

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:
(AL-95-531)
L&O:LNG:lng

October 13, 1995

Tony Robinson
Executive Assistant/Chief of staff
Office of Councilmember Kevin P. Chavous
John A. Wilson Building, Room 108
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Proposed agreement between ANC 7-B and the House of Ruth regarding the use of the premises 2910-2916 Pennsylvania Avenue, S.E., as a child development center

Dear Mr. Robinson:

This is in response to your October 2, 1995 memorandum to Leo Gorman of this Office in which you seek advice concerning a proposed agreement between Advisory Neighborhood Commission (ANC) 7-B, on behalf of itself and the Dupont Park, Randle Highlands, Hillcrest, and Penn-Branch communities in Ward 7 (all, including ANC 7-B, collectively referred to as the "community"), and the House of Ruth, a District of Columbia non-profit corporation.

The proposed agreement relates to the House of Ruth's operation of the premises 2910-2916 Pennsylvania Avenue, S.E. as a child development center to be called "Kidspace." One of the "whereas" recitals in the proposed agreement states that the House of Ruth has been issued a certificate of occupancy, dated August 30, 1995, by the D.C. Department of Consumer and Regulatory Affairs (OCRA) to use these premises as a child development center with a maximum occupancy of sixty children from two through five years of age. Another recital states that in the future the House of Ruth intends to apply to OCRA for a modification of its certificate of occupancy so that it would be authorized to provide services to infants and toddlers. Still further recitals state: (1) that the community supports the House of Ruth's "efforts to establish a quality child development center" at this location "with certain limitations and restrictions on the use of the [p]roperty," and (2) that the House of Ruth is willing "to adhere to the limitations and restrictions set forth herein to minimize any potential adverse impact upon the neighborhood."

"The "whereas" recitals are followed by declarations in which the community would agree: (1) to organize an advisory group that is representative of all the organizations that make up the community, and (2) to "support the House of Ruth's future efforts to expand Kidspace to include infants and toddlers." For its part, the House of Ruth would agree: (1) to limit the use of the property to a child development center for sixty children and related necessary functions; (2) to appoint one or more liaison persons to serve as the designated contact with the community; and (3) to meet with the community's advisory group on an agreed-upon schedule to discuss issues of mutual interest. The final declaration states that the "individual ANC Commissioners and their successors, on behalf of or to vindicate the rights of the ANCs and other members of the community, may enforce this Agreement in a court of law."

At the outset, it should be noted that ANC 7-B, as such, is not a legal entity. Therefore, ANC 7-B, as a commission, does not have the legal capacity to enter into contracts. Its members may enter into contracts, however. Thus, if authorized by the commissioners of ANC 7-B, the chairperson or other commissioner of the ANC may sign a contract that can bind all the commissioners of ANC 7-B and their successors in their official capacities as commissioners. And if the proposed agreement is supported by adequate consideration (which it appears to be) and would not contravene public policy (which for the most part it would not appear to do), the agreement would normally be enforceable in an appropriate court of law.¹ Beyond this general advice, this Office cannot, with the following exception, offer a predictive opinion as to the enforce-

In connection with the enforcement of contracts, it is relevant to note that an ANC does "not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen." Section 13(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(g) (1992). The corollary to this limitation is that "ANCs may not use their funds to finance litigation on behalf of individual commissioners or other persons or organizations. The expenditure of ANC funds for legal purposes is limited to Illegal expenses...for commission representation before an agency, board, or commission of the District government..... section 16(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(1) (1992). If an ANC wishes to have litigation initiated on behalf of its commissioners in their official capacities or if such commissioners are named as defendants in a suit arising out of the performance or non-performance of their official duties, they normally request legal representation by this Office.

ability of the provisions of this particular proposed agreement.²

"It is a general doctrine that contracts injuriously affecting public or government service are invalid. Inasmuch as the efficiency of that service is a matter of vital concern to the public, agreements tending to injure such service are regarded as being contrary to public policy." 17A Am. Jur. 2d Contracts § 282 (1991). As publicly elected officials of the District government, ANC commissioners have the general duty to represent the interests of their single-member district constituents on public matters that come before them for decision as ANC commissioners. In order to carry out this duty, ANC commissioners must be free to exercise their best judgment as to where the public interest lies in matters that come before them for official action. For ANC commissioners to agree by contract to vote in a certain way on a matter that may present itself for decision in the future is to restrict that freedom of decision that ANC commissioners must maintain as publicly elected government officials. Declaration No. 5 of the proposed agreement states: "The community agrees to support the House of Ruth's future efforts to expand Kidspace to include infants and toddlers." To the extent that this language would purport to bind the commissioners of ANC 7-B to vote in a certain way in a matter that may in the future come before them for official action, such language is contrary to public policy for the reasons stated above, and therefore would be unenforceable in a court of law.

² Your memorandum does not make clear the nature of the other community organizations, *i. e.*, "the Dupont Park, Randle Highlands, Hillcrest, and Penn-Branch communities in Ward 7." Are these communities incorporated neighborhood associations? If so, an agreement of this nature should be signed by an authorized representative of each such association after being authorized to do so on behalf of the association. It is doubtful that the chairperson of ANC 7-B can, with his signature alone, legally bind such community associations.

Where the issuance of a license or permit is involved, the terms of an agreement between an ANC and a license or permit applicant may in some cases be appropriately incorporated in the order of the issuing District government agency as a condition of the granting of the license or permit. In such a case, enforcement of the terms of such an agreement would fall to the District government agency, which could revoke or suspend the license or permit if the holder failed to comply with one or more of the conditions upon which the license or permit was issued.

sincerely,

Charles F.C. Ruff
by:



Karen L. Cooper, Chief
Legislation & Opinions section
Legal Counsel Division

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

Lavonna Johnson
Director
Office of Constituent Services

Ayo Bryant
Director
Office of Diversity and Special Services

Russell A. Smith
D.C. Auditor

Willard C. Poteat
Chairperson, ANC 7-B