

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



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

March 25, 1997

Chairperson Mary Treadwell
Commissioner W. Norman Wood, Jr.
Commissioner M.A. Doll Fitzgerald
Commissioner Lawrence T. Guyot, Jr.
Commissioner Seretha Renee Pearsall
Commissioner Anne G. Bennett
Commissioner Catherine Hammonds
Commissioner Ida Lowe Blocker
Advisory Neighborhood Commission I-B
P.O. Box 73710
Washington, D.C. 20019-3710

Dear Chairperson Treadwell, and Commissioners Wood, Fitzgerald, Guyot, Pearsall, Bennett, Hammonds, and Blocker:

This is in reply to your undated letter, which I received on March 21, 1997, concerning the March 4, 1997 letter from Advisory Neighborhood Commission (ANC) I-B Commissioner Tom Coumaris to this Office requesting advice on several questions.

In your letter, you take issue with some of the facts stated in Commissioner Coumaris's letter. In my March 12, 1997 response to Commissioner coumaris, while I quoted a number of the statements Commissioner Coumaris made in his letter, I did not (and was not in a position to) expressly opine on the factual accuracy of such statements, but rather provided general advice concerning the questions as to which Commissioner Coumaris sought advice. In this regard, I note that in your letter to me you do not take issue with any of the advice contained in my March 12, 1997 letter to Commissioner coumaris.

Regarding Commissioner Coumaris's statement in his March 4, 1997 letter concerning ANC I-B grants to a child care center that is not located within the boundaries of ANC I-B or within the boundaries of Ward I, you state as follows:

Response-Child Care Center Grant: [O]n June 12, 1996[,] our pre-scheduled public meeting took place two days after the death of Commissioner J. Tony Jones IB11. The minutes for that meeting in this matter read:

In honor of the outstanding public service work of Commissioner Jones, the Commission unanimously vote[d] to provide a floral tribute at the funeral service for Commissioner J. Tony Jones. Further, the Commission voted to honor Commissioner Jones by: (1) providing scholarship funds for one child residing in SMD 1B11 to the Edward C. Mazique Parent Child Development Center not to exceed \$1,000; and (2) Granting two children, also residing in SMD 1B11 with a scholarship for the YMCA (W street) Summer Camp. The camp grant is not to exceed \$1000. [Emphasis added.]

You then state in your letter: "Clearly our actions are exactly those described as allowable in your March [12, 1997] opinion. The Mazique Center not only serves many 1B children but employs a number of 1B residents ••••"

My March 12, 1997 letter to Commissioner Coumaris does not indicate that the above-described ANC 1-B expenditures are allowable. First, Commissioner Coumaris's March 4, 1997 letter to me does not mention the use of ANC 1-B funds to purchase a floral arrangement for Commissioner J. Tony Jones, and therefore I did not render any advice as to whether such use of ANC 1-B funds was proper. While the purchase of the floral arrangement for Commissioner J. Tony Jones was certainly well-intentioned, and while it is probably true that ANC 1-B did not knowingly violate the applicable limitations on the expenditure of ANC funds, nevertheless the expenditure of ANC 1-B funds for the floral arrangement was not an allowable expenditure because it was neither reasonably necessary for the operation of ANC 1-B nor was it a public purpose grant. The floral arrangement was in the nature of a Personal gift to the family of Commissioner J. Tony Jones that should have been paid for by private funds and not with ANC 1-B funds. See generally, Principles of Appropriations Law, United States General Accounting Office, Office of the General Counsel, Vol. I, 2nd ed. (1991), Chapter 4, Part C 8., page 4-128 ("Appropriated funds may not be used for personal gifts, unless •••there is specific statutory authority. 68 Compo Gen. 226 (1989)").

In regard to public purpose grants that ANCs may make using ANC funds, I stated in pertinent part, at page 3 of my March 12, 1997 letter to Commissioner coumaris, the following:

••• (A]bsent 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. (Emphasis added.)

In this regard, 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 or for the functioning of the Commission office..•• [Emphasis added.]

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

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. A grant to an individual shall be prohibited as a non-public purpose expenditure. [Emphasis added.]

A grant that is for a public purpose or that is "pUblc in nature" is one that confers a benefit or a potential benefit on the community in general or a significant part of the community. See, e.g., our letter of September 14, 1987 (copy enclosed) to the D.C. Auditor. Accordingly, an ANC grant that benefits only one or two or a few persons is not one that serves a public purpose and is not "public in nature." Thus, the ANC 1-B \$1,000 grant to the Edward C. Mazique Parent Child Development Center to provide scholarship funds for "one child" residing in SMD 1B11" failed the pUblc purpose test because it provided a benefit to only one person. Likewise, the ANC 1-B \$1,000 grant to the YMCA (W Street) Summer Camp for the benefit of "two children" residing in SMD 1B11 also failed the pUblc purpose test because it benefited only two persons.

If a child development center or a summer camp serves a significant number of children who reside within the boundaries of ANC 1-B, then it would be proper for ANC 1-B, after complying with the procedural requirements set forth in section 16(m) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code §1-264(m) (1992),1

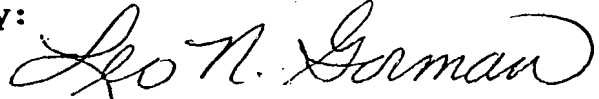
section 16(m) requires that each ANC "adopt guidelines for the consideration and award of grants," and that such guidelines must include a provision "that requires the proposed grantee to present the request for a grant at a pUblc meeting of the Commission." This section further provides that "[a] grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a pUblc meeting." For a vote awarding a grant to be legally valid, there must, of course, be a quorum of the commissioners present at the pUblc meeting. A quorum means a majority of the total number of commission positions in the ANC. In the case of ANC 1-B, a quorum is seven commissioners.

to make a grant to such child development center or such summer camp to be used by the grantee for the general benefit of all such children. In this context, there can be no mathematical definition of what constitutes a "significant number of children." If you have a doubt as to what constitutes a "significant number" of beneficiaries or potential beneficiaries in a specific situation, you should seek the advice of this Office.

sincerely,

Jo Anne Robinson
Interim Corporation Counsel

By:



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 Vazquez
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor

Tom Coumaris
Commissioner
Advisory Neighborhood Commission 1-B