

# 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:  
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(RL-267-94)  
(Mise 94-45)

September 2, 1994

Alice W. Gilmore  
Treasurer  
Advisory Neighborhood Commission 4-B  
32 Sheridan Street, N.E.  
Washington, D.C. 20011

Re: Is ANC 4-B legally liable to pay Esther Yarborough for personal services she rendered to ANC 4-B if ANC 4-B never approved the hiring of Ms. Yarborough or the disbursement of any ANC 4-B funds to her?

Dear Commissioner Gilmore:

This is in reply to your August 23, 1994 letter requesting the advice of this Office concerning the liability of Advisory Neighborhood Commission (ANC) 4-B on the claim for unpaid wages filed by Esther Yarborough with the Office of Wage-Hour of the Department of Employment Services. The claim is based on services rendered to ANC 4-B by Esther Yarborough, who, you assert, was hired by ANC 4-B Chairman Vannie Taylor without the approval of ANC 4-B. It is my understanding that Ms. Yarborough never received any compensation for the services she rendered to ANC 4-B. You state that at a hearing on Ms. Yarborough's claim held on August 23, 1994, "Ms. Pamela Banks (Wage Payment and Collection specialist) directed that we pay Ms. Yarborough within ten days." You ask whether ANC 4-B is "legally bound to honor Commissioner Taylor's commitment or is this an expense that only he should incur."

section 16(g) of the Advisory Neighborhood Commissions Act of 1975 ("act"), D.C. Code § 1-264(g) (1992), provides the following in regard to the expenditure of ANC funds for personal services:

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. The approval shall be recorded in the minutes of the Commission meeting. Any personal services payment shall name the person who is to receive the payments, the rate of compensation, and the maximum hours of

service, if less than full-time compensation. 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.

This provision prohibits ANC 4-B from making a disbursement in excess of \$50 for wages for a staff employee unless such disbursement is specifically approved by ANC 4-B prior to the disbursement. Therefore, if it is true, as you allege, that ANC 4-B Chairman Vannie Taylor authorized Ms. Yarborough to perform services for ANC 4-B and promised her certain compensation for such services, all without the specific approval of ANC 4-B, then he acted beyond his authority as Chairman of ANC 4-B. Thus, assuming ANC 4-B has never approved Chairman Taylor's action to hire Ms. Yarborough and has never approved any payment of compensation to Ms. Yarborough, either before or after she commenced performing services for ANC 4-B, then ANC 4-B cannot legally be required to pay the wage claim of Ms. Yarborough in excess of \$50.

Ms. Yarborough's wage claim against ANC 4-B is based on § 2 of An Act to provide for the payment and collection of wages in the District of Columbia ("Wage Act"), approved August 3, 1956, 70 stat. 976, D.C. Code § 36-102 (1993). Section 2 of the Wage Act provides in pertinent part that "(e]very employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer." While an ANC that hires a person to perform office work may be an "employer" for purposes of the Wage Act,<sup>1</sup> nevertheless, the general provisions of the Wage Act cannot properly be construed to override the specific provisions of the Advisory Neighborhood Commissions Act of 1975 governing the disbursement of funds by ANCs for personal services. In this regard, it must be remembered that an ANC's funds are pUBLIC funds. And in § 16(g) of the act, the Council

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Section 1(a) of the Wage Act, D.C. Code § 36-101(1) (1993), defines the term "employer" as "every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, association, or corporation, employing any person in the District of Columbia: Provided that the word 'employer' shall not include the government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer Subject to the Railway Labor Act." There could perhaps be an argument made that an ANC is an "agency" of "the government of the District of Columbia," and is, therefore, exempt from the Wage Act's coverage. However, for the purposes of this advice, I assume that the Wage Act applies to ANCs.

sought to protect these public funds from improper disbursement by requiring that Commission funds in excess of \$50 may not be disbursed to a person for personal services unless such disbursement is "specifically approved" by the full ANC. As a practical matter, this means that any contract of employment between an ANC and a person employed by that ANC that calls for compensation in excess of \$50 must be approved by the full ANC. Ideally, the contract should be approved before the employee commences to perform services for the ANC. However, the contract can be approved after the employee has commenced to perform services.

The application of § 16(g) of the act may work a hardship on a person such as Ms. Yarborough, who apparently relied upon the representations of Chairman Taylor. Nevertheless, the underlying principle embodied in the approval requirement in § 16(g) of the act is similar to the principle embodied in government contract law that a person who deals with a government officer is charged with knowledge of and bound by that officer's power (or lack of power) to enter into a contract obligating the payment of public funds. Chamberlain v. Barry, 606 A.2d 156, 159 (D.C. 1992). See also, Coffin v. District of Columbia, 320 A.2d 301, 303 (D.C. 1974) (holding that a would-be contractor was not entitled, in law or in equity, to recover any amount of money in excess of that which the District officer had authority to bind the District government). Likewise, Ms. Yarborough is charged with knowledge of the requirements of § 16(g) of the act. Moreover, persons such as Ms. Yarborough are not without the ability to protect themselves in situations such as the instant one. Given the requirement in § 16(g) of the act for specific approval by the full ANC of any disbursement in excess of \$50 for personal services, Ms. Yarborough could have avoided the predicament in which she now finds herself by refusing to commence performing personal services for ANC 4-B until an employment contract between her and ANC 4-B setting forth her hours of work and rate of pay was approved by the full ANC.

In order for Ms. Yarborough to collect more than \$50 from ANC 4-B for whatever services she rendered ANC 4-B, one of two things would have to happen: (1) ANC 4-B decides, as a matter of policy, to approve the disbursement of ANC 4-B funds to Ms. Yarborough for the services she performed, or (2) Ms. Yarborough prevails in a court action against the Commissioners of ANC 4-B.<sup>2</sup>

In sum, my advice to you and to the other Commissioners of ANC 4-B is to pay Ms. Yarborough \$50, unless ANC 4-B is willing, as a matter of policy, to approve the disbursement of a greater amount

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<sup>2</sup> If Ms. Yarborough were to bring a legal action against the Commissioners of ANC 4-B, you should immediately contact the civil Division of this Office.

to Ms. Yarborough. However, for the reasons stated above, ANC 4-B is not legally obligated to pay Ms. Yarborough more than \$50.

Sincerely,

A handwritten signature in black ink, appearing to read "Leo N. Gorman". The signature is fluid and cursive, with the first name "Leo" being particularly prominent.

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

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

Adam Dennis  
Director  
Office of Constituent Services

Russell A. Smith  
D.C. Auditor

Russell C. Washington  
Deputy Associate Director  
Office of Wage and Hour  
Department of Employment Services

Vannie Taylor  
Chairman, ANC 4-B

All other Commissioners of ANC 4-B