

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004

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May 19, 1986

Stanley Allen
Chairman
Advisory Neighborhood Commission 1-E
Post Office Box 43529
Washington, D.C. 20010

In Re: Legal Restrictions on
ANC Spending.

Dear Chairman Allen:

This in response to your April 9, 1986 letter to Acting Corporation Counsel John H. Suda concerning legal restrictions on Advisory Neighborhood Commission (ANE) spending and the role of the D.C. Auditor vis-a-vis ANC expenditures.

Section 738(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-251(c)(2) (1981), provides that an ANC may expend "public funds and other funds donated to it" for "public purposes within its neighborhood commission area." Section 738(e) of the Self-Government Act, D.C. Code § 1-251(e) (1985 Supp.), provides that public funds are to be allotted to ANCs in order for them to employ necessary staff, "and to conduct programs for the welfare of the people in a neighborhood commission area ••••" And D.C. Code § 1-261(k) (1981) provides:

Other than neighborhood or community enhancement campaigns, commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the commissions do not duplicate already available programs or services and further provided that the commissions'

programs are not conducted on a contractual basis with existing governmental agencies.

Thus, the programs funded by ANC money must have a local focus; that is, such programs must benefit persons residing or working in the ANC area. In addition, such programs must further "public purposes;" that is, the benefits conferred by ANC-funded programs must be "public" in character.

To my knowledge, there are no regulations in existence interpreting the "public purposes" limitation in § 738(c)(2) of the Self-Government Act. At the outset of the ANC funding process, Mayor's Memorandum 76-108, dated July 23, 1976, was issued to the ANCs. In regard to ANC expenditures, this memorandum (a copy of which is attached) provided in relevant part the following interpretive guidance:

It will be the responsibility of each Commission to maintain control and to ensure the integrity of its financial accounts. * * * In the absence of specific authority, funds allocated to the ANCs may not be used for such purposes as to furnish refreshments, meals, or out-of-town travel expenses. Funds allocated to the ANCs may not be used for purposes involving partisan political activity or for personal subsistence expenses of any kind. Questions regarding these limitations should be addressed to the ANC Information Office • . [Memorandum at 2.]

Over the years, the D.C. Auditor has advised ANCs with respect to the propriety of particular expenditures. For example, on June 4, 1979, then D.C. Auditor Matthew S. Watson, by letter, gave the following advice in response to a question from an ANC regarding the legal propriety of ANC contributions to a tenant association:!!

It is my opinion that to meet the "public purpose" requirements of the Home Rule Act, ANC contributions to tenant organizations must:

1. not be [for the] general support of the organization;

1/ This letter and others of a similar nature are reprinted in the 1985 ANC Manual compiled by the D.C. Office of Community Services. See pp. 79-80.

2. be either for general informational purposes or available to the general public;
3. not contribute to [the] personal gain of any individual or group *at* individuals, unless the program is available to any applicant;
4. not advocate or support one side in a private factual dispute or potential dispute except when the ANC is appearing officially before a District body such as the Zoning Commission.

Several examples may clarify allowable and unallowable expenditures:

- * A Commission may fund a tenant organization to produce a brochure accurately describing District law as it relates to condominium or cooperative conversions. The ANC must retain the right, however, to further distribute any material prepared with commission funds;
- * A commission may not fund a tenant organization to have an engineering evaluation of a particular building;
- * A commission may fund an area-wide seminar on forming associations;
- * A commission may not fund distribution of notices for a meeting to form a particular association;
- * A commission may give assistance in making improvements if available to substantial segment of the community, such as a tool lending library;
- * A commission may not support improvements limited to only a particular private building. [Emphasis original.]

The phrase "public purpose" or "public purposes" is common in state laws dealing with the expenditure of public funds. Thus, the phrase has been construed by state courts in many different factual contexts.' See 15 McQuillin Municipal Corporations, §§ 39.19 and 39.21 (1985); see also 35 Words and Phrases, "Public Purpose" (1963). One frequently enunciated test

is "whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." Opinion of the Justices, 384 So.2d 1051, 1053 (Ala. 1980), citing Opinion of the Justices, 347 Mass. 797, 197 N.E.2d 691 (1964). In this regard, the Supreme Court of New Jersey has stated that the concept of "public purpose" connotes "an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government." Roe v. Kervick, 42 N.J. 191, 199 A.2d 834, 842 (1964). Thus, the phrase "public purposes" is "incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare." Roe v. Kervick, supra.

As to the role of the D.C. Auditor vis-a-vis ANC expenditures, D.C. Code § 1-264(b) (1981) provides that "the financial accounts of each [advisory neighborhood] commission shall be audited at least once every 2 years by the District of Columbia Auditor." In 1976, then D.C. Auditor Matthew S. Watson, relying in part on this statutory provision, adopted rules governing the financial operations of ANCs (22 D.C. Register 5579-5588). Under these rules the D.C. Auditor, "[u]pon a finding of financial irregularities after notice and hearing," could "suspend the right of a commission to make further expenditures or may impose such other requirements as the Auditor may deem advisable to protect the interest of the public." 22 D.C. Register 5582. These rules set up an "Advisory Neighborhood Security Fund," the purpose of which is to "secure participating Advisory Neighborhood Commissions against unauthorized expenditures and losses of funds by the Treasurer of the participating Advisory Neighborhood Commission." 22 D.C. Register 5587.

In 1985 this Office reviewed the question of the Auditor's authority to adopt these rules, and concluded that the requisite authority was lacking. This Office further concluded that even assuming, arguendo, the Auditor had the requisite authority, the rules lapsed on July 1, 1984 because prior to that date they were never published in the District of Columbia Municipal Regulations. See D.C. Code § 1-1538(a) (1985 Supp.).

Thus, in our view the D.C. Auditor's authority is to audit the financial operations of the ANCs. In any ANC audit, one of the matters that the Auditor would normally investigate is the matter of whether ANC expenditures are in compliance with District of Columbia law. With respect to those audits, the Auditor has a duty to submit audit reports to Congress, the Mayor, and the Council, and is required to make "such recommendations with respect thereto as he may deem advisable." See § 455(d) of the Self-Government Act, D.C. Code § 47-117(d) (1981). Thus, it is within the authority of the Auditor to

recommend to the Mayor, the Council, and the Congress remedial measures to deal with a problem turned up by an audit, e.g., a problem relating to the expenditure of ANC funds for other than "public purposes."

In regard to your inquiry as to agencies having power to affect ANC expenditures, sections 738(f) and (g) of the Self-Government Act, D.C. Code §§ 1-251(f) and (g) (1981), provide in pertinent part:

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission ••. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures ••• of the District.

(g) The Council shall have authority, in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood commissions established in this section.

Pursuant to these provisions, the Council enacted, *inter alia*, the "Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975," D.C. Law 1-58, effective March 26, 1976, 22 OCR 5453-5466. This law added four sections to the Advisory Neighborhood Councils Act of 1975, D.C. Law 1-21. Added section 16(a) provides in pertinent part that "[d]isbursements of all [ANC] funds shall be in accordance with District government accounting procedures." 22 D.C. Register 5466, D.C. Code § 1-264(a) (1981).

The requirement in D.C. Code § 1-264(a) (1981) that ANC disbursements "be in accordance with District government accounting procedures" must be read together with the language in the last sentence of section 738(f) of the Self-Government Act, and with the language of two provisions of the Self-Government Act conferring upon the Mayor the authority to administer the financial affairs of District government, namely sections 448 and 449, D.C. Code §§ 47-310 and 47-312 (1981 and 1985 Supp.). When so read, it is clear that in the area of expenditure of public funds Advisory Neighborhood Commissions are required to follow those financial management procedures mandated by D.C. Code § 1-264 (1981), and are also subject to the authority of the Mayor, as conferred by sections 448 and 449 of the Self-Government Act.

Section 448 of the Self-Government Act, D.C. Code § 47-310 (1985 Supp.), provides in pertinent part that "the Mayor shall

have charge of the administration of the financial affairs of the District and to that end he shall:

* * *

(2) Maintain systems at accounting and internal control designed to provide:

* * *

(C) Effective control over and accountability for all funds, property, and other assets; •. "

Section 449(d) of the Self-Government Act, D.C. Code § 47-312(4) (1981), provides that the Mayor shall:

perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

In exercising his authority under these provisions the Mayor may, for example (acting through the Budget Operations Division of the Office of the Deputy Mayor for Finance), reduce an ANC's quarterly allotment by an amount equal to that ANC's unauthorized expenditures.

Sincerely,



Margaret L. Hines
Deputy Corporation Counsel, D.C.
Legal Counsel Division

Attachment

cc: William R. Spaulding
Chairman
Government Operations Committee

Otis H. Troupe
District of Columbia Auditor