

# 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  
(94-119-L)

April 19, 1994

Alice W. Gilmore  
Commissioner, ANC 4-B  
6856 Eastern Avenue, N.W. # 350  
Washington D.C. 20013

Re: May the chairperson of ANC 4-B list his  
business address and telephone number on  
ANC 4-B's official letterhead stationery?

Dear Commissioner Gilmore:

This is in response to your March 23, 1994 request for the advice of this Office concerning whether it is legally permissible for the chairperson of Advisory Neighborhood Commission (ANe) 4-B to list his private business address and telephone number on official ANC 4-B letterhead stationery.

In connection with your inquiry, you have supplied this Office with a sample of the stationery in question. At the top center of the sample is the name, office address, office telephone number, and office facsimile number of ANC 4-B. Along the left side of the sample is a listing of ANC 4-B officers and below that a listing of ANC 4-B commissioners. In the list of officers, there is listed just below the listing of the chairperson's name the address "1919 Pennsylvania Avenue; N.W. suite # 300, Washington, D.C. 20006 (202) 722-2222." The chairperson is a lawyer, and this address and telephone number is the address and telephone number of his law office.

Generally speaking, it may be said that the official stationery of District government boards and commissions should not list the private business address and telephone number of the chairperson or any other member of that board or commission. Under the District's Personnel Regulations, it is improper for a District government official to engage in conduct "which might result in, or create the appearance of. . . [u]sing pUBLIC office for private gain." See § 1803.1(a) of Chapter 18 the District's Personnel Regulations. A person's private business address and telephone number on official board or commission stationery could create the appearance that the person is using pUBLIC office for private gain. However,

Chapter 18 of the District's Personnel Regulations is not applicable to ANCs. Chapter 18 of the District's Personnel Regulations is applicable only to the members of those boards and commissions that are covered by the employee conduct provisions of the District of Columbia Government Comprehensive Merit Personnel Act ("Merit Personnel Act"), D.C. Law 2-139. See §§ 202(3) and 1801 et seq. of the Merit Personnel Act, D.C. Code §§ 1-602.2(3) and 1-619.1 et seq. (1992). section 301(2) of the Merit Personnel Act, D.C. Code § 1-603.1(2) (1992), defines the term "boards and commissions" to mean "bodies established by law or by order of the Mayor of the District of Columbia consisting of appointed members to perform a trust or execute official functions on behalf of the District of Columbia government." (Emphasis added.) Since ANC commissioners are elected rather than appointed, they are not covered by the Merit Personnel Act and Chapter 18 of the District's Personnel Regulations which was promulgated pursuant to authority conferred by § 1801(b) of the Merit Personnel Act, D.C. Code § 1-619.1(b) (1992) •

On the other hand, the conflict of interest provisions of § 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act ("Campaign Finance Act"), Pub. L. 93-376, are applicable to ANC commissioners. See D.C. Code §§ 1-1461 and 1-1462 (i) (2) (1992). In this regard, § 601(b) of the Campaign Finance Act, 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, other than that compensation provided by law for said public official."

It does not appear that the mere listing of the ANC 4-B chairperson's business address and telephone number on official ANC 4-B letterhead stationery would necessarily be a violation of the language quoted above. In this regard, it is relevant to note that there is no description, such as the phrase "Law Offices," which could be deemed to constitute an advertisement of the services available at the chairperson's business address. On its face, the listing of the chairperson's office address and telephone number serves merely to provide information where the chairperson may be reached directly by mail or telephone during business hours. Here, it also relevant to note: (1) that ANC commissioners can rarely be reached directly by telephone at the ANC office, (2) that an ANC office is not typically staffed eight hours a day, five days a week, and (3) if an ANC office has an answering machine to handle incoming calls when there is no one in the office, the taped message will likely not inform the caller how to reach the officers or other commissioners of the ANC directly.

Finally, it is important to point out that this Office does not render definitive opinions concerning whether actions of ANC commissioners are or are not in violation of § 601 of the Campaign Finance Act. That function has been entrusted to the Board of Elections and Ethics and that Board's Director of Campaign Finance. See § 306(c) of the Campaign Finance Act, D.C. Code § 1-1435(c) (1992), and Chapter 3 of Title 3 of the District of Columbia Municipal Regulations. Thus, you may wish to direct your inquiry to the General Counsel to the Board of Elections and Ethics, William H. Lewis, 441 4th street, N.W. suite 250N, Washington, D.C. 20001.

Sincerely,



Thomas F. Bastow  
Deputy Corporation Counsel  
Legal Counsel Division

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

Regena Thomas  
Director  
Office of Constituent services

William H. Lewis  
General Counsel  
Board of Elections and Ethics

Chairperson, ANC 4-B