

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

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Louis Lieb
Commissioner
Advisory Neighborhood Commission 4B
District of Columbia Government
424 Whittier Street, N.W.
Washington, D.C. 20012

RE: Whether ANC May Make a Grant that Will Enhance Private Property

Dear Commissioner Lieb:

Bye-mail dated October 16, 2002, to Nancy L. Alper, Assistant Corporation Counsel, you requested the position of the Office of Corporation Counsel on whether an Advisory Neighborhood Commission (the "ANC") may make a grant that will have the unintended result of enhancing private property.

Specifically, the Takoma Theatre Arts Project ("TTAP"), an applicant for section 501(c)(3) status, was formed in order to renovate and operate the Takoma Theatre ("Theatre"). The Theatre has been underutilized for many years and TTAP wants to convert it into a community resource for ANC 4B. The Theatre is privately owned. Currently, TTAP has a one-year lease on the property but is interested in extending the lease. Using some monies that were already granted it by ANC 4B, TTAP hired a consultant to advise it on what improvements are necessary to revitalize the Theatre. The consultant reported that certain improvements could be made in the lighting design of the Theatre that would result in the improvement of the private property without purchasing new equipment. While this approach would be more cost efficient to TTAP than purchasing new lighting equipment, it would provide improvements to private property.

The law governing grants by ANCs is found in section 16 of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective July 27, 2000, D.C. Law 13-135, § 3(d), D.C. Official Code, 2001 Ed. § 1-309.13, and provides as follows:

(1)(1) [E]xpenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to section (m) of this section.

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(m)(1) A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.

(2) An applicant for a grant must submit an application in writing to the Commission. The application shall contain:

- (A) A description of the proposed project for which the grant is requested;
- (B) A statement of expected public benefits; and
- (C) The total cost of the proposed project, including other sources of funding, if any.

D.C. Official Code, 2001 Ed. § 1-309.13. Previous iterations of this provision indicate that a grant that benefits an individual is prohibited as a nonpublic purpose. *See* section 16 of Advisory Neighborhood Commission Act of 1975, as amended by the Advisory Neighborhood Commission Amendment Act of 1990, D.C. Code § 1-264(m) (1992), 37 DCR 8420 ("A grant to an individual shall be prohibited as a nonpublic purpose expenditure."). Thus, the law in general provides that an ANC may grant monies to an organization that is public in nature provided the money does not inure to the benefit of a private party but rather is for the public good.

Relying upon the facts as you set forth in your October 16, 2002, e-mail, it appears that TTAP's use of grant monies in its efforts to revitalize the Takoma Theatre in general meets the statutory requirement of providing a public benefit in making grant awards. The issue to be determined is whether the unintended "consequences of TTAP's using grant monies to improve the Theatre's lighting equipment that is owned by a private party may result in the use of public monies for a prohibited purpose. There is no clear distinction or a bright line test in such a determination. Rather, a balancing test must be employed to determine whether the public benefit outweighs the private gain.

According to your e-mail, in this case rearranging and improving the lighting design would assist TTAP in staging better productions and drawing more groups to present productions to the public. In turn, this would benefit the community by making the Theatre a significant resource to the community and attracting the public to the Theatre. You must weigh this against the private gain that may come from improving the lighting of the privately owned Theatre. While we do not have the facts upon which to make such a determination, you should determine whether this type of enhancement

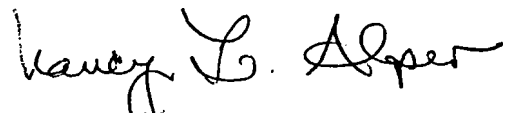
appreciably adds to the value of the private property. **If** the grant awarded would benefit the public significantly more than the gain inured by the private party, then the monies can be used by TTAP to rearrange and amplify the current lighting equipment. For example, if you conclude that the increase in value to the private property as a result of the changes is *de minimus*, then you could probably conclude that there is no prohibited purpose in the grant.

The following questions may assist you in your determination as to whether the public benefit outweighs the private gain:

- What is the current value of the Takoma Theatre property?
- Does this include stage equipment, including lighting?
- What is the current value specifically of the lighting equipment?
- What is the current condition of the equipment?
- What recommendations has the consultant made with regard to the lighting?
- Do the recommendations require purchasing any new **lighting** equipment?
- Do the recommendations require purchasing any new parts for the lighting equipment or do they only provide plans for rearranging the equipment that is already on the premises of the Takoma Theatre?
- If the recommendations only consist of rearranging the equipment, what value does this add to the lighting equipment and to the Takoma Theatre property, respectively?
- What percentage of value would the newly configured equipment add to the total of the Takoma Theatre property?

I hope this discussion is helpful. If you have any questions, please contact the undersigned at 724-5537.

Very truly yours,



Nancy L. Alper
Assistant Corporation Counsel