

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



Legal Counsel Division

August 9, 2006

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

Re: Whether a Grant to Purchase Amusement Park Tickets is Permissible

Dear Ms. Nichols:

This letter responds to your request for a legal interpretation from this Office concerning whether an ANC may make a grant to an organization for the purpose of purchasing tickets to an amusement theme park. For the reasons that follow, we conclude that such an expenditure is an impermissible use of ANC funds.

You advise that on July 21, 2005 ANC 6C authorized a grant (and issued a check) to the Perry School Community Services Center, Inc. for a “Family Fun” outing to the Six Flags of America theme park located in Mitchellville, Maryland. The outing was described as a “family-centered” event for the 400 children of Tyler House – a housing complex in the Sursum Corda neighborhood of the District whose residents have an income below the recognized poverty level.

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...

There are limitations, however. Section 16(l) of the ANC Act (D.C. Official Code § 1-309.13(l)(2) (2006 Supp.)), provides in pertinent part: “(2) Funds allocated to the Commissions may not be used for a purpose that involves . . . meals . . . or travel outside of the Washington metropolitan area.” Based upon the information provided to us, we do

not believe that either one of these prohibitions applies here. For example, to the extent that any of the funds might be used for “travel” to the theme park, the location of the park in Mitchellville, Maryland is just outside the Washington Beltway (I-495) and could therefore be considered within the “Washington metropolitan area.” Moreover, the grant request is for tickets only and does not suggest that the funds will be used for meals, which would be prohibited. And, we do not question that the entity is public in nature or that 400 children represent a significant benefit to those residing in the community. The problem is that this type of activity is difficult to characterize as anything but entertainment, whatever its beneficial effects are, and public funds for entertainment is irrefutably prohibited under federal appropriations law.

According to the Government Accountability Office¹ (GAO), the use of federally appropriated funds for entertainment purposes is prohibited unless specifically authorized by statute. *See* General Accounting Office, Principles of Federal Appropriations Law, 4-123 (3d ed., Jan. 2004); *see also* Letter to Westy McDermid, May 26, 1994.² Although it has not precisely defined “entertainment,” the GAO has suggested that the term is very broad, and is meant to include sports, recreation, performances, or other sources of amusement. Principles of Federal Appropriations Law at 4-101 to 102.

Nonetheless, because of the “public benefit” authority of the Home Rule Act, which we read together with federal appropriations law, this Office traditionally has taken a more expansive view of what may constitute a permissible expenditure by ANC’s than what federal law might otherwise strictly allow.³ Thus, ANC’s have been allowed to expend funds for recreational purposes where there is a sufficient benefit to the community. For instance, this Office authorized the expenditure of funds for football equipment (Letter to Otis Troupe, Dec. 28, 1992), roller-skates (Letter to Sandra Seegars, June 25, 2004), and other athletic equipment (Letter to Alice Gilmore, Oct. 20, 1994). And, we more recently concluded that an ANC grant to fund an arts program in which community members could participate was permissible (Letter to Philip C. Spalding, July 13, 2005). These approved grants all served a public purpose by facilitating community participation in the funded activity. Further, all such approved grants provided a number of other benefits to the community, such as affording safe and constructive activities for community youth.

We have stopped short, however, of permitting ANC funds to be utilized purely for entertainment not otherwise considered to be recreational or participatory in nature. In our view, the public benefit element associated with such events would not be sufficient to overcome the federal restrictions on entertainment expenditures. Thus, we have concluded that ANC funds could not be used to fund a series of jazz concerts (Letter to Alice Gilmore, Oct. 20, 1994) or to purchase a generator to power sound equipment for

¹ Formerly the General Accounting Office.

² The money allocated to an ANC by the District falls under this federal restriction because Congress must appropriate the District’s local revenue before the District can obligate or spend it.

³ Section 738(e) of the Home Rule Act, approved Dec. 24, 1973, Pub. Law 93-198, D.C. Official Code § 1-207.38(e) (2006 Supp.), states that an ANC shall receive funds “to conduct programs for the welfare of the people in a neighborhood.”

music at a roller-skating event (Letter to Sandra Seegars, June 25, 2004). Though we did, in fact, approve funds for the actual roller-skates, we expressly distinguished the grant as one which would provide recreation and “not mere entertainment” (Letter to Sandra Seegars, June 25, 2004).

In the instant case, we cannot reconcile the entertainment prohibition with the activity in question, namely a day-long excursion to an amusement theme park – the very purpose of which is to provide entertainment to its guests. Despite the stated benefit that may be realized to the children (“family fun”), a grant to pay for ANC residents to participate in rides and attractions designed to offer maximum entertainment, while perhaps a worthwhile charitable cause for private contributions, simply is an impermissible use of public funds.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/s/

RJS/dps
(AL-06-381)