

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL



Office of Government Operations
Legal Counsel Division

February 26, 2001

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

Dear Ms. Nichols:

This responds to your letter of January 31, 2001 to Robert Rigsby, Corporation Counsel, wherein you requested legal advice regarding a number of questions that were presented to you at a training session you held for Advisory Neighborhood Commission (ANC) Chairpersons and Treasurers. You state that the response of this Office will be shared with all ANCs. The questions you posed and the answers to them are as follows:

1. In the absence of an approved budget for the District, may an ANC pass a Continuing Resolution to authorize expenditures until budget approval and allocation to the ANCs? No. Section 16(a) of the Advisory Neighborhood Commission Act of 1975 (ANC Act), effective October 10, 1975, D.C. Law 1-21, D.C. Code § 1-264(a) provides that:

Each Commission shall receive an annual allocation pursuant to section 738(e) of the Home Rule Act to be distributed quarterly during the fiscal year, except that if the District's appropriations act for the fiscal year has not become effective at the beginning of the fiscal year, each Commission shall receive its first quarterly allocation for the fiscal year if and when a continuing resolution is adopted by the Congress of the United States.

(Emphasis added). Therefore, as long as the Congress approves a budget or a continuing resolution for the District Government, the ANCs will receive allotments, and there would be no need for ANCs to pass their own continuing resolutions. In the absence of an approved District budget or a continuing resolution passed by the Congress to allow spending by the District Government at the same level as the prior fiscal year, the District Government, including the ANCs, may not expend any funds.

2. Is it mandatory that ANCs offer District of Columbia health and life insurance benefits to staff employed by the Commissions? Yes. Pursuant to section 16(0) of the ANC Act (D.C. Code § 1-264(0)) persons employed by the ANC, not including persons hired as independent contractors, are considered District employees for the purposes of District health

and life insurance. Such employees are entitled to participate in the District health and life insurance programs at their option.

3. What guidelines or procedures should ANC's follow in insuring ANC equipment? In obtaining liability insurance? The new statutory language authorizing ANC's to purchase insurance is found in section 16(1)(1) of the ANC Act (D.C. Code § 1-264(1)(1)), as added by the Comprehensive Advisory Neighborhood Commission Reform Amendment Act of 2000 (Reform Act), effective June 27, 2000, D.C. Law 13-135, 47 DCR 2741, and provides that:

A Commission may expend its funds to purchase insurance or obtain indemnification against any loss in connection with the assets of the Commission or any liability in connection with the activities of the Commission, such insurance or indemnification to be purchased or obtained in such amounts and from such sources as the Commission deems to be appropriate.

Therefore, the extent to which and manner in which an ANC chooses to insure its property or insure against liability is solely within the discretion of each ANC. Furthermore, because the ANC's are statutorily exempt from the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986, D.C. Law 6-85, D.C. Code § 1-1181.1 *et seq.* there are no statutorily required procedures for the ANC to follow in obtaining insurance.

4. Is the Mayor required to provide office space to ANC's, or funds to acquire office space, under the recently amended ANC law? How and to whom should a request for space and/or funding be made? Section 16(q) of the ANC Act (D.C. Code § 1-264(q)), as amended by the Reform Act, provides as follows:

Upon the request of a Commission, evidenced by a properly adopted resolution signed or transmitted by the Chairperson and secretary, the Mayor shall provide that Commission with suitable office space in a District-owned or leased building. The Mayor shall acknowledge receipt of the resolution within 15 days and shall provide the Commission with a list of available office space within 45 days thereafter. The space shall be a minimum of 250 square feet and shall be the sole office of the Commission. The space shall be located within the Commission's boundaries. If no such space is "available, then the space shall be located within the ward boundaries of the Commission. If District-owned or leased office space cannot be provided, the Mayor may seek to reprogram up to \$600 per month to cover the rental of office space for the respective Commission.

Upon request of an ANC, the Mayor is required to provide at least 250 square feet of office space in District-owned or leased property within the ANC or the Ward boundaries, if any is available. If no space is available, the Mayor may, but is not required to, reprogram funds up to \$600 per month to cover the rental of space by an ANC. Requests for office space should be made by the Chairperson and Secretary transmitting a copy of the resolution adopted by the ANC to the Office of Property Management, with a copy to the Office of the Public Advocate.

5. Mayan ANC contribute to or provide a grant to a homeless feeding program within its area? No. ANC funds may not be expended on food except as specifically provided by statute. *See* chapter 4, section C.5.(d), Principles of Federal Appropriations Law, 2d ed., July 1991. ANC's are specifically authorized to expend ANC funds on nominal refreshments at Commission meetings, *see* section 16(1)(1) of the ANC Act (D.C. Code § 1-264(1)(1)), and specifically prohibited from expending funds on meals, *see* section 16 (1)(2) of the ANC Act (D.C. Code § 1-264(1)(2)). Therefore, an ANC may not make a grant to a homeless feeding program.

6. Should equipment, i.e., computers, printers, etc., provided to an ANC by the District government be kept only in the ANC office? Must the ANC grant public access to the equipment? The ANC should decide where to keep equipment owned by the ANC. While there is no legal requirement that ANC equipment be kept at the office, doing so would ensure that all commissioners have equal access to it. If some equipment, such as computers, contain ANC records, then such equipment should be kept at the ANC office as required by section 16(e) of the ANC Act (D.C. Code § 1-264(e)) and all Commissioners would be entitled to equal access to it under section 16(P) of the ANC Act (D.C. Code § 1-264(P)). ANCs are not required to provide general public access to their equipment; however, if ANC records that are required to be accessible to the public under section 14(g) of the ANC Act (D.C. Code § 1-262(g)) are stored on computer and such records are not and cannot be made available in print form to the public, then the ANC would be required to permit access to such information on the computer.

7. May ANCs place business advertisements on ANC web sites? No. *See* attached letter dated February 22, 1994 from Garland Pinkston, Jr., Deputy Corporation Counsel, Legal Counsel Division, to Russell Gamble, Chairperson, ANC 2B regarding business advertisements in ANC newsletters.

8. What are the IRS rules and tests to determine whether an individual is an employee or an independent contractor? Since tax law is complex and not governed by District law, I advise that ANCs seek information from the IRS or consult with a tax advisor for an answer to this question.

9. Mayan ANC pay debts by money order or cashiers check particularly where the payment is to an instrumentality of the District government that only accepts payment in the form of a money order? (The Board of Elections and Ethics requires ANCs to pay for address labels by money order or cashiers check and will not accept an ANC bank check.) A prior opinion of this Office states:

[S]ection 16 expressly sets forth two ways an ANC may expend its fund[sic], namely through the writing of checks and through cash disbursements from a petty cash fund. The general rule of statutory construction that is applicable here is expressed in Latin as follows: "Expressio unius est exclusio alterius." In the instant context this means that if the legislature has specified certain methods for making expenditures, it intends to exclude other methods.

(Emphasis in original.) See attached letter dated May 28, 1996 from Karen L. Cooper, Director, Office of Legal Counsel, to Russell A. Smith, District of Columbia Auditor. In that letter we opined that ANC's could not pay for purchases either directly or indirectly by credit card because the only two means of payment expressed in the statute are check or cash.

With regard to the use of checks by an ANC, section 16(f) of the ANC Act states:

Any expenditure made by check shall be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairperson. The check shall, prior to signature, contain the date of payment, the name of the payee, and the amount of the payment. No check may be made payable to cash. Any check shall be pre-numbered, shall bear the name of the Commission and "District of Columbia Government" on its face, and shall be issued in consecutive order.

(D.C. Code § 1-264(f)). A money order is, in effect, a substitute for a check and is not itself a check. In order to obtain a money order an ANC would use cash to purchase the money order from a bank or post office. A cashier's check is a check that is written by the bank as the drawer, again with the ANC providing the funds to the bank. In contrast, a certified check is a check on the ANC's account that is certified by the bank as to the funds available. See Black's Law Dictionary (5th ed, 1979) and D.C. Code §§ 28:3-104 and 28:3-409. It does not appear that a cashier's check or a money order could meet the prerequisites of the ANC Act for checks written by an ANC, *i.e.*, checks must be signed by 2 officers of the ANC, be pre-numbered, bear the name of the Commission and the District of Columbia Government on their face, and be issued in consecutive order. Therefore, cashier's checks and money orders are not currently available to ANC's as a form of payment, regardless of the payee on the check. However, if a certified check meets the statutory requirements - as it appears that it could - then it would be an acceptable form of payment by an ANC, if acceptable to the payee.

I was unable to locate the regulation containing the Board of Elections and Ethics' (BOEE) requirement that ANC's pay by cashier's check or money order; thus, it would appear that such a requirement is merely an internal BOEE policy. If that is the case, the ANC's might consider contacting BOEE to request a change in this policy and/or enlisting the support of the D.C. Auditor, the Office of the Treasurer, and Councilmember Catania in making such a request.

10. Mayan ANC establish an organization for fundraising purposes and then through that organization use the funds raised for expenditures not permitted under the ANC law? No. An ANC is not authorized by law to establish any private or public fundraising organization, and any money donated to an ANC may only be expended for purposes permitted under appropriations and ANC law. Furthermore, if an ANC Commissioner, acting in an individual capacity, raises funds for a private organization, he or she must make clear that he or she is not acting on behalf of the ANC.

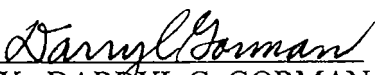
11. Maya Single Member District (SMD) solicit contributions and donations of goods and services to support activities within the SMD? SMDs and SMD Commissioners may only solicit donations to the ANC, not to the SMD because an SMD is not authorized to solicit or expend funds, or to maintain a bank account. Once a donation is received by the ANC, it is up to

the ANC to determine how to spend those funds, or utilize the donated goods or services. The ANC must vote to authorize all expenditures, and no SMD Commissioner may unilaterally decide how donated funds will be spent. Of course, an ANC may vote to spend donated funds or to use donated goods and services to support activities within a specific SMD.

If you have any further questions please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division, at 724-5537.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel


BY: DARRYL G. GORMAN
Senior Deputy Corporation Counsel
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Attachments