Arts — which helped pay for the mural through a grant from Part-

ners in the Arts — prohibits any grant money from being used for "activities that have a religious purpose."

The state arts grant was for \$4,000, a quarter of the \$16,000 project.

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Please see MUR



COMMONWEALTH OF PENNSYLVANIA
 OFFICE OF THE GOVERNOR
 HARRISBURG

THE GOVERNOR

Diane Dalto, Chairman
 Pennsylvania Council on the Arts
 1810 Spruce Street
 Philadelphia, PA 19103

Philip Hora, Executive Director
 Pennsylvania Council on the Arts
 215 Finance Building
 Harrisburg, PA 17120

Dear Diane and Phil,

I am writing to you concerning the Duncannon Mural Project. It is my strong belief that the mural, which depicts local pastors, a Bible, and Jesus, should not be found to violate the Council's prohibition against any of its grant money being used for "activities that have a religious purpose."

I believe this to be the case for these reasons (including our strong presumption against censorship, and the fact that the use of our money can be beneficial given the \$1200 raised for the mural by the local Council of Churches). The primary reason for my belief is that an examination of this mural and its goal to depict community history and culture make it clear that it does not have a religious purpose. The mural in its entirety depicts various events, peoples, and things that have made up Duncannon's history such as the flood of 1972, local philanthropists, Native Americans, firefighters, church pastors, and the campuses of the local school district. I agree with Borough Council member John Guzmara that "churches represent a big part of life in the community."

This significant part of community life deserves to be included in a pictorial of Duncannon; doing so does not constitute a "religious purpose." Rather the purpose is clearly to depict the rich and varied culture and history of Duncannon and including religious objects in this rich mosaic does not change the overall purpose.

It is my hope that you will review this as expeditiously as possible and give the Duncannon Area Prevention Board the go ahead so that the mural can be unveiled as scheduled at the tree lighting on December 6, 2004.

Sincerely,

Edward G. Rendell

Edward G. Rendell
 Governor

EGR:ds



Questions

1. May a public arts agency grant public funds to a religious organization?
2. Are there limitations which a public arts agency must apply to projects from religious organizations?
3. Do the limitations apply to grants to non-religious organizations or individuals for projects with religious content?

Questions

4. May a public arts agency fund a project which has content that is offensive to or disrespectful of religion?
5. If a grant to a religious organization or to a project with religious content raises public concern, how does the arts agency respond?

Questions & Answers

1. May a public arts agency grant public funds to a religious organization?

Yes. To deny a grant to a religious organization based solely on the organization's religious nature may itself be a violation of the organization's first amendment rights.

Questions & Answers

2. Are there limitations which a public arts agency must apply to projects from religious organizations?

Yes. The limitations must strike a balance between the protection of the organization's first amendment rights and the public agency's first amendment responsibilities.

Questions & Answers

3. Do the limitations apply to grants to non-religious organizations or individuals for projects with religious content?

Yes.

Questions & Answers

4. May a public arts agency fund a project which has content that is offensive to or disrespectful of religion?

Yes, but there are important public policy and practical considerations which must be taken into account.

Questions & Answers

5. If a grant to a religious organization or to a project with religious content raises public concern, how does the arts agency respond?

Carefully, precisely, professionally and intelligently.

Possible Sources of Objections

Who might object:

1. Citizen
2. Citizen as taxpayer
3. Citizen group
4. Organization (ACLU, American Society for the Defense of Tradition, Family and Property; Americans United for Separation of Church and State).
5. Legislator, other government official
6. Media
7. Arts organization board members / council members / panelists

Possible Avenues of Objections

How:

1. Email, letter, telephone
2. Through the media
 - Letter to Editor
 - Op-Ed publication
 - Press conference
3. Legal Action
 - A. To prevent funding
 - B. To sanction funding
4. Through arts organization boards

Legal Considerations

1. Decision not to fund is easier to challenge than a decision to fund.
2. You don't have to suffer much damage to bring suit, but you have to allege some injury.
3. Gone but not forgotten: Removing the work does not necessarily moot the objection; claim for nominal damage.
4. Challenges based on the Establishment clause area not decided by bright-line rules but on a case-by-case basis with the results turning on the facts.

Elements that Establish Constitutionality

1. Government has a secular purpose in carrying out program*
2. A broad class of groups or individuals is eligible for the program.
3. The criteria for receiving a grant award, whether objective or subjective, may be applied neutrally and not in a manner which favors or harms religious institutions.
4. Statutory, regulatory and administrative safeguards.

**That one or more individuals may believe a program has a primarily religious impact on them does not mean the primary purpose of the program is religious.*

Procedural Safeguards

1. Application and approval process
 - A. eligibility
 - B. evaluation based on stated criteria
 - C. panel review
2. Grant agreement and guidelines
3. Audit, record keeping, reporting

If the purpose of the program is secular, the fact that there may be some incidental or indirect “benefit” to religion does not invalidate it on first amendment grounds. *What is the program for?* is the question.

Heather Doughty, deputy director for communications for the Council on the Arts, said the council doesn't *"know enough yet to make any kind of judgment."*

"Our guidelines restrict our funding from being used for religious purposes," she said. "Our understanding of the project is that the mural was a project on community history and culture. The aspects that have been described to us are something that we will need to look into."

Ten Crisis Lessons

Tell the truth.

**If you make a mistake,
apologize immediately.**

Be sincere in your apology.

**If you are explaining
you are losing.
Explanations drown
out the apology.**

Really fix the problem.

**Blaming the other person
does not score you any points.**

**Ignoring the problem does
not mean it goes away.**

**You are always being watched.
Especially when you are not at
your best.**

**Crisis abhors a vacuum.
If you don't fill the void
with leadership,
someone else will.**

**Listen to your mother.
If you can't justify
to your mother
what you are doing,
don't do it.**

The End

Credits

David Devries, Esq

Heather Doughty, Esq

Selby Doughty

Philip Horn

PCA staff, especially

Karl "Danger" Blischke