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Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



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(86-392)(LCD-2023)

. December 1, 1986

Paul M. Washington, Chairman
Advisory Neighborhood Commission 5-A
Slowe School Demountable
14th and Irving Streets, N.E.
Washington, D.C. 20017

Re: Use of ANC funds for legal
assistance to residents who oppose
a shelter for persons with AIDS.

Dear Chairman Washington:

This is in response to your November 10, 1986 letter to Acting Corporation Counsel James R. Murphy, in which you request advice concerning the legality of using ANC 5-A funds to hire an attorney to address, "on behalf of the citizens of the Otis Street neighborhood," the "Catholic Charities proposal to use 2800 Otis Street, N.E. as a shelter for Aids victims." In this connection, you request an "interpretation of pages 60-67 of the ANC ••• Manual that refers to the use of funds."

On page 77 of the ANC Manual (published in 1985), there appears a copy of a letter, dated April 4, 1978, signed by then D.C. Auditor Matthew S. Watson, which appears relevant. According to that letter, a tenants association was collecting money for a "legal defense fund" in order "to hire an attorney as a consultant to protect [the association's] ••• legal rights, to assist in legal procedures and to research alternatives in this landlord/tenant rental housing accommodations dilemma." The tenants association requested a grant from its ANC, stating that the grant "may be used to assist tenants associations in defraying attorney fees ••••" To the ANC's request for guidance, Mr. Watson responded as follows:

It is my opinion that your proposed grant cannot legally be made. The Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975 specifically forbids a Commission from "initiat[ing] a

legal action." D.C. Law 1-58 § 13(g). That section further states that lithe Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions••• should the Commission feel legal redress is required.". To allow a Commission to make a grant to a separate entity to finance initiation of a legal action would be to allow the Commission to do indirectly what it is forbidden to do directly and would violate the intent of the statute. This is particularly clear since the law states what a Commission should do if it believes legal redress is necessary.

My opinion that an ANC may not finance litigation is in agreement with the Opinion of the Corporation Counsel, dated April 19, 1977 (24 D.C. Register 2502 published September 30, '1977). A copy of that opinion is enclosed.

I believe this analysis is correct. The April 19, 1977 Corporation Counsel opinion^{1/} referenced in Mr. Watson's letter is quoted and relied upon in a letter of legal advice, dated October 21, 1986, from Acting Corporation Counsel James R. Murphy to D.C. Auditor Otis H. Troupe. In that letter, a copy of which is attached, Mr. Murphy stated in relevant part:

Permitting ANCs to finance the legal representation costs incurred by private persons or organizations in connection with quasi-judicial proceedings before District Government administrative agencies is not substantially different from permitting ANCs to finance the legal representation costs incurred by private persons or organizations in court litigation. And to permit ANCs to finance legal costs in either situation is, in effect, to permit ANCs to assume "an enforcement responsibility - or authority" which "they do not have•••" Kopff [v. District of Columbia Alcoholic Beverage Control Board], supra, 381 A.2d [1372] at 1376 [D.C. 1977]. The authority of an ANC is to offer advice, not to exert legal compulsion on agencies or officers of the District Gdvernment.

Moreover, the fact that actual litigation, whether in an administrative or a judicial forum, is not ultimately initiated does not make the grant or expenditure of ANC funds proper since the initiation of litigation is not necessary in order for an ANC, or a private person or organization financed by an ANC, to assume an enforcement responsibility or authority.

^{1/} This opinion is published at 2 Ope C.C. D.C. 17. A copy of the opinion is attached for your information.

There is an additional problem with using ANC 5-A funds to pay for legal representation for those citizens of the Otis Street neighborhood who oppose the use of 2800 Otis Street, N.E. as a shelter for persons with AIDS.

Section 738(c)(2) of the 'District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-251(c)(2) (1981), provides that an ANC may expend "public funds and other funds donated to it" for "public purposes within its neighborhood commission area." Section 738(e) of the Self-Government Act, D.C. Code § 1-251(e) (1986 Supp.), provides that public funds are to be allotted to ANCs in order for them to employ necessary staff, "and to conduct programs for the welfare of the people in a neighborhood commission area••••" And D.C. Code § 1-261(k) (1981) provides in pertinent part:

Other than neighborhood or community enhancement campaigns, commissions may operate programs only in conjunction with existing governmental activities..••

Thus, the programs funded by ANC money must have a local focus; that is, such programs must benefit persons residing or working in the ANC area. In addition, such programs must further "public purposes"; that is, the benefits conferred by ANC-funded programs must be "public" in character.

The phrase "public purpose" or "public purposes" is common in state laws dealing with the expenditure of public funds, and has been construed by state courts in many different factual contexts. See 15 McQuillin Municipal Corporations, §§ 39.19 and 39.21 (1985); see also 35 Words and Phrases, "Public Purpose" (1963). One frequently enunciated test is "whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." Opinion of the Justices, 384 So.2d 1051, 1053 (Ala. 1980), citing Opinion of the Justices, 347 Mass. 797, 197 N.E.2d 691 (1964). In this regard, the Supreme Court of New Jersey has stated that the concept of "public purpose" connotes "an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government." Roe v. Kervick, 42 N.J. 191, 199 A.2d 834, 842 (1964). Thus, the phrase "public purposes" is "incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare." Roe v. Kervick, supra.

While the ANC 5-A community includes citizens in the Otis Street neighborhood who oppose the use of 2800 Otis Street as a shelter for persons with AIDS, the D.C. Commissioner of Public Health reports that more than 10% of the persons with AIDS in the District of Columbia are residents of Ward 5. Thus, while this use of ANC 5-A funds might benefit the perceived interests of some individuals in the community, it could not be said to serve "as a benefit to the [ANC 5-A] community as a whole....." Roe v. Kervick, supra. Accordingly, District of Columbia law does not authorize such a use of ANC 5-A funds.

Sincerely,



Margaret L. Hines
Deputy Corporation Counsel, D.C.
Legal Counsel Division

Attachments

cc: Otis H. Troupe
D.C. Auditor

William R. Spaulding, Chairman
Committee on Government Operations
Council of the District of Columbia'