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The Arts Lottery

GOVERNMENT DOCUMENTS
COLLECTION

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University of Massachusetts
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Guidelines for Official Arts Councils Administering Massachusetts Arts Lottery Funds

The success and viability of the Arts Lottery is wholly dependent upon its acceptance by the public. To stimulate awareness of the lottery and help ensure its ultimate success, arts councils and potential recipients of Arts Lottery funds are encouraged to support the Arts Lottery in all appropriate ways. These may include direct participation, verbal support, advertising in programs and brochures, and, where appropriate, sale of Arts Lottery tickets.

FROM THE CHAIRMAN

Commonwealth of Massachusetts
Edward J. King, Governor

Massachusetts Arts Lottery Council
Room 212M State House
Boston, Massachusetts 02133
(617) 727-0419

Jacqueline D. O'Reilly, Chairman
Jane P. Fitzpatrick
Joseph E. Hill
William J. McCarthy, Esq.
Patricia Rice

Max Friedli, Director

Dear Trustees:

On behalf of the Massachusetts Arts Lottery Council, I want to express my sincere gratitude to the Chairpeople and members of the more than 300 arts councils which have been appointed to be trustees of funds generated by the first arts lottery in the nation.

Your enthusiasm and support have been invaluable in establishing our program and we look forward to a successful statewide effort in the future.

We know that you join us in expressing our deepest appreciation to the members of the Guidelines Committee for their extraordinary commitment and contribution to the project.

Sincerely,



Jacqueline D. O'Reilly
Chairman

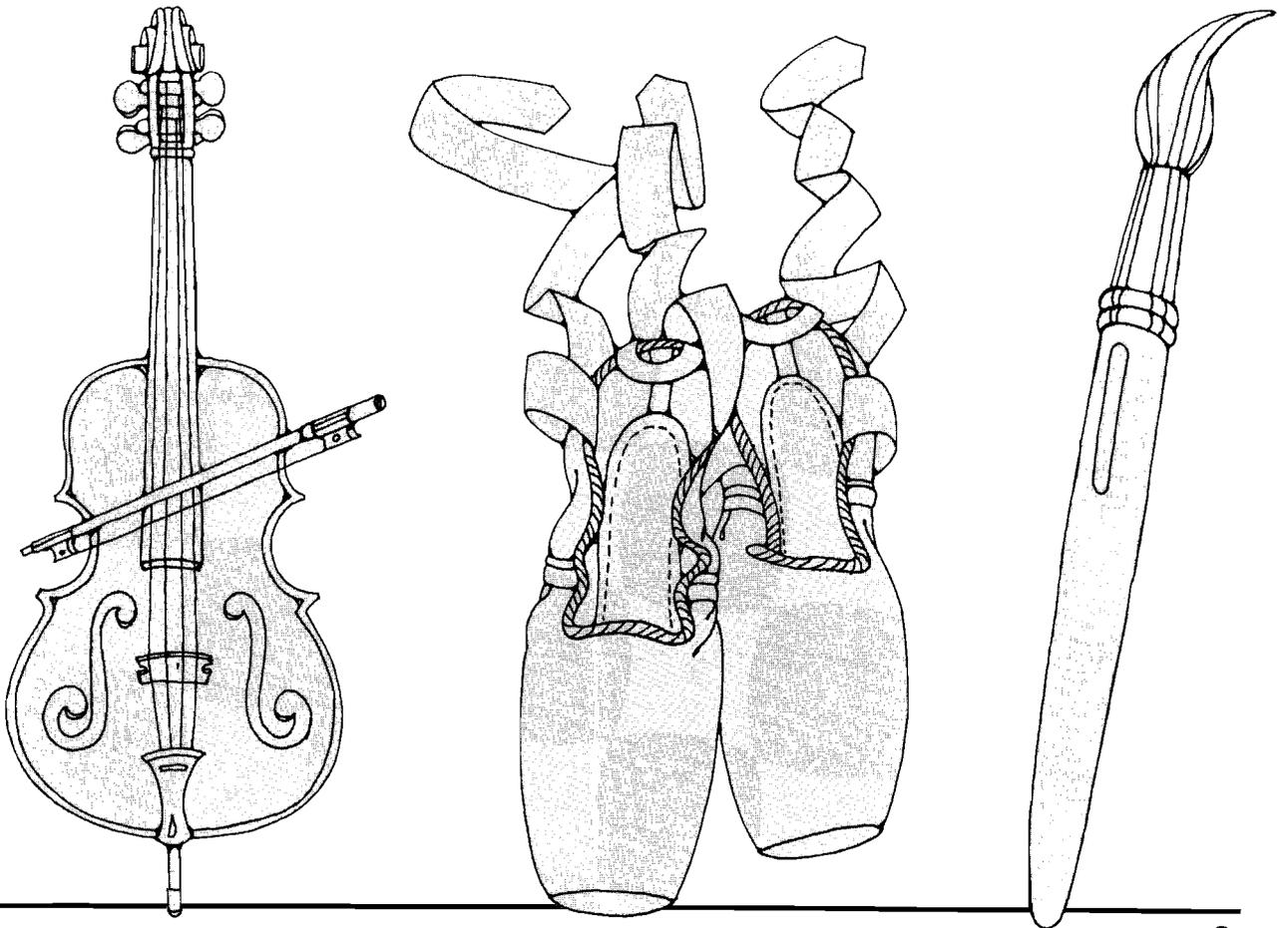
INTRODUCTION

The new Massachusetts Arts Lottery is an exciting new experiment in arts funding for two reasons: (a) it establishes the first-in-the-nation lottery solely to profit the cause of the arts, (b) it sets up a unique dispersal mechanism for arts funds through local and regional publicly appointed arts councils throughout the Commonwealth of Massachusetts.

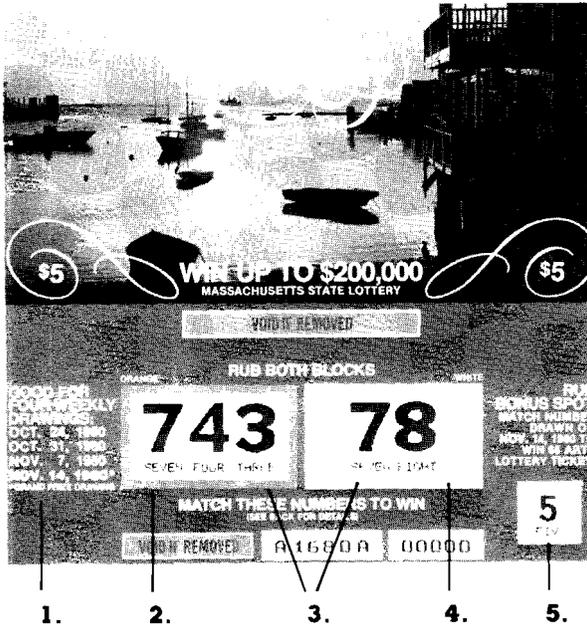
The Arts Lottery Game

On October 14, 1980, the State Lottery Commission launched the possibly most sophisticated lottery game ever devised. The Arts Lottery sells a \$5 good-for-four-weeks ticket with beautiful New England photography and three rub off spots which cover the numbers. No matter when the ticket is bought it is valid for all four weekly Friday drawings. No matter how many tickets are sold a grand prize winning of \$200,000 is guaranteed every fourth Friday.

Depending on how many of the rubbed off numbers a player can match with the numbers drawn every Friday, the winnings are \$10, \$100, \$10,000 and \$200,000. On the fourth Friday a bonus number is drawn which entitles the player to a free Arts Lottery ticket.



This re-print of the Arts Lottery flyer explains the game in more detail.



1. Each ticket good for four consecutive weekly drawings regardless of whether you buy the ticket during the 1st, 2nd, 3rd, or 4th week.
2. Match the orange 3 digit number and win \$100.
3. During the 1st, 2nd or 3rd week match the white and orange numbers and win \$10,000. **Match the white and orange numbers in the Grand Prize Drawing (4th week) and win \$200,000.**
4. Match the number in the bonus spot and win a free ticket.
5. Match the white 2 digit number and win \$10.

The Arts Lottery really is a good bet for Massachusetts. That's because it supports the arts on a local and state level. And the Arts Lottery could be a good bet for you too. Because with a little luck you could win \$200,000* And \$200,000 is a good reason for anyone to support the arts.

The Lottery's best odds to win a top prize**

PRIZE STRUCTURE FOR ARTS LOTTERY		
WIN	NO. OF PRIZES	ODDS
\$200,000	1	1:100,000
10,000	3	1: 33,333
100	396	1: 253
10	3,996	1: 25
"Free Ticket"	10,000	1: 10

*\$10,000 a year for 20 years. **Lottery prizes of \$50,000 or more.

Prize structure is based on sale of 100,000 tickets.

There is a guaranteed \$200,000 winner for every Grand Prize Drawing. Winning number announced every Friday during the late news on TV and on Saturday in the newspaper.

ALL WINNERS, TICKETS AND TRANSACTIONS SUBJECT TO LOTTERY COMMISSION RULES.

 MASSACHUSETTS STATE LOTTERY

Presently, close to 3,000 of the state's lottery outlets which carry the other state lottery tickets—supermarkets, drug stores, etc.— are selling the Arts Lottery tickets and plans are underway to include theater box offices and arts organizations among the Arts Lottery sales agents.

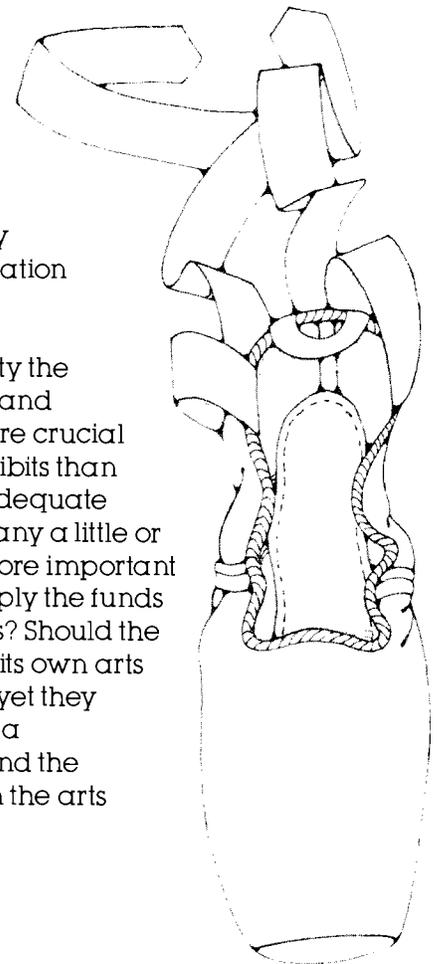
The winning numbers are publicized in the major Sunday newspapers and by some radio and TV stations on Friday and Saturday. Numbers can also be obtained by calling the State Lottery Commission at (617) 848-7755 or their winning number line (617) 575-1000.

Winnings may be claimed by first detaching and filling out the top part of the Arts Lottery ticket and then handing it to the sales agent for up to \$10, or mailing it to the State Lottery Commission for all higher winnings. If the ticket should turn out to be a multiple winner, the computer automatically issues all checks.

On a \$5 ticket investment the player can expect approximately \$2.25 to be returned in the form of prizes, 25¢ to go to the sales agent for commission, approximately 50¢ to be used for promotion and administration, and the remainder, some \$2.00 to be profit for the arts.

The Use of the Arts Lottery Funds

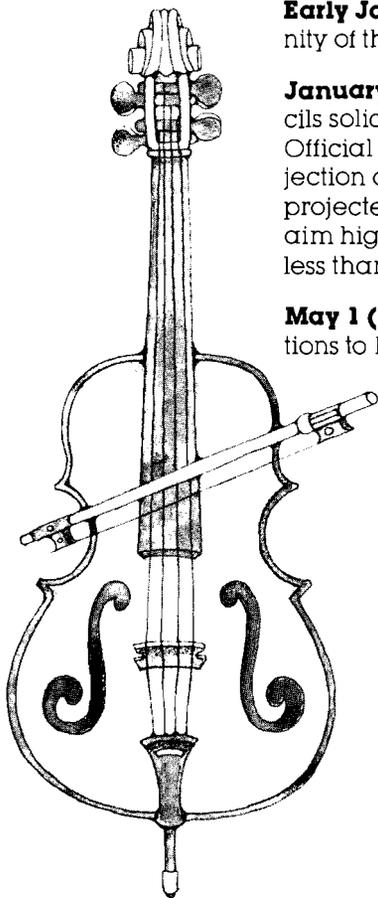
The more than 2,000 members of all the new local and regional arts councils across the state who are charged with administering the Arts Lottery funds are confronted with the same complex tasks that any arts funding agency has to address. The interests are often conflicting yet equally valid. Should seasoned artists receive the foremost consideration or should newcomers be given a chance? It is important to encourage and support local artistic ventures, but is it more valuable to go elsewhere at times to provide the high quality the public deserves? Should we pay for the education of artists and audiences rather than subsidize the accomplished? Is it more crucial to give many people free admission to the theater and exhibits than to ensure that the artists be supported in their struggle for adequate compensation? Should the limited funds be used to help many a little or to fund one project totally? Are the traditional arts values more important than the new and experimental? Is it more beneficial to apply the funds to the smaller community arts or the larger professional arts? Should the council regrant or could it provide a better service through its own arts programming? All these demands have their validity and yet they cannot all be met at the same time. The Arts Lottery fund is a supplement in the variety of sources available to the arts, and the local arts councils are called upon to assume their place in the arts funding network.



The Local and Regional Arts Council Network

For the purpose of these guidelines the local and regional arts councils administering the Arts Lottery funds are called "official." The Mayors and Boards of Selectmen have the power to appoint a minimum of five official arts council members. If new appointments are made, they should be for full two year terms so as to ensure a sliding membership on the councils. Once established, the official arts councils function as independent bodies. Their main purpose is to make sure that the Arts Lottery funds are distributed to worthy artists and arts organizations in their communities.

A typical funding cycle is 6 months long. The following is an example:



Early January (July): The state supplies a projection to every community of the funds they can expect in 6 months.

January through April (July through October): The official arts councils solicit applications for grants from artists and arts organizations. Official arts councils decide whom to fund in accordance with the projection obtained. Since there is a possibility that a higher amount than projected will be paid out, the official arts councils are encouraged to aim high and devise a policy by which the grants may be reduced if less than the amount expected is realized.

May 1 (November 1): Official arts councils submit summary applications to Massachusetts Arts Lottery Council. If no arts council has been formed and/or no application has been submitted by that time, the community forfeits its right to any Arts Lottery funds for that particular funding cycle. The other communities profit accordingly.

May-June (November-December): The Massachusetts Arts Lottery Council, which is limited in its authority to comparing the grant applications with these guidelines, either awards the grant or returns the application to the community for revision should there be serious non-compliance.

July 1 (January 1): Disbursements are made to the qualifying communities. These amounts are fixed and determined by the local aid formula and are not dependent on the amounts approved on the summary applications. In the event that excess funds are given to the communities, supplementary applications may be forwarded to the Massachusetts Arts Lottery Council or these excess funds may be credited to the next funding cycle.

These guidelines have been drawn broadly with the intent to ensure maximum funding freedom. They also avoid defining the terms "arts" and "quality" to emphasize the local decision autonomy, to make allowances for differing needs and circumstances in the communities, and to encourage official arts councils to establish their own policies and criteria as they deem beneficial to the communities. These guidelines aim to keep administrative work and expenses at a minimum.

All councils are reminded that the provisions of these guidelines can be waived in appropriate cases by contacting the Massachusetts Arts Lottery Council. For example, the official arts councils may determine that the most beneficial use of the Arts Lottery funds may be to devote a substantial amount to their own programs and services that are not otherwise available in the community, or to a single venture, such as maintaining an arts center.

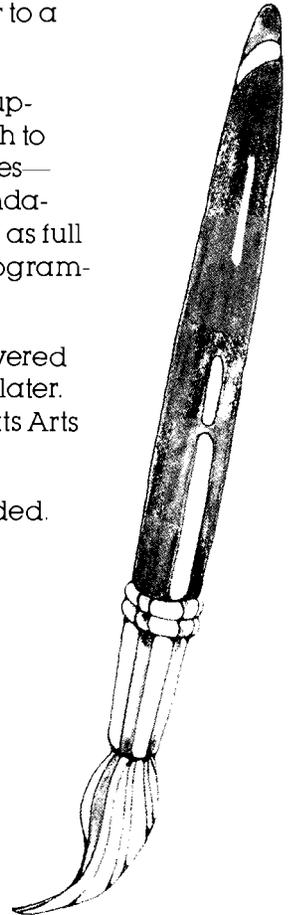
Situations involving activities that are not supported by or only partially supported by Arts Lottery funds may occur. The official arts councils may wish to seek income from sources other than the Arts Lottery, such as public sources—either federal, state or local—or private sources—either corporations, foundations or individuals. In the same vein, official arts councils may wish to act as full fledged community arts agencies by providing additional regranteeing, programming and service activities.

These other potential functions—funding and other activities—are not covered by either existing legislation or by these guidelines, but will be addressed later. Official arts councils should in the meantime confer with the Massachusetts Arts Lottery Council on specific questions.

Revisions may be forthcoming as needed. Forms will be supplied as needed.

Max Friedli,
Director

Massachusetts
Arts Lottery
Council



GUIDELINES

Intent and Purpose

Principles

Requirements

Appendix

962 CMR 2.00: GUIDELINES

Section

- 2.01 Intent and Purpose
- 2.02 Principles
- 2.03 Requirements and Procedures
- (962 CMR 2.04 through 2.89 Reserved)
- 2.90 Appendixes

2.01: Intent and Purpose

- (1) The Arts Lottery is intended to provide a supplemental source of public funds to be used for and devoted to the support and betterment of the arts and humanities in the Commonwealth of Massachusetts.
- (2) It is intended that the arts and humanities encompass, without limitation, the study, pursuit, performance, exhibition, and enjoyment of cultural activities in the broadest sense.
- (3) Because the principal objectives of the Arts Lottery are (1) to promote and maintain the vitality of existing cultural resources, (2) to ensure the continued contribution and value of these resources to the Commonwealth, the local communities and their residents, and (3) to involve as many citizens as possible in some aspect of cultural activity, it is intended that, consistent with the following principles and guide lines, Arts Lottery funds be directed to individuals and organizations dedicated to productive and creative efforts in the arts and humanities.
- (4) The structure of the Arts Lottery is intended to encourage the recognition of, and provision for, the particular needs of local communities in carrying out the purposes of the Arts Lottery.

2.02: Principles

- (1) Accessibility Principle: Arts Lottery funds are intended to support activities which are available to or benefit the general public.
- (2) Nonsubstitution Principle: Arts Lottery funds are not intended to substitute for, replace, or relieve existing responsibility for public funding of programs in the arts and humanities.
- (3) Nondependency Principle: Arts Lottery funds are intended to respond to community initiatives as evidenced by local support in the form of public and private contributions of money, effort or other resources and are not generally intended to be used as the sole source of funding for projects of a continuing nature.
- (4) Nondiscrimination Principle: Distribution and use of Arts Lottery funds shall not be based on criteria involving race, sex, religion, creed, color, or national origin except where such criteria are relevant to the activity to be funded.

2.02: continued

(5) Local Decision Principle: To the extent consistent with the Act establishing the Arts Lottery, the foregoing statement of Intent and Purpose, this statement of Principles and the Requirements and Procedures, and Appendix Guidelines which follow, decisions on the distribution and use of Arts Lottery funds shall rest with the official local and regional arts councils.

2.03: Requirements and Procedures

(1) Accessibility

(a) Activities funded by the Arts Lottery should be available to the general public by exhibit, performance or other means whenever possible, and, insofar as possible, shall be accessible to the handicapped and those with other special needs.

(b) Where funds are directed toward activities which do not lend themselves to public viewing, some other forum of a public nature should be considered, e.g., progress reports on or demonstrations by individual artists of their continuing work, readings of works in progress, etc.

(c) The benefit that the general public derives from activities funded by the Arts Lottery may be indirect by providing support or the opportunity for improvement in one's field, as well as direct.

For example, funds awarded to individual artists for study in their field need not be conditioned on producing tangible results.

(2) Nonsubstitution

(a) Communities should not supplant existing funding in the arts and humanities with Arts Lottery funds. This is particularly important in areas such as school and library cultural programs which are already an integral part of the communities' budgets.

(b) Use of Arts Lottery funds to supplement or expand publicly funded activities may be appropriate if not intended to substitute for normal budget maintenance or growth.

For example, the hiring of an artist to work in the school system for a semester might be a more appropriate use of Arts Lottery funds than hiring an additional art teacher.

(3) Nondependency

(a) A community's need for, or the benefit to be derived from, a particular activity can, in general, be measured by the involvement and support of the citizens of the community. This citizen concern can be evidenced in a number of ways, e.g., attendance, private contributions, public funding, volunteer work, membership, even written expressions of support.

(b) While there is no specific requirement for matching of Arts Lottery funds, local councils are encouraged to formulate a policy on the size and character of projects that might fairly call for some matching requirement.

(c) Arts Lottery funds should not be depended upon as the sole source of funds for any project of a continuing nature, although

2.03: continued

one-time projects which involve minimal cost or are of an experimental, "pilot," innovative or otherwise special nature and do not lend themselves to other support may be funded in their entirety by Arts Lottery funds.

(d) Individual artists or organizations demonstrating other sources of support for their continuing needs may have particular activities funded in their entirety, or, may have part of their operating expenses funded by, Arts Lottery funds.

For example: A. An existing musical group may be fully funded for a series of concerts if that series does not constitute its entire performing season or the costs associated with the series are less than its total operating budget. Alternatively, the group may be funded for part of its annual operating costs whether or not associated with particular activities.

B. An individual artist may have part or all of the cost of a particular work funded by a commission, purchase or otherwise, or may be paid toward living expenses during the completion of a work in the form of a fellowship or otherwise.

(4) Nondiscrimination

(a) Local councils are not only required to comply with legislation that prohibits discrimination based on race, color, national origin, sex, religion, or handicap, but are encouraged to develop a policy of affirmative action to ensure full and equal access for all residents of the Commonwealth to activities funded by the Arts Lottery.

(b) While discrimination on criteria involving the status of applicants is not permitted, there may be instances where such criteria are relevant to the particular activity for which Arts Lottery funds are sought such as specific ethnic or cultural activities or cultural efforts representative of specific segments of society (women, disabled, elderly, children, those in prisons or hospitals, etc.).

For example: In considering an application for publishing an anthology of poems by writers of a particular ethnic background or for supporting a project with a feminist viewpoint, these criteria may be considered relevant to the artistic product.

(5) Local Decision

(a) Procedure

1. It is intended that to the fullest extent possible decisions as to the distribution and use of Arts Lottery funds be made by the official arts council in each community or region.

2. It is required that such decisions be consistent with the law and these guidelines.

3. It is expected that each local council will establish appropriate procedures to ensure the widest possible involvement by the community in such decisions and the development, where appropriate, of an arts plan for use of Arts Lottery funds for a particular period of time.

4. Each arts council will certify that appropriate means were used to notify the general public and potential recipients of the

2.03: continued

availability of Arts Lottery funds, the general plan the council has developed for use of the funds, if any, the procedures for applying for funds, and the methods by which the applications will be reviewed.

5. A uniform application for submission by applicants to local councils will be furnished by the Arts Lottery Council; however, additional information may be requested by local councils.

6. Each council must complete and submit a summary application form furnished by the Massachusetts Arts Lottery Council in order to request Arts Lottery funds for each period of distribution.

(b) Criteria

1. The following criteria should be considered in deciding on the distribution of funds to applicants: quality, dedication, accomplishment, financial need, community involvement, and benefit to the community.

2. Local councils may develop additional criteria for selection of applicants and may give different weight to criteria in order to reflect local concerns.

3. Recipients of funds must be organized or reside in Massachusetts and have been engaged in the kind of activity for which funds are requested for at least one year.

4. Organizations seeking Arts Lottery funds should generally be nonprofit and tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

5. Individual artists should be able to demonstrate their commitment by the previous sale or exhibit of their works, having a portfolio, or otherwise.

6. Official local councils may make rules as to eligibility of council members to receive funds, recognizing that participation of artists and cultural organizations on official councils should be encouraged.

7. Official arts councils should recognize and avail themselves of the knowledge and experience of existing nonofficial, local or regional arts councils and commissions. These entities are eligible applicants for Arts Lottery funds; however, no more than 5% of funds awarded to such bodies shall be used for administrative expenses.

8. Official arts councils are eligible to apply for funds for council-originated programs for cultural needs not otherwise being addressed in the community. Local councils must complete a separate local application form for council-originated programs and forward the application to the Massachusetts Arts Lottery Council for approval with the summary application form.

9. Funds may be used to acquire, improve and maintain facilities for the housing, support and presentation of cultural activities.

10. To promote harmonious labor relations and protect labor standards, local councils should encourage all recipients of Arts Lottery funds to pay prevailing or equivalent union scale, as

2.03: continued

recognized by the appropriate unions, to all professional personnel, laborers and mechanics.

11. Official arts councils may seek the advice of the Massachusetts Arts Lottery Council with respect to the application of these guidelines to particular situations and may request the Massachusetts Arts Lottery Council to waive one or more guideline requirements and procedures where the circumstances might warrant a departure.

(c) Accountability of Local and Regional Arts Councils

1. Each local or regional arts council shall maintain uniform prenumbered and preprinted application forms for use by each applicant for Arts Lottery funds. The form shall be supplied by the Massachusetts Arts Lottery Council and shall contain, among other data, information as to the use of the funds, the amount requested and the amount approved. It shall be signed by the individual applicant or if on behalf of an organization, by a properly identified official of such organization. Approval of such application shall be indicated by the required signature or signatures of members of the council.

2. After approval by the official council, the designated copy of each approved form shall be submitted to the Massachusetts Arts Lottery Council under cover of a summary application form furnished by the Massachusetts Arts Lottery Council. The original of each approved and each disapproved application shall be retained by the official council.

3. Applications which comply with the guidelines shall be certified for payment by the Massachusetts Arts Lottery Council by number on the summary listing which forms part of the summary application and certify payment to the comptroller of the Commonwealth of Massachusetts. In those instances where applications do not comply with the guidelines, the Massachusetts Arts Lottery Council shall note its disapproval by number on the summary listing. A copy of this summary listing noting the certification or disapproval of the Massachusetts Arts Lottery Council shall be forwarded to the originating local council. The Massachusetts Arts Lottery Council shall indicate the reason for each disapproval.

4. Funds certified for payment will be deposited into the treasuries of the cities and towns in which the official councils are located. In those instances where a regional arts council exists, the funds shall be deposited in the treasury of the larger municipality included in the particular region unless otherwise approved by the Massachusetts Arts Lottery Council.

5. Disbursement of the funds to the applicants shall be made by the city and town treasurers upon certification by the official councils. It is recommended that the city and town treasurers maintain separate revolving accounts for Arts Lottery funds and that disbursement of such funds to approved applicants be made from such accounts upon the joint signature of the town or city treasurer and the treasurer or other appointed member of the official council.

2.03: continued

6. For grants above \$1,000, each applicant shall furnish written acknowledgement to the official council of the receipt of funds disbursed to it and shall certify that the funds were or will be used for the fulfillment of the purpose indicated in its application. Such certification shall be signed by the individual applicant or by the responsible official of the applicant's organization.

7. The official council shall require the applicant to furnish a financial report to the official council not later than sixty (60) days after the completion of its program or project. The report shall provide an account of the use of the funds, including, where appropriate, the dates of payment, names of recipients and amounts expended.

8. The accounting provided by the applicant shall be retained by the official council with the application file.

9. A record of all the applications received shall be maintained by the official council, identified both by name or organization and by the preprinted number appearing on the application to provide the source to account for all applications considered whether approved or not.

10. The Massachusetts Arts Lottery Council shall arrange for periodic audit of the records of the official council and, in particular, the applications received, approved or rejected, and the accompanying documentation furnished by the grantees.

11. The Massachusetts Arts Lottery Council shall, on a random basis, audit the financial reports submitted by the grantees.

12. Grants to Religious Organizations not Permitted. The Constitution of the Commonwealth of Massachusetts prohibits the use of public money for the purpose of founding, maintaining, or aiding any church or religious denomination or society. In order to comply with this requirement, official arts councils should not accept applications from churches and religious denominations or societies for programs that further the religious activities of the applicant or that benefit, exclusively or substantially, only the members of the applicant organization.

13. Acknowledgement. In all published materials and announcements regarding the activity or programs supported by arts lottery funds, the sponsoring group or individual must acknowledge such assistance with the following statement:

"This program is supported, in part, by the Massachusetts Arts Lottery, as administered by the (name of City, Town or Regional Arts Council.)"

14. Reconsideration. Official arts councils are encouraged to develop procedures for reconsideration. In the absence of such procedures, the following procedures shall apply.

An applicant who is aggrieved by a decision of an official arts council may ask an official council to reconsider a decision on one or all of the following grounds: (1) failure to consider

2.03: continued

significant information; (2) treatment substantially different from other organizations; and (3) failure to make grants in conformity with guidelines.

No reconsideration, unless the official council chooses on its own to so provide otherwise, may be made on the amount awarded or any decision as to artistic quality.

Applications for reconsideration must be made within 14 days of the decision having been made public, and mailed to the applicant. Applications for reconsideration must be made in writing. Applicants for reconsideration shall not be entitled to be heard as of right by the official arts council, but the official council may elect to ask for elaboration of argument in its discretion.

15. The Grant Application Process. The following is an outline of the grant application process for official arts councils, including some additional procedural requirements.

a. The Massachusetts Arts Lottery Council promulgates, and to the extent necessary, revises its guidelines.

b. Official arts councils promulgate any local rules for applicants.

c. Official arts councils announce the availability of funding, conditions of eligibility, deadlines, and other important information through publication, mailing, etc.

d. Applicants submit formal applications to official arts councils.

e. Applications are logged by the official arts council or its staff and checked by the council or its staff to make sure materials are complete. Applicants are notified of deficiencies.

f. The official arts council decides which applications to grant, and to what degree, and notifies all successful and unsuccessful applicants.

g. The official arts council reconsiders any applications for which valid grounds for reconsideration have been produced.

h. Official arts councils transmit accepted grant applications, together with any supporting statements regarding compliance with guidelines, to the Massachusetts Arts Lottery Council.

i. The Massachusetts Art Lottery Council reviews such application for compliance, and certifies to the Comptroller that funds allocable to such official arts council may be released. The amounts are determined by the local aid formula. To the extent that non-compliance is found, the Massachusetts Arts Lottery Council will so notify the official council and return the non-qualifying applications for local review.

j. Payments are made from the state-level Arts Lottery Fund to the city or town treasury.

k. The official arts council makes a request to the city or town treasurer for disbursement of funds to grantees.

l. Checks are made payable by the town or city treasurer, countersigned by the treasurer or designated member of the official arts council, and delivered to grantees.

2.03: continued

m. The grantee completes the project and submits financial report and any needed certification as to compliance with the grant conditions to the official arts council.

n. The official arts council reviews and approves such reports and closes out the grant file.

2.90: Appendix - Guidelines to Open Meeting and Conflict of Interest Law

(1) Open Meeting Law. Under Massachusetts law, meetings of a local "government body", including an official arts council, must be open to the public. Mass. Gen. Laws c. 39, §§ 23A, 23B, and 23C. Because violation of the Open Meeting Law can result in the invalidation of the action taken, the following guidelines are designed to help an official arts council comply with the Open Meeting Law, though each arts council member should obtain a copy from the city or town clerk and examine its provisions for more detailed guidance.

(a) All meetings of a quorum of official arts council members (except a chance or social meeting resulting in no final agreement) must be open to the public, except for the limited exceptions specified in G. L. c. 39, § 23B.

(b) Except as provided by law, no official arts council may meet in private for the purpose of deciding on or deliberating toward a decision on any matter.

(c) Except in an emergency, a notice of any meeting or an official arts council must be filed with the city or town clerk at least 48 hours, including Saturdays, but not Sundays and legal holidays, prior to the meeting.

(d) The official arts council must maintain accurate records of its meetings, setting forth the date, time, place, and members present or absent and action taken at each meeting, which shall become public records except as otherwise provided by law.

(e) Meetings may be recorded on tape.

(f) No person may address a public meeting of an official arts council without permission of the presiding council member, and all persons shall, at the request of the pending officer, be silent.

(2) Conflict of Interest. A member of an official arts council must avoid real and apparent conflicts between his private interests and public duties so that public confidence can be maintained in the integrity of the process by which Arts Lottery funds are distributed. This duty is reinforced by the provisions of the Massachusetts Conflict of Interest Law, chapter 268A, which applies to official arts council members.

At the same time, the Massachusetts Arts Lottery Council recognizes that if the objectives of the Arts Lottery are to be accomplished, the official arts council needs to be well-informed about artistic activity in the community served, which in turn will mean, in certain cases, that individual council members may themselves be artists or have links to cultural organizations which are potentially worthy recipients. Indeed the guidelines provide that:

2.90: continued

"Official local councils may make rules as to eligibility of council members to receive funds, recognizing that participation of artists and cultural organizations on official councils should be encouraged."

Thus while each official arts council may make its own rules for funding council members, the process of funding decision must be uniform and conform to the over-riding principles of the Conflict of Interest Law.

The following guidelines, which have been reviewed by the State Ethics Commission Staff, are designed to aid members of official arts councils in their efforts to comply with the Conflict of Interest Law. At the same time, they supplement, but do not supersede the Law, and each official arts council is urged to obtain a copy of the statute and the Guide to the Conflict of Interest Law published in December 1980 by the State Ethics Commission, Room 1413, One Ashburton Place, Boston, Mass. 02108 (617)727-0060. An individual member of an official arts council may obtain an advisory opinion regarding his or her responsibilities under the law in any specific situation from the local Corporation Counsel, Town Counsel or City Solicitor. (Issues of potential applicability to more than one official arts council, however, may be raised with the Massachusetts Arts Lottery Council Staff for possible general advice from the State Ethics Commission.)

Finally, members of official arts councils are advised to seek classification by their local legislative body as "special municipal employees", as defined in G. L. c. 268A, Section 1(n). The following guidelines assume such a classification. (Members of an official arts council who are not so classified are deemed "municipal employees" for purposes of the Conflict of Interest Law, and are then subject to more restrictive provisions of the statute.)

The Conflict of Interest statute is complex, but it can be divided into categories which may be helpful to official arts council members.

First, there are standards of conduct which carry only a civil and not a criminal penalty. These standards are found in G. L. ch. 268A, § 23 and provide that no public employee (including a member of an official arts council) shall accept employment impairing his independent judgment, disclose confidential information gained through his position, use his position to gain favored treatment, give the impression that he can be influenced to give favored treatment, or so act as to raise public suspicion that he may be violating his trust.

In addition, other sections of the statute impose criminal penalties for certain conduct. For example, Sections 2 and 3 prohibit the performance of official acts in return for money (bribes). But the areas where members of an official arts council are likely to have

2.90: continued

questions are those involving conflict of financial interest while acting in an official capacity or limitations on certain outside activities. Most of these situations are covered by the following guidelines which are designed to help official councils comply with the Conflict of Interest Law.

(a) In general, a member of an official arts council must not act in his or her official capacity in matters in which he or she has a personal financial stake, or in matters affecting the financial interests of other individuals or businesses with whom he or she is closely related.

(b) More particularly, a member of an official arts council may not participate in a particular matter in which the following people or entities have a financial interest:

1. The member, himself or herself;
2. The member's "immediate family" which is defined as the member, the member's spouse, and their parents, children, brothers and sisters;
3. The member's partner (even in a totally unrelated venture);
4. A business organization which the member is serving as an officer, director, trustee, partner or employee (including municipalities and non-profit organizations, including arts organizations);
5. Any person or organization with whom a member is negotiating or has any arrangement concerning prospective employment.

(c) Participation includes participation not only in a final decision but in any of the steps leading to the final decision. Therefore an official council member should not in any way discuss with other members an application in which he has a financial interest, and should leave the room when the application is discussed or voted on. He should also disclose, as soon as he becomes aware of it, any such interest he may have in an application.

(d) A member of an official arts council will not be disqualified from participation in a decision if the member first advises the official(s) responsible for his appointment of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official(s) that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from the member.

(e) It may occur that an arts lottery council may have more than one member who is disqualified from participating in a particular matter. If such disqualifications reduce those able to participate below a quorum (a majority of the official arts council), then less than a quorum may act on the matter, provided it constitutes no less than one-third of the official arts council. If less than one-third (or if the entire official council is for some reason disqualified) then such matter shall be forwarded to the Massachusetts Arts Lottery Council, which may act in place of such official arts council on such matter if the Massachusetts Arts Lottery Council deems it

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appropriate, and if not, the Massachusetts Arts Lottery Council shall certify to the official arts council that necessity requires one or more of such disqualified members to participate so that a valid vote may be taken.

(f) Assuming such members are classified as special municipal employees by their community, and assuming not otherwise provided by law for the proper discharge of official duties, a member of an official arts council may not receive compensation from, or act as agent or attorney for, anyone other than the municipality in relation to a particular matter of direct and substantial interest to the municipality if the matter is one in which he has actually participated or over which he had official responsibility, or which is pending before his official arts council.

(g) An example of the application of guideline (f) could occur in a situation in which a serving member of an official arts council is likely to be an indirect grant beneficiary because of an employment relationship with a potential grant applicant. In such a situation, the council member must disclose his relationship and not participate in the council decision, and should seek an opinion from municipal counsel.

(h) An official arts council member may not knowingly have a direct or indirect financial interest (of more than one percent ownership interest in the stock of a corporation) in any contract made by a municipal agency of the same city or town, unless he does not participate in or have official responsibility for any of the activities of the contracting agency and also files with the city or town clerk a statement fully disclosing his own and immediate family's interest. Even if he did participate or have such responsibility, if he makes such a disclosure, the city council or board of alderman may approve his exemption.

(i) An example of the application of guideline (h) could occur in a situation where a member of an official arts council, or his immediate family, is an applicant or has a financial interest in an applicant.

Such a grant is barred altogether by G.L. c. 268A, §20 unless the council member files with the clerk of the city or town a statement making full disclosures of his interest and the interests of his immediate family in the contract and the local legislative body approves the exemption of his interest. In addition, such a council member should not participate in the council decision.

Thus, to summarize, a grant to a sitting council member individually will at a minimum involve a disclosure filing, local legislative exemption, and non-participation in the decision.

(j) A former official arts council member must never act as agent or attorney for, or receive compensation from, anyone in connection with a particular matter in which the member had participated while on the council. For example, he could not vote to award funds for a project and then work for the recipient of the funds on that same project.

2.90: continued

(k) For one year after leaving the council, an official arts council member may not appear before a town agency as agent or attorney for a private party in connection with a matter which was under his official responsibility as an official arts council member at any time within the two years prior to his termination of service, even if the member did not actually participate in the matter before the official arts council.

(l) While serving, or for 30 days thereafter, a member of the official arts council may not be appointed to a position under the supervision of the council.

All concerns about the administration of the Arts Lottery proper:

State Lottery Commission
15 Rockdale Street
Braintree, Massachusetts 02184
(617) 848-7755

Dr. William E. Perrault, Executive Director

All concerns about the use of the Arts Lottery funds:

Massachusetts Arts Lottery Council
Room 212M State House
Boston, Massachusetts 02133
(617) 727-0419

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