


# Memorandum

Government of the District of Columbia

TO: Thomas Downs  
City Administrator

Department, OCC  
Agency, Office: LCD:L&O:LNG:gbt  
(85-127)

FROM: Margaret L. Hines   
Deputy Corporation Counsel, D.C. Date: December 11, 1985  
Legal Counsel Division

SUBJECT: Auditor's Rules Governing Audit and Financial  
Procedures for Advisory Neighborhood Commissions.

An October 29, 1985 letter (a copy of which is attached) from D.C. Auditor Otis Troupe to you states that there is "confusion regarding the applicability of D.C. Auditor rules promulgated prior to... [his] tenure..... Mr. Troupe also reiterates his view that the Auditor should not promulgate rules governing the financial operations of Advisory Neighborhood Commissions (ANCs) and then be required to monitor ANCs for compliance with such rules. This Office agrees with Mr. Troupe's observations and recommends that the Executive Branch promulgate any necessary rules. Our reasoning follows.

On April 12, 1976, then D.C. Auditor Matthew S. Watson adopted rules governing audit and financial procedures for Advisory Neighborhood Commissions. See 22 DCR 3851-3854, 4603-4607, 4887-4889, and 5579-5588. It is my understanding that these rules are still utilized by the Auditor in connection with the exercise of the Auditor's audit responsibilities under section 16(b) of the Advisory Neighborhood Councils Act of 1975 (ANC Act), D.C. Law 1-21, as amended by D.C. Law 1-58, 22 OCR 5466, D.C. Code § 1-264(b) (1981). These rules, however, have never been published in the District of Columbia Municipal Regulations (DCMR). Accordingly, these rules ceased to be effective on July 1, 1984. See D.C. Code § 1-1538(a) (1985 Supp.).

Even if these rules had been published in the DCMR, they would nevertheless not be valid. For the reasons outlined below, I have concluded that the Auditor does not have the requisite statutory authority to prescribe accounting procedures to be followed by Advisory Neighborhood Commissions.

There is no provision in either the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, 87 Stat. 774, as amended, or in the ANC Act, as amended, which authorizes the D.C. Auditor to prescribe accounting procedures for Advisory Neighborhood Commissions. In this regard, section 738(f) of the Self-Government Act provides:

The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.  
(Emphasis added.)

Following these instructions, the Council enacted the "Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975," D.C. Law 1-58, effective March 26, 1976, "22 DCR 5453-5466. This law added four sections to the ANC Act. Added section 16(a) provides in pertinent part that" (d)isbursements of all (ANC] funds shall be in accordance with District government accounting procedures." 22 DCR 5466, D.C. Code § 1-264(a) (1981). Added section 16(b) provides in pertinent part that "••• the financial accounts of each (Advisory Neighborhood] Commission shall be audited at least once every two years by the District of Columbia Auditor." 22 DCR 5466, D.C. Code § 1-264(b) (1981).

These two provisions of D.C. Law 1-58, even when read together, do not on their face support the proposition that the D.C. Auditor has thereby been granted the authority to prescribe accounting procedures to be followed by Advisory Neighborhood Commissions. Moreover, there is nothing in the legislative history of D.C. Law 1-58 which indicates that the Council intended this law to confer upon the D.C. Auditor the authority to prescribe accounting procedures for Advisory Neighborhood Commissions.<sup>1/</sup>

<sup>1/</sup> The November 19, 1975 Committee Report on Bill 1-193, the bill which became D.C. Law 1-58, merely states in this regard that" (d)isbursements and accounting shall be in accordance with District government procedures." Committee Report at 10. On November 12, 1975, D.C. Auditor Matthew S. Watson wrote to the Secretary of the Council a letter commenting on Bill 1-193, as follows:

Section 15(b) provides that this Office shall audit each commission at least every two years. In order to maintain the independence of the commissions, we believe that this audit function is properly place(d] in this Office and we support its adoption.

(Footnote continued on next page.)