

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



July 12, 1994

IN REPLY REFER TO:
RAS:LNG:lng
(Misc 94-26)
(RL-94-t71)

Alice W. Gilmore
Commissioner, ANC 4-B
32 Sheridan Street, N.E.
Washington, D.C. 20011

Re: Allegations of misconduct against chairman of ANC

Dear Commissioner Gilmore:

The is in response to your June 6, 1994 request for the advice of this Office concerning the legality of conduct you allege has been engaged in by the chairman of Advisory Neighborhood Commission (ANC) 4-B. In rendering this advice, I make no judgment on the truth of your allegations.

First, you allege that the chairman "[o]pens other commissioners' mail." Such conduct does not violate any provision of the laws specifically applicable to ANCs. However, it is conduct that could serve as a basis for removal of the chairperson from that office by action of ANC 4-B. See generally our July 30, 1993 advice (copy enclosed) to ANC 1-A on the procedures to be followed for the removal of an ANC officer.

Second, you allege that the chairman "[r]efuses to leave the mailbox key in the office." This prevents other commissioners from having "direct access to the mailbox." section 16(p) of the Advisory Neighborhood Commissions Act of 1975 (act), D.C. Code § 1-264(p) (1992), provides: "Any Commissioner within an individual Commission shall have equal access to the Commission office in order to carry out Commission duties and responsibilities." Equal access to the commission office, under this provision, includes equal access to the ANC's incoming mail. Thus, it would be a violation of section 16(p) if the chairman of an ANC were to interfere with a commissioner's right to have immediate access to his or her mail when that commissioner is at the ANC office. Compare our January 14, 1994 advice (copy enclosed) to ANC 1-C on the question of whether an ANC commissioner may be denied a key to the ANC's office.

Third, you allege that the chairman "[w]rites checks without the treasurer's signature or consent of other commissioners." Section 16(f) of the act, D.C. Code § 1-264(f) (1992), provides in pertinent part: "No expenditure of any amount shall be made without the specific authorization of the Commission. Any expenditure made by check shall be signed by least two officers of the Commission, one of whom shall be the treasurer or Chairman." Thus, the act does not require that the treasurer sign commission checks, but only that checks be signed by two officers of the commission, one of whom shall be either the chairman or the treasurer. However, all expenditures of a commission must be approved by the whole commission. This approval can come before or after the expenditure is made.

Fourth, you allege that the chairman "[h]as used petty cash funds for lunch." Section 16(1) of the act, D.C. Code § 1-264(1) (1992), provides in pertinent part: "Funds allocated to the Commissions may not be used for...meals...." The only exception to this prohibition is that a commission may use its funds to purchase "nominal refreshments [for consumption] at Commission meetings." See our March 11, 1992 advice (copy enclosed) to ANC 3-C regarding this exception. Thus, use of money in an ANC's petty cash fund is a violation of section 16(1) of the act.

Fifth, you allege that the chairman has asked you "not to fight" his authority, but "to sign any checks that he deems necessary." This is not, in itself, a violation of any law. However, you are not under any obligation to sign and should not sign a check where the expenditure of funds would constitute a violation of the act.

Sixth, you allege that the chairman "[h]ad ANC letterhead made up with his law office address without obtaining consent of other commissioners." By letter dated April 19, 1994, this Office advised you that the act did not prohibit the chairman of an ANC from listing on ANC letterhead stationery an address and telephone number where the chairman could be reached during business hours. In this regard, you have attached a copy of a memorandum, dated May 4, 1994, to you from W.C. Bradley, III of the Office of the Secretary of the District of Columbia. In that memorandum, Mr. Bradley opines that it is improper to print names and addresses of officials on government stationery. Mr. Bradley cites Mayor's Order 79-223, dated September 24, 1979, paragraph No.3 of which provides in pertinent part that "the names of directors, officers, officials, chairpersons or employees of departments, agencies, offices, boards, committees and commissions are not authorized to be printed on official letterheads except as provided by this Order." Paragraph 4(e) of this Mayor's Order states that the provisions of the Order shall not apply to "independent agencies of the Government of the District of Columbia established by law and not under the direction and control of the Mayor of the District of Columbia." ANCs are established by law and are not under the direction and

control of the Mayor. Therefore, Mayor's Order 79-223 does not apply to ANCs. Commission expenditures for office supplies, such as ANC letterhead stationery, like any other expenditures, must be approved by the commission.!

Seventh, you allege that the chairman "[u]pdated the computer without other commissioners' consent, with revisions that were costly but inadequate. No one is able to use it at this time." If ANC 4-B funds were expended for this computer updating, then such expenditure, to be legal, would have to be approved by the full commission.

Eighth, you allege that the chairman "[h]ired temporary help without other commissioners' consent." section 16(g) of the act, D.C. Code § 1-264(g) (1992), provides in pertinent part:

"Disbursements of Commission funds exceeding \$50 for personal service expenditures shall be specifically approved by the Commission at a public meeting prior to the disbursement. * * * If an expenditure required to be approved pursuant to this subsection is made without the required authorization of the Commission, the expenditure shall be deemed to be a personal expense of the officer who authorized the payment, unless the Commission SUbsequently approves the expenditure.

Thus, if the chairman expended ANC 4-B funds in excess of \$50 to hire a temporary staff person, he is required to obtain the specific approval of the full commission, and if he fails to obtain such approval, the act makes him personally liable for such expenditure.

Ninth, you allege that the chairman n[l]eft the file cabinet containing the checkbook open, although the policy is that it must be locked at all times." The act does not address this matter. Depending on the circumstances, it may be grounds for removal of the chairman from office. See the answer to your first question.

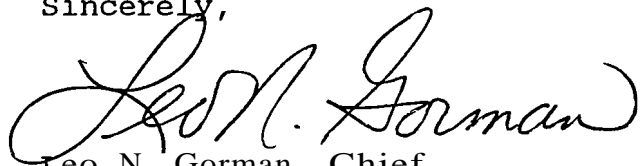
You ask why must the treasurer be bonded if the treasurer's signature is not required on each ANC check. Subsection (c) of section 16 of the act, D.C. Code § 1-264(c) (1992), provides in pertinent part that "[t]he treasurer shall file with the District of Columbia Auditor and maintain in force during the treasurer's occupancy of the office a cash or surety bond in an amount and on

This is not to say that every time office supplies are purchased, each specific purchase must be individually approved by the commission. For example, if, at the beginning of the year, the commission approves a budget that allocates \$1,000 of the commission's funds for office supplies, each individual purchase of supplies within that bUdget allocation need not be specifically approved by the commission.

a form satisfactory to the Auditor." This subsection goes on to provide that "[p]articipation by a Commission in the Advisory Neighborhood Commission Security Fund...shall satisfy the requirement of a cash or surety bond." The final sentence of this subsection reads: "No expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the District of Columbia Auditor." These provisions reflect the policy that the treasurer of an ANC is to be a principal player in the financial operations of an ANC. Yet, as noted above, the act does not mandate that the treasurer be one of the two signatories on ANC checks. If you believe the treasurer of an ANC should be required to sign every ANC check, you should recommend an amendment to section 16(f) of the act, D.C. Code § 1-264(f) (1992), to your Councilmember or to Councilmember Harold Brazil, the Chairman of the Council's Committee on Government Operations which has oversight responsibility for ANCs.

Any violations of law involving the use of funds by ANC 4-B should be promptly reported to the D.C. Auditor.

Sincerely,



Leo N. Gorman, Chief
Regulatory Affairs section
Legal Counsel Division

Enclosures

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

The Honorable Charlene Drew Jarvis
Councilmember, Ward 4
Council of the District of Columbia

The Honorable Linda W. Cropp
Councilmember At-Large
Council of the District of Columbia

Adam Dennis
Director
Office of Constituent Services

Russell A. Smith
D.C. Auditor