

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



Legal Counsel Division

August 10, 2006

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

Re: Whether a Grant to Fund Painted Murals on Private Buildings is
Permissible

Dear Ms. Nichols:

This letter responds to your request for a legal interpretation concerning whether an ANC may make a grant to an organization for the purpose of having a mural painted on the exterior of a private building. For the reasons that follow, we conclude that such an expenditure is a permissible use of ANC funds.

You attach a grant request entitled “Small Grant Application” submitted to ANC 4C by an organization called the 14th Street Heights Main Street Program (FSHMSP). FSHMSP is described as a non-profit civic organization that strives to create a “business-friendly, children-friendly, safer 14th Street.” It receives financial support from members of the community.

The application seeks \$1000 for two mural projects in the ANC area – one at Johana’s Restaurant (4728 14th Street), and the second at W.T.A.M.N. Ethiopian Bakery (4720 14th Street). In each case, students from The Midnight Forum, Inc., described as a “free Leadership & Hip-Hop based training school” for D.C. teens (itself a non-profit organization) will paint murals on the storefronts of the aforementioned business structures. The conceptual designs will reflect Dominican and Ethiopian culture and incorporate some freestyle elements intended to permit the students to express themselves artistically.

Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(m) (2006 Supp.), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135 (collectively, the “ANC Act”), limits the purposes and recipients of grants. It states in relevant part:

(m)(1) ... A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area...

Though there are other restrictions to this somewhat expansive grant authority, we are not concerned with any of the express expenditure prohibitions contained in the ANC Act (*i.e.*, expenditures for meals, partisan political activity, personal subsistence, meals, or transportation outside of the Washington metropolitan area). *See* section 16(1)(2) of the ANC Act (D.C. Official Code § 1-309.13(1)(2) (2006 Supp.)). We also are not concerned with the requirement that grants be made to organizations that are public in nature, given the representations in the grant request that the two entities involved are non-profit organizations that engage in civic activities. The concern, rather, is the apparent benefit to the two private businesses that will be the direct recipients of the storefront murals funded by the proposed grant.

In your request to this Office you advise that one of the Commission members has questioned the permissibility of this grant because of his belief that permitting such a grant will open the door for other business owners in the community to have their properties improved at the District's expense. That is not a valid basis, however, to deny this grant request.

As set forth above, the grant must "benefit persons who reside or work within the Commission area." In the past, we have interpreted this to permit expenditures even where there are secondary benefits to private or business interests. (Letter to Deborah K. Nichols, July 13, 2005.) In that case this Office permitted an expenditure to a bookstore in the ANC area to hold performances at which members of the community could both listen to and participate in various types of public performances (*i.e.*, poetry reading). In approving the expenditure we stated in pertinent part:

Further, the concept of an ANC grant is that money is needed to secure a community benefit. Sometimes this can only be achieved by directly benefiting private parties. As a practical matter, the indirect benefits that flow from an ANC grant are a necessary consequence of any expenditure. In fact, much of the power and importance of the grant funds is that they do provide secondary benefits to many businesses and people in the community.
[Footnotes omitted.]

Id. In an earlier letter we approved a grant to a community group that paid the wages of five neighborhood youths to perform work within the community. Although the youths benefited from receiving a wage, the benefit was considered public because the work performed by the five youths enhanced the entire community. (Letter to Deborah K. Nichols, August 4, 2000.)

We find no difference between these earlier letters and the grant request at issue here. Conceding that the mural will improve the business owner's property, this consequence does not detract from the potential public benefit of beautifying the neighborhood. Both shops have sidewalk store fronts that border 14th Street and the ANC may properly find that the suggested artwork will improve the neighborhood. As in the bookstore letter in which members of the public could observe the performances, the murals will be observable by all who pass, pedestrians and motorists alike. As for the Commissioner's concern that approval of this grant may open the door to other business owners making similar requests, we remind the ANC that it is not obligated to spend its limited funds in this manner and may simply decline to do so, even if the grant is otherwise permissible.

Accordingly, I conclude that the grant request presented to this Office is a permissible use of ANC funds.¹

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

_____/s/_____

RJS/dps

(AL-06-417)

¹ This letter is intended for the limited purpose of authorizing the ANC to make the grant in question. It does not, either expressly or impliedly, grant approval to the grant recipients to engage in the projects described in the grant application without first obtaining all necessary permits (if any) from the appropriate District government agencies, departments, or offices and, if applicable, permission from the property owners upon which the businesses are located (if the properties are leased).