

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
JUDICIARY SQUARE
441 FOURTH ST., N.W.
WASHINGTON, D. C. 20001



IN REPLY REFER TO:
L&O:LNG:lng
(AL-95-491)

October 4, 1995

Henry L. Fernandez, Chairman
Advisory Neighborhood Commission 2-B
1601 Connecticut Avenue, N.W. #802
Washington, D.C. 20009-1601

Re: Application of TCR, Inc., t/a J.R.'s Bar and Grill,
to use pUblIc space for an unenclosed outdoor cafe

Dear Chairman Fernandez:

This is in reply to your September 13, 1995 letter to Mr. Leo Gorman of this Office in which you seek the advice of this Office concerning questions relating to the application of TCR, Inc., trading as J.R.'s Bar and Grill, to use pUblIc space for an unenclosed cafe at 1517 17th Street, N.W. It is my understanding that this application is currently pending before the Public Space committee for determination.

In your letter you ask five numbered questions. Only question number three involves the application of statutory provisions governing the operation of advisory neighborhood commissions. ("ANCs") • Pursuant to § 15(d) (3) (A) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code § 1-263(d) (3) (A) (1992), the corporation Counsel is required to provide to ANCs "[I]legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions." This mandate does not require this Office to render advice to ANCs as to statutes or issues that do not directly relate to the functions and operations of ANCs. And, as a matter of general policy, this Office confines its legal advice to ANCs to questions that relate to such functions and operations. Therefore, we will respond only to your question number three, which is stated as follows:

ANC 2B Commissioner Kyle pitsor (who is the immediate past president of DCCA [the Dupont Circle Citizens Association] and continues to be an active member) testified before the [Public Space] Committee opposing the application. His testimony went contrary to the ANC's official position. However, he asked the Committee to set aside

the ANC recommendation in support of the cafe permit and to disregard the "great weight" which the ANC decision carries. Can the Public Space Committee disregard the "great weight" of the ANC decision?

The right of an ANC commissioner to present a minority position to a District government agency on a proposed agency action was addressed in a June 20, 1989 letter (copy enclosed) from the corporation Counsel to Councilmember Betty Ann Kane. In sum, that letter stated that an ANC commissioner has such a right (under the First Amendment to the Constitution), but that it should be made clear that the ANC commissioner is speaking only for himself or herself and his or her single-member district constituents and not the ANC of which he or she is a member. The statutory "great weight" requirement applies to the written recommendations adopted by the ANC in accordance with the procedures set forth in § 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992) (copy enclosed). If the ANC's written recommendations have been adopted in a manner consistent with the statutory requirements and have been timely presented to the District government agency, that agency is not free to disregard the great weight requirement which mandates that the agency acknowledge the ANC "as the source of the recommendations," and make, in its decision, "explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each." *Id.*¹

Sincerely,

Charles F.C. Ruff
corporation Counsel

by:


Karen L. Cooper, Chief
Legislation & Opinions section
Legal Counsel Division

Enclosures

¹ A District government agency is, of course, not required to follow the written recommendations of an ANC, nor is the agency required to give such recommendations any special deference. The agency must, however, "articulate why the particular ANC itself, given its vantage point, does--or does not--offer persuasive advice under the circumstances." Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C. 1977). Further, ANC written recommendations that are not legally relevant to the issues that the agency must resolve are not entitled to be given great weight by the agency. Bakers Local Union No. 118 v. District of Columbia Board of Zoning Adjustment, 437 A.2d 176, 179 (D.C. 1981).

cc: The Honorable Harold Brazil
Chairman
Committee on Government Operations
Council of the District of Columbia

Lavonna Johnson
Director
Office of Constituent services

Ayo Bryant
Director
Office of Diversity and Special services