

Government of the District of Columbia

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IN REPLY REFER TO:
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(AL-97-133)

March 12, 1997

Tom Coumaris
Commissioner
Advisory Neighborhood Commission 1-B
1413 S street, N.W.
Washington, D.C. 20009

Re: Do ANC bylaws expire every two years?

Dear Commissioner Coumaris:

This is in response to your March 4, 1997 letter requesting the advice of this Office as to whether the bylaws of an Advisory Neighborhood Commission (ANC) expire at the end of a year in which there is a general election of ANC commissioners.

This question was addressed in a letter of advice, dated April 8, 1993, to ANC 3-C chairperson Patricia Wamsley. At page 3 of that letter (a copy of which is enclosed), we stated in pertinent part the following:

For many purposes, an ANC is considered to be a continuing body even though its members may change significantly or totally at the beginning of a year following an election year. For example, ANCs are not required to adopt new by-laws every two years, but are governed by the by-laws adopted previously. * * *

Therefore, the answer to this question is that an ANC's bylaws do not expire at end of each two-year election cycle, but rather remain in effect until amended by the ANC.

In your letter you seek the advice of this Office concerning three other matters. As to the first of these matters, you state:

Currently purchases of goods, services, and leases are made by our chair without preapproval or even seeing by the commission of any contract for such goods, services, or lease. Once each year a "proposed budget" similar to the attached is presented to the commission without notice, and approval is voted with no other documentation. Quarterly reports are filed with only check numbers for

verification. No receipts, employment contracts, rental agreements, telephone bills, or other documentation are ever shown. Are such expenditures valid? If not[,] who is responsible for such expenditures?

Section 16(f) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(f) (1992), provides in pertinent part:

Any expenditure of funds by a Commission shall be authorized in writing by the treasurer or Chairman and recorded by the treasurer in the commission's books of accounts. No expenditure of any amount shall be made without the specific authorization of the Commission.

section 16(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(g) (1992), provides in pertinent part:

Disbursements of Commission funds exceeding \$50 for personal service expenditures shall be specifically approved by the Commission at a public meeting prior to the disbursement.

Under these provisions, the general rule is that an ANC, acting as a commission, must approve all expenditures of public and donated funds of the ANC. This does not mean, however, that there must be a vote at a public meeting specifically authorizing every ANC check that is written or authorizing every disbursement made from the ANC's petty cash fund. In this regard, this Office and the D.C. Auditor have consistently advised ANCs that routine payments for such things as telephone service, rent, and office supplies can be made without specific individual approval by the commission at a public meeting if such items are included in an annual budget that is approved by the commission. However, certain decisions to spend ANC money must be approved on an individual basis by the commission at a public meeting. Examples of things that need to be so approved are: a lease to rent office space, including all the terms of the lease; a lease or contract to rent office equipment including all the terms of the lease or contract; any decision, including any written employment contract associated therewith, to employ a staff employee and all the terms of such employment, including the rate of compensation to be paid the employee;

To avoid misunderstandings and disputes between an ANC and a staff employee, it is strongly recommended that if an ANC employs a staff support person, it do so pursuant to a written employment contract that sets forth the rights and duties of the ANC and the employee, including the duties to be performed by the employee, the rate of compensation to be paid the employee, and the fact that the employee serves "at the pleasure of the Commission." See section 16(0) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(0) (1992). Like a decision to hire an employee, a

any major purchase made by an ANC that involves a substantial expenditure of ANC funds, e.g., a copy machine; and any grant made by the commission. Once a lease or employment contract is approved by the commission, the periodic payments of the commission-approved lease rate or the commission-approved employee rate of compensation need not thereafter be approved by the commission on an individual basis. Finally, every commissioner of an ANC has, upon reasonable demand as to time and place, a legal right to examine the financial, business, and other official records of his or her ANC.

In your next question you state that "\$7500 has been given in grants to our former vice-chair's employer, a child care center. This center is not in our ANC area or even our ward." You ask whether these grants are valid.

section 16(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(1) (1992), provides in pertinent part:

A commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area. . . . A Commission may expend its funds for public purposes outside the Commission as authorized pursuant to subsection (k) of this section.
[Emphasis added.]

subsection (k) of section 16 provides that "Commissions may pool Commission funds in accordance with agreements adopted by their constituent Commissions." Finally, subsection (m) of section 16 provides in pertinent part that "[a] grant approved by a Commission shall provide a benefit that is public in nature and that benefits persons who reside or work within the Commission area." (Emphasis added.) Thus, absent a pooling agreement with another ANC to pool funds to provide public benefits within the areas of both ANC's, the law requires that (1) a grant be for a public purpose, i.e., benefit or potentially benefit a significant number of persons, and (2) that the persons benefited either reside or work within the commission area. The only way the grants in question could possibly have satisfied these requirements is if the child care center to which the grants were made provided child care to a significant number of children who resided within the boundaries of ANC 1-B. Otherwise, these grants were made in violation of applicable statutory law.

In your last request for advice, you note that the Council of the District of Columbia repealed the statutory provision that prohibited an commissioner from serving as the chairperson of his or

decision to terminate an employee is the kind of decision that must be taken by the commission, acting as a commission, at a public meeting.

her ANC for more than two consecutive one-year terms. You state that ANC 1-B has such a limitation in its bylaws and ask whether such limitation is now in conflict with ANC statutory law or whether it is permissible, if no longer mandatory, to have such a limitation in ANC 1-B's bylaws.

The two-consecutive-term limitation on serving as the chairperson of an ANC was set forth in section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1981). It was repealed by the Advisory Neighborhood Commission Act of 1990, effective March 6; 1991, D.C. Law 8-203. The October 25, 1990 Committee Report of the Committee on Government Operations on Bill 8-626, the bill that became D.C. Law 8-203, states at page 3 the following regarding the repeal of this limitation: "The prohibition against a Chairman...serving more than 2 consecutive one year terms has been removed, enabling each Commission to chose its Chairperson without term limitations." There is nothing in the legislative history of D.C. Law 8-203 that indicates that the Council intended to prohibit ANCs from adopting such a limitation in their bylaws if they choose to do so. Therefore, I conclude that it is now up to each ANC to decide whether to adopt, as part of its bylaws, consecutive term limitations for its officer positions. In short, the answer to your question is that while a two-year term limitation for the position of chairperson of an ANC is no longer statutorily mandated, an ANC may, in its discretion, adopt such a limitation as part of its bylaws.

Sincerely,



Leo N. Gorman
Assistant Corporation Counsel
Office of Legal Counsel

Enclosure

cc: The Honorable Kathleen Patterson
Chairperson, committee on Government operations
Council of the District of Columbia

Willie Vasquez, Director
Office of the Ombudsman

Ayo Bryant, Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor

Mary Treadwell, Chairperson
Advisory Neighborhood Commission 1-B