

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:

L&O: LNG: Ing .

(93-059-L) (LCD-664:

April 8, 1993

Patricia Wamsley
Chairperson, ANC 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Re: Are ANC staffpersons eligible for health and life insurance coverage? Do obligations of an ANC survive the election of new members?

Dear Chairperson Wamsley:

This is in reply to your February 23, 1993 letter to the Corporation Counsel in which you request the advice of this Office in regard to two matters. First, you ask whether a "contractually-hired staff person" is "entitled" to health and life insurance benefits. Second, you ask whether ANCs are "continuing bodies with regard to the ratification and subsequent execution of agreements."

As you note in your letter, in 1990 the Council adopted extensive amendments to the Advisory Neighborhood Councils Act of 1977, D.C. Code § 1-251 et seq. See the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203. As amended by D.C. Law 8-203, § 16 of the Advisory Neighborhood Councils Act, D.C. Code § 1-264 (1992), provides in pertinent part in subsection (1) that a Commission may expend public funds "for the functioning of the Commission office, including staff salaries••••" Subsection (0) of § 16 provides further guidance in this regard in the following language:

A commission may employ any person necessary to provide administrative support to the Commission. A Commission shall establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees. A Commission employee shall serve at the pleasure of the Commission. An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of title XXI (Life Insurance Benefits) and title XXII ("Life Insurance") of the Merit Personnel Act (D.C. Code, secs. 1-622 et seq. and 1-623 et seq.).

Thus, a person who performs administrative work for a Commission as a Commission employee is eligible for and entitled to the health and life insurance benefits available under titles XXI and XXII of the Merit Personnel Act, *D.C. Code* § 1-622.1 et seq. and § 1-623.1 et seq. (1992), if that person desires such benefits and meets the requirements of the *D.C. Office of Personnel*. This is true regardless of whether the person is employed by the Commission on a part-time or a full-time basis. For more information concerning these health and life insurance benefits, you should contact Frances Lee in the Office of Personnel's Benefits Administration Division, 613 G street, N.W., Washington, *D.C.* 20001, telephone---727-9505.

You state in your letter that "ANC 3-C retains staff assistance by contractual arrangement with an individual."¹¹ I understand you to mean that you regard the person who performs administrative work for ANC 3-C to be an independent contractor rather than an employee of ANC 3-C. Whether the relationship between an ANC and a person who performs administrative work for the ANC is that of employer-employee or employer-independent contractor depends on a number of factors, the most important of which is the degree to which the Commissioners exercise or have the right to exercise control over the manner in which the person performs the work for the Commission. See generally 41 Am. Jur. 2d Independent Contractors § 6 (1968). Other relevant factors are:

the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price, the independent nature of his business or his distinct calling, his employment of assistants with the right to supervise their activities, his obligation to furnish necessary tools, supplies, and materials, his right to control the progress of the work except as to final results, the time for which the workman is employed, the method of payment, whether by time or by the job, and whether the work is part of the regular business of the employer. [Id. at § 5.]

If, after applying these factors, you conclude that the person who performs administrative work for ANC 3-C is an independent contractor rather than an employee of the Commission, then such person would not be entitled as a matter of right to the health and life insurance benefits described in § 16(0) of the Advisory Neighborhood Councils Act of 1975, as amended by the Advisory Neighborhood Commission Amendment Act of 1990, *D.C. Code* § 1-264(0) (1992).

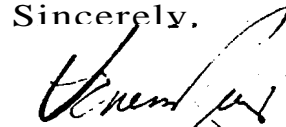
In regard to your second question, you provide the following background:

In 1992 this ANC reached an agreement with a local property owner and an adjacent ANC as to the use of a certain office building on Wisconsin Avenue. However,

although the terms were agreed to last year, the agreement has not been finalized for execution until this year --after the election and installation of new ANC's. For purposes of agreements such as this one, are ANC's continuing bodies or must we now re-ratify last year's agreement before it can be properly executed?

For many purposes, an ANC is considered to be continuing body even though its members may change significantly or totally at the beginning of a year following an election year. For example, ANC's are not required to adopt new by-laws every two years, but-are governed by the by-laws adopted previously. And final agreements and debt obligations that were entered into by the commissioners of an ANC serving a particular two-year term are binding on commissioners who serve in the succeeding two-year term regardless of whether they are reelected incumbents or first term commissioners. It is my understanding that because the agreement in question had not been reduced to a written document signed by the interested parties, ANC 3-C, in January of this year, formally reapproved the agreement. Such a conservative resolution of the question is, in my view, the preferable one since it eliminates any doubt concerning whether the agreement truly represents the will of ANC 3-C as it is currently constituted.

Sincerely,



Vanessa Ruiz
Deputy corporation Counsel
Legal Counsel Division

cc: The Honorable Harold Brazil
Council of the District of Columbia

Regina Thomas
Office of Constituent services

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D.C. Auditor