

Arts Agency Voids Pledge On Obscenity

By WILLIAM H. HONAN

The National Endowment for the Arts agreed yesterday to drop its requirement that the New School for Social Research sign an anti-obscenity pledge to receive the \$45,000 grant allotted for fiscal 1990.

As a result, the New School terminated its lawsuit challenging the constitutionality of the requirement. The suit had embroiled the arts endowment in controversy for nearly a year.

Although the specific agreement is with the New School, lawyers for both parties agreed that it would apply to all other 1990 grant recipients as well.

After Judge Louis L. Stanton of Federal District Court in Manhattan approved an agreement between the parties and dismissed the case, Floyd Abrams, a lawyer for the New School, said in an interview: "This is a major structural change. If it had been in effect a year ago, much controversy of the past would not have occurred."

Virginia Falck, a spokeswoman for the endowment, said that John E. Frohnmayer, the chairman of the arts agency, was unavailable for comment.

A Paragraph at Issue

The dispute concerned a paragraph in the lengthy acceptance statement that successful grant applicants were asked to sign. They were to certify that none of the Federal funds received would be used to promote, disseminate or produce material which in the judgment of the arts agency "may be considered obscene, including, but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political or scientific value."

Last year, Jack Lichtenstein, an endowment spokesman, said that the paragraph had been adopted in response to a directive from the General Accounting Office. Senator Jesse Helms, the North Carolina Republican who has been a leading critic of the agency, had asked the G.A.O. to investigate whether and how the arts endowment was putting into effect the restrictive language appended to its congressional appropriation.

Henry Wray, general counsel for the G.A.O., reported to a congressional subcommittee that because "concerns have been raised that the statutory language is vague and may even be unconstitutional," the endowment should formally issue guidelines explaining how grant recipients could avoid violating the legislative language.

Enforcement After Conviction

Under the agreement filed in court yesterday, the controversial paragraph is replaced by one stating that the arts endowment intends to enforce the anti-obscenity stipulation mandated by Congress "after a grantee has been convicted of violating a criminal obscenity or child pornography statute and all appeal rights have been exhausted."

Mr. Abrams terms the substitute language "inoffensive."

Congress removed the restriction from this year's grants when it extended the life of the agency for three years last fall. The compromise reached by legislators was that the determination of obscenity should be left to the courts.

The resolution of the case did not come as a surprise, since a Federal judge in Los Angeles ruled on Jan. 9 that the anti-obscenity clause in the arts endowment's letter of agreement was unconstitutional.

The New School project for which a \$45,000 grant was approved is a collaboration between the sculptor Martin Puryear and the landscape architect Michael Van Valkenburgh to turn a courtyard into a work of art.