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Mr. James W. Slicer
 Advisory Neighborhood Commissioner 2A06
 P.O. Box 7362
 Washington, D.C. 20044

Dear Mr. Slicer:

This is in reply to your request for an opinion from this Office with respect to your several questions concerning legal representation of Advisory Neighborhood Commissioners and the expenditure of Advisory Neighborhood Commission (ANC) funds for such representation.

The basic question which you pose is whether the Office of the Corporation Counsel will counsel and represent ANC Commissioners, as though each is a governmental entity entitled to the counsel of and representation by this Office.

Recent opinions of this Office and of the Office of the District of Columbia Auditor have concluded, in effect, that the ANCs are characterized by indicia, which are common to elements of the District Government. In reaching this conclusion, the Auditor, in his memorandum of January 5, 1977, entitled "Tax Status of ANCs", listed the following indicia of government status based upon section 739 of the Self-Government and Governmental Reorganization Act (D.C. Code, section 1-171); and the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975 (D.C. Law 1-58; 22 D.C. Reg. 5454). The Commissions, he concluded:

1. Shall have boundaries set by the City Council.
2. Shall be established upon petition of 5% of the registered voters in each area;
3. Shall have members elected at an official District election held together with the school board election and certified by the City;
4. May expend public funds with minimum amount as set forth in the Act [Home Rule act] which must be included in future budgets;

writing, thirty days in advance, "except where shorter notice on good cause made and published with the notice or in the case of an emergency."

The first of your inquiries pertains to the Alcoholic Beverage Control Board; your specific question is whether the Board must give special notice before it may consider, and conduct a hearing with respect to "Class C" liquor license applications. Under the Board's regulations, such licenses are granted, and a hearing conducted, only after written notice to the public-at-large of the pendency of the application. 3 DCRR 20.1 (1971).

The application--which is a public document--of course, does not constitute "action or proposed action of District government policy"; it is merely a request for action. Nor, ordinarily, is prior notice to the public-at-large of action on such applications required by the DCAPA; therefore, the disposition of such applications falls outside of the special notice requirement of §13(b).

Moreover, it is the exception rather than the rule for the Board to act upon such applications within the contemplation of that portion of §13(c), which requires special notice "before the formulation of any final policy decision or guideline," (emphasis added); rather, excepting those "contested case" proceedings where a rule is promulgated, the applications are acted upon only in accordance with previously formulated final policy decisions or guidelines. These previously formulated decisions or guidelines are those rules previously promulgated and adopted pursuant to §5(a) of the DCAPA, of which special notice must have been given to the public-at-large, as well as the Commissions as required by §§13(a) and (c) of the ANC Act. Therefore, no special notice of such applications is required by §13(c) either.

Accordingly, it is my opinion that licensing actions of the ABC Board do not fall within the scope of those provisions of the ANC Act that require the giving of special notice to ANCs. This, of course, does not mean that the Board is not required to give prior public notice of the pendency of applications; for it clearly must do so, see eTg., D.C. Code §2S-115(b), and

5. May expend public funds and any other funds received only for public purposes.

He therefore concluded:

"Based on the above relationships, it can only be concluded that ANCs are units of the District Government. The Commissions have no existence outside of the Government. Without an officially sanctioned and conducted election, the Commissions cannot begin or continue to function. The election itself is conducted at the same times, places, and by the same electors voting for other officers of the Government. As a result of the election to office, the Commissions are authorized to expend public funds."

This Office, on June 6, 1977, issued an opinion regarding the status of personal property of the ANCs for insurance purposes. At issue was whether ANC personalty was private property, and thus in need of private insurance, or whether such property was District government property and thus covered by the District as a self-insurer. The conclusion reached was that "ANC personal property is constituted as government property not only because of its purchase through allocated government funds, but also because such purchase is subject to certain strict fiscal controls imposed by the D.C. Auditor."

Because ANCs do share such characteristics of the District Government, they are entitled to legal counsel and representation by this Office, only, since the Corporation Counsel has charge of and conducts "all law business of the said District, and all suits instituted by and against the government thereof.- (D.C. Code, section 1-301). This counsel and representation is necessarily limited, however, by section 13(q) of the Advisory Neighborhood Councils Act of 1975, as amended by D.C. Law 1-58 (Duties and Responsibilities of the Advisory Neighborhood Commission Act of 1975), which provides, in pertinent part, as follows:

"The Commission shall not have the power to initiate a legal action in the Courts of the District of Columbia or in the Federal Courts, provided that this limitation does not apply to or prohibit any Commission (sic) from bringing suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required." If a Commissioner were to bring suit as a private citizen, this Office, of course, would not represent him, nor would it represent a Commission in the initiation of legal action, since that is prohibited by section 13(q) cited above. Also prohibited is the appearance by an ANC as *Amicus Curiae* in a suit filed by another party (see American University Park Citizens' Association v. Burka (Superior Court of the District

of Columbia, C.A. No. 11437-76, March 28, 1977).

I trust that the conclusion that this Office should, for the reasons and under the conditions discussed above provide legal counsel and representation to ANCs, also answers the other questions which you posed.

Sincerely yours,

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