

# 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:

June 15, 1993

Douglas Mitchell  
Commissioner, ANC 3-F  
3409 Fessenden street, N.W.  
Washington, D.C. 20008

Re: Conflict of interest inquiry relating to ANC vote  
on Methodist Home special exception application  
before Board of Zoning Adjustment

Dear Commissioner Mitchell:

This is in reply to your May 10, 1993 request for the advice of this Office concerning whether you have a conflict of interest in the following situation: You are a commissioner of Advisory Neighborhood Commission (ANC) 3-F. You are a tenant of 3409 Fessenden street, N.W., but otherwise have no financial interest in this property. Across the street from your house is the Methodist Home of the District of Columbia in which you have no financial interest. The Methodist Home has an application for a special exception pending before the District of Columbia Board of Zoning Adjustment (BZA). If the BZA grants the special exception, the Methodist Home will expand its facilities. At its June 21, 1993 meeting, ANC 3-F intends vote on the question of what if any written recommendation it will send to the BZA in regard to the Methodist Home's special exception application. You ask whether the fact that you rent a house across the street from the Methodist Home creates a conflict of interest for you in regard to your voting on the Methodist Home's special exception application before the BZA.

ANC commissioners are subject to the conflict of interest provisions set forth in § 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, Public Law 93-376, approved August 14, 1974, 88 stat. 465, D.C. Code § 1-1461 (1992).1

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ANC commissioners are not covered by the conflict of interest provisions of the District of Columbia Government Comprehensive Merit Personnel Act, D.C. Law 2-139, D.C. Code § 1-619.1 et seq. (1992), or the conflict of interest regulations promulgated pursuant thereto (Chapter 18 of the D.C. Personnel Regulations).

See § 602(i) (2) of that Act, D.C. Code § 1-1462(i) (2) (1992). Sub-section (b) of § 601, D.C. Code § 1-1461(b) (1992), provides in pertinent part:

No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated.♦♦.

The District of Columbia Board of Elections and Ethics and that Board's Office of Campaign Finance are responsible for enforcing § 601. See §§ 301, 302, and 306 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, D.C. Code §§ 1-1431, 1-1432, and 1-1435 (1992). On the basis of the facts supplied by you, it does not appear that you have any financial interest that would be affected by your voting as an ANC 3-F commissioner on the Methodist Home application before the BZA. Therefore, it does not appear that such a vote would violate the above-quoted language of § 601(b). However, definitive advice on this question can 'only' come from the Director of the Office of Campaign Finance. The Director of that office is Robert Lane and his address is suite 420, 2000 14th Street, N.W., Washington, D.C. 20009.

The only other conflict of interest standards that may apply to the instant situation are those that may be set forth in ANC 3-F's bylaws. Since you have not mentioned the existence of any such conflict of interest standards, I assume that ANC 3-F's bylaws do not contain conflict of interest provisions.

If you have any further questions, please contact me or Leo Gorman of my staff, at 727-3400.

Sincerely,

  
Vanessa Ruiz  
Ethics Counselor,

because, generally, the Merit Personnel Act applies only to a District government "employee," a term that is defined to mean a person "who receives compensation for the performance of♦♦♦services" for the District government. See § 301(g) of the Merit Personnel Act, D.C. Code § 1-603.1(7)'(1992). Since ANC commissioners are not compensated for their services, they are not employees of the District government for the purposes of the Merit Personnel Act's conflict of interest provisions and the conflict of interest regulations promulgated pursuant to the Merit Personnel Act.