

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

June 25, 2004

Sandra "S.S." Seegars  
Chairperson ANC 8E  
1107 Savannah Street, S.E.  
Washington, DC 20032

Re: Use of grant money for church-sponsored recreational youth event

Dear Commissioner Seegars:

This letter responds to your letter of June 21, 2004, wherein you seek the advice of this Office concerning whether your Advisory Neighborhood Commission (ANC) may grant public funds to a church for a community event involving roller skating.

According to your letter and its supporting materials, "Gospel Skate Night" is a recreational event for youth that will take place on the grounds of Johnson Jr. High School on Friday, June 25, 2004. You state that ANC 8E proposes to donate \$597.00 for roller skates, and \$450.00 for a generator that will provide music, totaling \$1,047.00.<sup>1</sup>

First, the event's title, "Gospel Skate Night," sponsorship by the A.P. Shaw Church, and its stated purpose, "to meet more than the spiritual needs of the people in our community," raises issues of which you need to be aware before you proceed with the grant.

Section 16(m) of the Advisory Neighborhood Commission Act, as amended, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.13(m)(1) (2003 Supp.), provides in pertinent part:

(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

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<sup>1</sup> In a follow-up telephone conversation with our Office on June 22, 2004, you advised that the grantee would purchase these items as opposed to renting them.

organization must not be duplicative of any that are already performed by the District government.

Additionally, the Establishment Clause of the First Amendment to the U.S. Constitution provides that “Congress shall make no law respecting an establishment of religion.” Therefore, your ANC may provide this grant only if: (1) the grant has a secular purpose; (2) the principal or primary effect of the grant is one that neither advances nor inhibits religion; and (3) the grant does not foster an excessive ANC entanglement with religion. *See Letter to Otis H. Troupe, District of Columbia Auditor, December 28, 1992* (attached hereto) quoting *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 747-748 (1976). In the letter to Mr. Troupe, this Office opined that ANC 8-B could grant the A.P. Shaw Church funds to purchase football equipment for a church sponsored youth team as long as it met the three conditions listed above.

You state that the grant, in part, would fund the purchase of roller skates for the event. This would not likely be a violation of the law, as this Office has found that a Commission can provide funds for athletic equipment for youth in its area, so long as the youth do not keep the equipment. *See Letter to Alice W. Gilmore, Advisory Neighborhood Commission 4-B, October 20, 1994* (attached hereto). *Webster’s Dictionary* defines skating as “the act, art, or sport of gliding on skates.” As such, we view roller skating to be like any another recreational sport and not mere entertainment for the purpose of ANC grants (see discussion below on prohibition of ANC expenditures for entertainment). Skating, therefore, is a permissible form of youth activity for which a grant can be given.

Accordingly, with regard to the purchase of roller skates, the grant must serve a significant number of your ANC’s residents, as well as follow the guidelines of the Establishment Clause. This means that the following conditions must be strictly followed: (1) participation of youth in the skating event must not be limited on the basis of religious affiliation; rather, it must be open to all of the youth in your ANC’s community; (2) the event must not be religiously-oriented or promote, or inhibit, religion; and (3) the roller skates must not be given to the participants or restricted solely to this one event, but instead must be returned to the grantee for use in future secular, youth-oriented, community events.

Second, you state that the remainder of the funds would be used to buy a generator that would power the music for the event. This funding differs from that of roller skates, as the generator’s purpose is to provide entertainment for the event, rather than to foster athletic recreation. Since ANC 8E’s grant would come from funds appropriated by Congress, the question of whether your ANC may make a grant for these purposes is governed by the standards set forth in the General Accounting Office’s Principle of Federal Appropriations Law, 2<sup>nd</sup> ed., Vol. 1, July 1991. Chapter 4, Part C, section 5(d) (at page 4-100), states, in part:

Just as the entertainment of government personnel is generally unauthorized, the entertainment of non-government personnel is equally impermissible. The basic rule is the same regardless of who is being fed or entertained. Appropriated funds are

not available for entertainment, including free food, except under specific statutory authority.<sup>2</sup>

There is no specific authority that authorizes the type of expenditure for entertainment that you seek (purchasing a generator to power music for a community event). *See Letter to Westy McDermid, ANC 2-E, May 26, 1994* (attached hereto).

Additionally, the inability to track how the generator will be used after the skating event presents another problem. In a previous opinion, this Office stated that a proposed Commission grant for a VCR was suspect because of the difficulty of policing whether the VCR would be used for entertainment purposes. *See Letter to Deborah K. Nichols, District of Columbia Auditor, August 15, 2000*.

Furthermore, as stated previously, the Establishment Clause prohibits the proposed expenditure from being used for non-secular purposes. Practically, it would be impossible to ensure that the Church would not use the generator for purposes that might promote religious principles. *See Letter to James D. Berry, ANC 5C, May 4, 2004* (attached hereto). Therefore, a grant for the purpose of purchasing a generator for the skating event is impermissible.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

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RJS/dps

Attachments (5)

AL-O4-386

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<sup>2</sup> Under the General Accounting Office's "necessary expense" doctrine, however, an argument might be made that use of the generator is necessary to the roller skating activity. Given our conclusion that its purchase would be prohibited for other reasons, we do not find it necessary to form an opinion on this particular issue.