

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Legis 50/The Center for Legislative Improvement      DATE: Sept. 26, 1978  
Docket No. 76-17  
Decision No. 48

DECISION

Legis 50, formerly the Citizens Conference on State Legislatures, is a non-profit corporation organized to foster improvement of state legislative processes. This case arises in connection with a grant made to Legis 50 by NIAAA (National Institute on Alcohol Abuse and Alcoholism), as lead agency for several other agencies, for a program of assisting state legislatures to legislate more efficiently in the area of alcoholism and drug abuse primarily by supplying committee staff. In connection with this grant, Legis 50 received roughly \$2 million of government assistance over a four-year period.

Grantee was operating under a provisional indirect cost rate of 151% of salaries and wages for headquarters activities for 1974, 100% for 1975, and 33% for field activities for each year. Negotiations followed for determination of a final rate between Legis 50 and the HEW Regional Office. A disagreement developed between the parties with respect primarily to two categories of expenses called by Legis 50 Citizens Participation and Bidding and Proposal costs. Legis 50, as it was entitled to do, appealed these issues to the Regional Director. At its request, normal written procedures were somewhat shortcut in favor of an extended, transcribed, informal meeting of the parties and subsequent written submissions. The Deputy Regional Director ruled against Legis 50 on the Citizens Participation costs and, ruled in favor of Legis 50, in part, on the Bidding and Proposal costs, June 25, 1976. Legis 50 then appealed the unresolved issues to this Board, July 23, 1976.

The Board has received the appeal and the Regional Office's response to the appeal. It twice requested the parties, once informally, once formally, to respond to a number of questions and has received the parties' answers. (Executive Secretary's letter, September 13, 1977; Order to Show Cause, November 10, 1977; Grantee Response to Executive Secretary's letter, October 3, 1977; Acting Principal Regional Official's Response to Executive Secretary's letter, October 3, 1977. Grantee Response to Order to Show Cause, November 30, 1977; Deputy Principal Regional Official Response to Order to Show Cause, November 30, 1977). The Board found the responses on both sides inadequate to permit a fully informed decision but recognized the possibility that the parties had not fully understood what they were called upon to supply. The Board therefore scheduled a meeting of the parties and supplied to the parties in advance an extended and detailed analysis of certain issues that had not been adequately met in the Board's view, and of the Board's tentative interpretation of the facts before it. The parties were directed to come prepared to discuss these specific issues as well as any others they might wish to raise at the meeting. (Notice of Informal Conference, March 7, 1978).

It may be noted preliminarily that Legis 50, in view of its staffing and performance, is a highly sophisticated grantee, its officers and staff having a demonstrated record of experience in the Federal Government grant system and the ways of government generally. It is not the kind of grantee in whom one would readily attribute to simple ignorance and confusion the failure to give a responsive answer to a direct inquiry.

#### A Threshold Question.

The Board was confronted at the threshold with a grant of an unusual kind which raised on its face preliminary questions as to the authority under which it was made. The grant appeared intended to provide federal "capacity-building" support to improve state legislative processes as they related to alcoholism legislation, and was labeled as a grant for research although it did not reflect any apparent research purposes. The Board, therefore, asked both parties to identify the authority under which the grant was made and to specify the respects in which the grant was to be recognized as a research grant.

The Regional Office in its final briefing has taken the position that the grant was not a research grant and was, in fact, not valid.

Grantee's response, in part, challenged the authority of the Board to raise the question of validity of the grant since it had not theretofore been raised by the Regional Director or any other official of HEW. On this issue we disagree: since the grantee is requesting the Board, in effect, to award to grantee a payment of indirect costs denied by the Regional Office, we would find it difficult to justify awarding such an additional payment under a grant that was from the beginning without authority.

If we had concluded, as at an earlier stage we tentatively thought likely (cf. Order to Show Cause, pp. 4-5; cf. Notice of Informal Conference, pp. 2-5), that grantee's claims should be sustained in part or in whole on the indirect cost computation issues, we would have been compelled to resolve the issue of the validity of the grant. Since, however, we find on the merits of those issues against the grantee for reasons indicated below, it is not necessary for the Board to determine the validity of the grant. Accordingly, on this issue we make no ruling.

#### Bidding and Proposal Costs.

The Bidding and Proposal costs are costs related to the immediate preparation of proposed bids for grants or contracts. Although a precise definition and discrimination is not easy, the parties have reached what appears to be a workable, mutually acceptable definition which appears to us substantially sound. That definition is as follows: "Bid and Proposal cost are those related to preparing, submitting and supporting bids and proposals on potential contracts or grants. The costs of such activities are includable in this classification regardless

of whether or not the bids or proposals were solicited or unsolicited. . . . Development ends and bid and proposal activity begins when: -- The nature and scope of a potential project is sufficiently well identified so that, with appropriate directorate authorization, a draft can be prepared that describes the projects major components, the kinds of talents required, the approximate man day needs, the approximate total elapsed time and the approximate costs; or-- A funding source has been identified...; or-- A request for proposal is received from a funding source at their initiative (solicited)...; or-- A request for proposal is received from a funding source at Legis 50 initiative (unsolicited)..." (Region Response to Application for Review, October 15, 1976, Attachment I, page 2, Memo from Harry Hedges, Business Manager, Legis 50, March 10, 1976).

Grantee's records were kept in such form that it was impossible for the Regional Office to establish whether costs claimed were appropriate or not under the applicable definition. (Transcript of Informal Conference, April 12, 1978, page 64). In this state of the case we believe the burden of proof was with the grantee and that the grantee could not carry it because of the deficiency of its own recordkeeping. Cf. Oregon Statewide Cost Allocation Plan, Docket No. 75-7, Decision No. 22, June 25, 1976, page 3 (Computer Rates). Nevertheless, the Regional Office recognized that there was some amount of legitimate costs that was properly allocated to Bidding and Proposal costs and sought to find some way of estimating that amount or of reaching an agreed allowance by negotiation. The parties apparently attributed to the auditors a test which is, indeed, an inappropriate one, that is that no costs be allowed unless an actual bid were submitted. That is not a correct interpretation of the cost principles on this point, and the Regional Office concedes that it is not. [Region Response to Order to Show Cause, November 30, 1977, page 9, item 3. In fact, we believe, a more attentive reading of the audit report shows that the attribution of this position to the auditors may be a misunderstanding. The actual test applied by the auditors seems to have been more carefully stated and to have been correct. The audit report, moreover, gives the kind of specific identification of the items of cost challenged which we later criticized the Regional Office for not supplying. HEW Audit Report 07-61302, April 7, 1976, esp. pages 6-10, page 10, 2nd paragraph, Region Response to Application for Review, October 15, 1976, Attachment D. Cf. Transcript of Informal Conference, April 12, 1978, pages 58-9. The grantee read the audit report less carefully than it deserved (Application for Review, page 13-14) and the Panel Chairman apologizes for having picked up and repeated the loose reading (Notice of Informal Conference, March 7, 1978, page 4)].

In the course of negotiation, the Regional Office initially proposed to allow one-third of the Bidding and Proposal costs claimed and ultimately agreed to 65 percent of the costs claimed on the basis of a submission made by the grantee. Grantee has explained that this submission was made not to represent its own analysis but to represent what it understood to be the analysis the Regional Office insisted upon even though grantee considered it erroneous.

We were concerned in our consideration of this case by the fact that the Regional Office had never explained with appropriate clarity the position it was taking on this issue. We called this to the attention of the parties and asked the Region for a clearer statement. We believe, after hearing the parties and reading the briefs, that the Region's lack of clarity represented its effort to be as favorable to the grantee as was possible under the circumstances and to reach a negotiated settlement, which apparently it thought, in good faith but mistakenly, it had accomplished.

The Region could have taken the position that the burden was on the grantee and that for lack of adequate records it would reject any allowance. It could also have taken the position that since an indirect cost rate must of necessity have elements of rough approximation, it would recognize that there was some amount of allowable costs and reach a rough approximation. This, in substance, is what it did. It concluded that a 65 percent allowance was roughly in the area of what was fair. It recognizes that 65 percent (rather than, say, 60 percent or 70 percent) coincides with the percentage of costs related to proposals actually submitted, which it correctly concedes is in itself an improper test, but it takes the view that this rough test contains counterbalancing errors. That is, some costs of proposals never submitted should perhaps be allowed but, on the other hand, some costs of proposals that were submitted are not allowable, and these two adjustments, it believes, are very roughly equivalent. (Transcript of Informal Conference, April 12, 1978, page 75; Supplemental Brief of HEW, May 23, 1978, pages 4-6: "the ultimate determination...probably provided a reasonably accurate assessment (perhaps tilted somewhat in favor of the grantee).") The distinction between costs of specific bids prepared and costs of bids submitted does not indeed appear to be very realistic. It can only make a difference if there are actual instances of costs of the immediate preparation of bids and proposals which were thereafter not submitted. No such incident has been brought to our attention or seems likely to have occurred.) It is recognized of course that the Region's estimates are extremely rough but they appear to be made in good faith, and since the Regional Office could quite properly have taken a much harsher position, we believe that, absent a clearer showing which grantee has not made, the Region's position here should be sustained. (University of California, Indirect Cost Rate, Docket No. 76-6, Decision No. 40, October 11, 1977, page 11; Oregon State-wide Cost Allocation Plan, supra, page 5). We do not accept grantee's contention that the statistics it developed for a later period after adoption of a better accounting system should now be read back into the earlier period. (Grantee Brief in Response to Informal Conference, May 23, 1978, pages 32 and 33).

The appeal is therefore denied with respect to Bidding and Proposal costs.

Citizens Participation Costs.

Citizens Participation costs are grantee's name for a class of costs originally classified as fund raising. Approximately 90 percent of the costs in dispute

relate to the holding of three meetings or conferences (the Williamsburg Conference, the PepsiCo Meeting, and the Dupont Plaza Conference), several times described in the materials submitted.

The Region asserts that these costs in their entirety must be disallowed under the provisions of A Guide for Non-Profit Institutions: Costs Principles and Procedures for Establishing Indirect Costs and other Rates for Grants and Contracts with the Department of Health, Education, and Welfare (OASC-5), in particular paragraphs C.1, 2 and 3, Direct Costs, and paragraph G.33, Public Information Services Costs. (The August 1970 and August 1974 revisions of the Guide (OASC-5) are identical so far as material here. Page references throughout are to the August 1974 edition.) Grantee takes the position that these costs were necessary to its ability to perform its tasks and that it has no other source of revenue at present and therefore these costs must be paid by HEW. (Grantee Application for Review, July 23, 1976, pages 3-4, 10; Grantee Response to Executive Secretary's letter, October 3, 1977, pages 12-14; Grantee Response to Order to Show Cause, November 30, 1977, pages 3 and 4).

Certain costs of a non-profit organization however are not reimbursable at all, and the issue to be determined is whether these are in that category.

OASC-5 provides, paragraph C.2. at pages 16 and 17, that certain types of costs, or costs associated with certain activities are not reimbursable as a charge to a DHEW grant or contract. These unallowable costs are identified in Section G, which contains general standards for selected items of costs. Paragraph G.33. defines public services information costs to include costs of promotion, public relations, and other forms of information services incurred to:

- "(a) Inform or instruct individuals, groups, or the general public about health or social problems.
- (b) Interest individuals or groups in participating in a service program of the institution.
- ....
- (d) Appeal for funds.
- (e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community."

Of these costs, fund raising costs are unallowable as either a direct or indirect charge to a DHEW grant or contract. (Cf.G.18(b)). Other public information services costs are unallowable as direct costs of DHEW grants or contracts unless formally approved and are unallowable as indirect costs if "identifiable with a particular cost objective."

Identification with a particular cost objective, i.e. treatment as a direct cost, may result in a particular cost being non-reimbursable as a charge to a DHEW grant or contract regardless of its type or the activity with which it is associated. Paragraph C.1. of OASC-5, at p.16, provides that "[c]osts identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly."

Moreover, like costs must be treated alike--either as direct costs or as indirect costs. A grantee may not charge conferences, for example, as direct costs when they can be advantageously so charged and as indirect costs when direct cost treatment is disadvantageous. (OASC-5, Section IV C.1. and page 57 Section II.A). This, in part, is what grantee seeks to do.

Paragraph C.2. of OASC-5 specifies when unallowable costs or activities must be treated as direct costs or activities for the purpose of allocating indirect costs to them. According to this paragraph, treatment of a function as direct is indicated when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping. Further, the paragraph identifies certain types of activities which generate costs which must be treated as direct "when normal or necessary to an institution's primary mission," including the following:

- "(b) Providing services and information to members, legislative or administrative bodies or the public.
- (c) Promotion, lobbying and other forms of public relations.
- (d) Meetings and conferences except those held to conduct the general administration of the institution.
- (e) Fund raising. . ."

This provision reflects the intention that an institution's primary mission may be a particular cost objective. When the listed activities are normal and necessary to a primary mission, the associated costs are costs of "other work of the institution" which cannot be charged to DHEW grants or contracts and, therefore, must be excluded as indirect costs.

Relating the specific cost principles of Section G and the criteria for identifying direct costs in Section C thus leads to the following conclusions with respect to reimbursement from DHEW grants or contracts:

- (1) Fundraising activities are excluded as direct and as indirect costs.

- (2) Public information services costs are excluded as indirect costs if normal or necessary to an institution's primary mission or otherwise identifiable with a particular cost objective.
- (3) Meetings and conferences are excluded as indirect costs if they are normal and necessary to an institution's primary mission and not held to conduct the general administration of the institution or if they are a form of information service and are identifiable with a particular cost objective.

That certain activities may be associated with the "primary mission" of a non-profit institution flows from the basic principle that a non-profit grantee such as Legis 50 is normally expected to have an autonomous mission of its own and not merely to serve as an instrument for the performance of federal activities under grant or otherwise. It is expected to have, to the extent necessary, independent funding volunteered by an interested community to serve its autonomous goals and to pay at least the costs of these categories of activities in support of the institution's primary goals. These expenses will not be reimbursed as an indirect cost by the federal government and will be reimbursed as a direct cost only when they are shown to be direct costs of a specific federal grant or contract-supported activity and otherwise meet the applicable requirements.

Grantee argues that because it only operates at present under federal grants and contracts, all of its costs must be paid for by those grants and contracts. Grantee's submission shows a substantial and growing and energetically pursued amount of funding from corporate sources. (Region Response to Application for Review, October 15, 1976, Attachment G, 1973 Annual Report, page 25). But assuming that these sources have dried up or are inadequate, grantee's conclusion completely misconstrues the basic grant process. Grants do not in general pay all costs. They are in basic principle assistance to an autonomous grantee, and if the grantee is unable to meet the costs which the grant system expects it to shoulder, it does not thereby acquire a claim on the federal government. Action for Boston Community Development, Inc. (ABCD), Docket No. 76-4, Decision No. 32, January 31, 1977, page 3.

Grantee also argues that the federal government is obliged to pay the costs for those activities by which grantee acquires credibility. (Transcript of Informal Conference, April 12, 1978, pages 18-20). That will not do. What grantee calls its credibility is something that it must bring to the grant and not expect the grant to purchase for it.

The Citizens Participation costs appear to be associated with the categories of activities referred to in paragraph C.2. of OASC-5. As described by grantee they were clearly normal and necessary to the institution's primary purpose. They reflected headquarters activity that included salaries, occupied space and was serviced by indirect cost activities. They involved the providing of services and information to legislative bodies and the public that appeared to

be promotional and public relations activities. They were primarily costs of meetings and conferences other than the institution's general administration meetings. They were in part fund raising.

Grantee has been several times invited to comment specifically on the eligibility of these costs for inclusion in the indirect cost rate computation in view of these exclusions and certain more specific provisions contained in the preamble of paragraph G., General Standards for Selected Items of Cost, G.12, Entertainment Costs, and G.33 Public Information Services Costs.

Grantee's responses were unsatisfactory. They appeared to avoid responding to specific inquiry. For example when asked to comment on whether these costs were not promotion, lobbying or other forms of public relations, grantee responded by denying that these costs were lobbying costs but made no comment on promotion and other forms of public relations other than a general denial. (Order to Show Cause, November 10, 1977, page 3 and page 5, item 1; Grantee Response to Order to Show Cause, November 30, 1977, page 4, last paragraph). When asked to comment on whether these costs did not relate to providing services and information to members, legislative or administrative bodies or the public, grantee denied that it had members or provided services or information to the public, but acknowledged providing services and information to legislative or administrative bodies as part of specific grants and contracts. (Order to Show Cause, November 10, 1977, page 3 and page 5, item 1; Grantee Response to Order to Show Cause, November 30, 1977, page 4).

In addition, the responses appeared to be contradicted by information contained in annual reports and other publications of the grantee contained in the file and statements contained in file memoranda and reports of conferences.

Although it does not wish to acknowledge participation in promotional and public relations and public information activities, Legis 50 has put out a pamphlet which describes Legis 50 as follows: "Legis 50 is a national organization working to improve the fifty state legislatures through non-partisan research, publications, technical assistance and operating programs." (Response to Order to Show Cause, November 30, 1977, Exhibit B, page 18).

In a newsletter entitled Insight, February 20, 1976, Legis 50 refers to its change of name and comments that Legis 50 is a focal point from which programs for legislative improvement are generated and implemented, a center for research, education, resource development, information-gathering and analysis, and publishing. (Response to Order to Show Cause, November 30, 1977, Exhibit G, page 3).

In the annual report for 1973 at page 14, Legis 50 states that it maintains an active research and publications program answering individual research requests, issuing publications such as the research memorandum and information bulletin to keep the organization's contacts up to date on changes in the legislative reform field, and conducts an active public information effort



with the publication of general brochures on state legislatures. (Region Response to Application for Review, October 15, 1976, Attachment G).

In the face of statements such as these, especially in the absence of a pointed effort at explanation, it is impossible to accept Legis 50's general denials that it has engaged in providing informational services, promotion and public relations, meetings and conferences, and fund raising or its general denial that the Citizens Participation costs represent in whole or in major part (and, if in part, there is no attempt on Legis 50's behalf to show what portion may be defensible) such activities, and the costs of meetings and conferences other than those held to conduct the general administration of the institution.

Partly in view of the inadequate responses to the Order to Show Cause, the Panel conducted an informal conference in the hope that face-to-face confrontation would give grantee an opportunity to clarify what it had failed to clarify in writing. In the Notice of this conference, the apparent contradiction and non-responsiveness were called to grantee's attention. Grantee was again pointedly requested to comment.

At this meeting grantee again in its voluminous written material and oral presentation failed to meet the specific issues raised, and in directing the filing of final briefs in this matter, the Chairman expressly called attention once again to this deficiency and invited a better response:

"I will, however, make a personal observation in connection with the brief that we invite you to submit and that is that I for one was rather disappointed that some narrowly focused questions that rested on very specific references to material in the record--for example, at the bottom of page six and at the top of page seven, we asked you to address yourself to a question that we thought was highlighted by pages five, six and 15 of exhibit B to your response to the order to show cause, and so on. There are quite a number of very specific references that we asked you to address yourself to. And I found it disappointing that in your response you have given us, it seemed to me a great deal of general response but no specific response to those provisions.

"I would recommend to you that you at least think about whether you want to make a more specific response on those points." (Transcript of Informal Conference, April 12, 1978, p. 124-5; cf. Panel Member Mr. Hastings p. 125-6; cf. also pages 20-22).

In spite of this, grantee once again in its brief made assertions of generalities but did not meet at all the very specific concerns of the Panel. In any event we are persuaded by the record that these costs cannot be justified.

Grantee exists to influence legislatures to improve the legislative process. This is its primary mission as stated in its bylaws and in various forms in its publications. (Grantee Response to Executive Secretary's letter, October 3,

1977, Exhibit C, Articles of Incorporation and By-Laws; Region Response to Application for Review, October 15, 1976, Attachment G (1973 Annual Report); Grantee Response to Order to Show Cause, November 30, 1977, Exhibits B through I (brochure and newsletters)). In order to accomplish this mission, it provides services and information if not to members then to legislative or administrative bodies and to the public.

Legis 50 stresses the special character and peculiar nature of the work that Legis 50 does. It states that it is not engaged in influencing legislation at the State legislative level. "What it does do is that it works to implement the development, the improvement and the development of policy and the inter-connection between State governmental policy and federal policy." Citizens Participation activity is described by Legis 50 as the work of identifying influential community leaders, of establishing contacts and relations with them, and marshalling their efforts on behalf of legislative improvement programs. (Transcript of Informal Conference, April 12, 1978, page 8, 10-11). The primary mission of Legis 50 is described as follows in its bylaws:

"To achieve its purposes THE CENTER FOR LEGISLATIVE IMPROVEMENT will devote its principal attention to 1) providing information on the state legislatures to interested organizations and to the general public, 2) encouraging, assisting and providing a medium for communication among state citizen groups working to support and improve the effectiveness of their legislatures, and 3) bringing together pertinent existing research and conducting or encouraging new research where needed." (Grantee Response to Executive Secretary's letter, October 3, 1977, Exhibit C, By-laws, Article II, last paragraph).

Legis 50 objects that this description no longer fits its current activities and that although it has made other amendments to its bylaws, its failure to amend these provisions should not be interpreted as confirming their accuracy. (Grantee Response to Order to Show Cause, November 30, 1977, pages 3 and 4). We are unable to understand in what respect Legis 50 wishes to repudiate this definition of its primary purpose, but the problem does not appear to be an important one because any of the many statements that Legis 50 has made of its primary function in annual report, newsletters, applications for grants, documents filed with the Board and orally at the informal conference lead to the same conclusion. The primary mission of Legis 50 in broad terms is to influence State legislatures, to improve the processes by which State legislation is made. There appears to be no room for reasonable doubt that the Citizens Participation activity is normal or necessary to the institution's primary mission so described, and the costs of that objective should be directly attributed to it.

We now turn to consider specifically whether the three major items which constitute the bulk of the Citizens Participation costs are in the categories of costs excluded from an indirect cost rate by OASC-5.

The PepsiCo Meeting.

This meeting is clearly excluded from allowability in the indirect cost rate as a fund raising meeting. It was expressly so called in Legis 50's own internal records of the meeting and the expression was not used in a Pickwickian sense. The purpose of the meeting was to get underway a concentrated drive for corporate contributions of unrestricted funding.

It is described in a Legis 50 memorandum from Thomas L. Budd, Project Manager, to all Directors dated June 7, 1974, as follows:

"Jerris Leonard, Jim McNeely and I will be attending a fund-raising meeting at 12:00 o'clock noon on June 13, 1974, at PepsiCo, Incorporated, in Purchase, New York. The purpose of this meeting is to ascertain whether or not a select group of corporate executives representing major corporations within the greater New York City area can assist the Citizens Conference in identifying and soliciting other major corporations, particularly within that same geographical area.

"The concept of a Task Force on Corporate Funding for the Citizens Conference was originally drafted by Dick Edwards, and improved upon by Jim McNeely. ...a meeting took place. . .on April 19, 1974. In this initial meeting, the crucial need for unrestricted funding by the corporate community was stressed. In fact, a statement was made that the Citizens Conference must receive substantial unrestricted funds in order to provide it with flexibility needed to meet the needs for legislative improvement. Those present agreed to assist the Citizens Conference in identifying the problems of enlisting the support of other key corporations for the work of the Citizens Conference, and to form the nucleus for a forthcoming Task Force that would move this effort from a point of discussion to a point of action. It was further agreed that a pilot project should be attempted before utilizing this approach on a national basis."

(R-9, Grantee Memorandum, June 7, 1974, re PepsiCo Meeting, presented by Region at Informal Conference, April 12, 1978; cf. also Transcript of Informal Conference, page 46).

The memorandum continues to refer to "identifying and soliciting other major corporations," to moving in the direction of "developmental fund-raising," and adds,

"Furthermore, in preparation for this meeting and as a tool of solicitation, Dick Edwards drafted an outstanding forty-four page document entitled, 'A Suggested Rationale for Corporate Support of the Citizens Conference on State Legislatures'. . .for the purpose of creating a strong solicitation statement that would hopefully demonstrate the correlation among corporate well-being, legislative improvement, and

the activities and progress of the Citizens Conference." (R-9 Grantee Memorandum, June 7, 1974, re PepsiCo Meeting, presented by Region at the Informal Conference, April 12, 1978).

As a fund raising meeting it is excluded both from indirect costs and from direct cost allowability. The meeting is also excluded as an indirect cost element as a promotional activity, as a form of public relations, and as a meeting not held to conduct the general administration of the institution.

The Williamsburg Meeting.

This meeting in its formal content focused on campaign funding and on openness in government. It is clearly not allowable as a direct cost to the grant and, if allowable at all, it must be as an indirect cost. The meeting is described at length and repeatedly in the file. It was designed to bring persons of influence, in the corporate world particularly, and State legislators together in what is described as an unthreatening atmosphere and an atmosphere of candor and to impress the legislators by the presence of the businessmen and the businessmen by the presence of the legislators. (Grantee Response to Order to Show Cause, November 30, 1977, page 8). It is described by Legis 50 spokesman as a form of "developmental fund-raising" (R-11 Transcript of May 18, 1976 Meeting, page 32, presented by Region at the Informal Conference, April 12, 1978), and, although there is some quibbling about the meaning of this expression, it seems likely that in significant part the meeting was envisioned as part of grantee's fundraising activities. It also appears likely, although this is not unmistakably clear, that the general tenor of the meeting was that of a social activity and the costs related thereto would be unallowable under G.12. To the extent that these costs were public information services costs as they appear to be under G.33, they are identifiable with a particular cost objective, namely the carrying out of grantee's primary mission, and as such would require direct cost treatment.

The Dupont Plaza Meeting.

This meeting was apparently thought of as an attempt to involve non-establishment groups. (Grantee Brief in Response to Informal Conference, May 23, 1978, pages 15 and 16; Transcript of Informal Conference, April 12, 1978, pages 16-18). It appears clearly excluded from indirect cost treatment as an activity providing services and information to the public, as promotional activity, and as a form of public relations, and in any event as a meeting or conference not held to conduct the general administration of the institution, identifiable with a particular cost objective, the institution's primary mission.

The remaining minor costs in this category must be stricken because grantee has failed to carry the burden of identifying and justifying them and because its general assertions with relation to them appear to be contradicted repeatedly by documents issued by it or contained in its files which grantee has, after repeated invitations, made no pointed effort to explain away.

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The appeal is therefore denied with respect to Citizens Participation costs.

#### CONCLUSION

We therefore conclude that the appeal must be denied because Legis 50 has made no valid showing of grounds to overturn the Regional Office rejection of Citizens Participation costs and no valid showing that it has Bidding and Proposal costs in an amount in excess of the rough figure reached by the Regional Office even though we do not altogether approve the process by which the Regional Office reached that rough figure.

/s/ Francis D. DeGeorge

/s/ Wilmot R. Hastings

/s/ Malcolm S. Mason, Panel Chairman