

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001

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IN REPLY REFER TO:
Prepared by: ABE:abe
(AL-98-549)

February 3, 1999

Donald Wright
Office of the D.C. Auditor
Fax: (202) 724-8814

Re: Retired District employee receiving disability pension employed as Administrative Officer to an ANC

Dear Mr. Wright:

This responds to your oral request to Annette Elseth, of my staff, for advice on Monday, December 14, 1998 and your follow-up phone call on Thursday, December 17, 1998. You state that Mr. David J. White is the Chairman of Advisory Neighborhood Commission ("ANC") 8A and is also acting as the Administrative Officer of the ANC, for which he has been paid certain sums by the ANC. Mr. White is also a retired District employee and is receiving a disability pension from the Policemen and Firemen's Relief Fund. You ask whether Mr. White's receipt of a disability pension affects his wages from his employment as the Administrative Officer of ANC 8A.

Regarding Mr. White's disability pension, subsection (p)(5) of section 12 of the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916, 39 Stat. 718, ch. 433, as amended, D.C. Code § 4-629(e)(1994), provides as follows:

Notwithstanding any other provision of law, the salary of any annuitant who first becomes entitled to an annuity under [§§ 4-607 to 4-630], after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant's annuity under [§§ 4-607 to 4-630] and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant.

D.C. Code § 4-629(e), added by section 214 of the District of Columbia Retirement Reform Act, approved November 17, 1979, Pub. L. No. 96-122, 93 Stat. 915, was added to prevent so-called "double dipping" by retired members of the D.C. police and

fire departments, who return to work as employees of any entity of the District government after their retirement.¹

ANCs have been permitted to employ staff almost since their inception. See subsections 16(c) and (d) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as added by section 2 of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58. Subsequently, in March 1991, D.C. Law 8-203 extensively amended the law to provide, among other things, as follows:

A Commission may employ any person necessary to provide administrative support to the Commission. A Commission shall establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees. A Commission-employee shall serve at the pleasure of the Commission. An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of titles XXI and XXII of this act.

See D.C. Code § 1-264(0)(1992). "Titles XXI and XXII of this act" refers to the provision of health and life insurance benefits offered to D.C. employees under the District of Columbia Comprehensive Merit Personnel Act ("CMPA"), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-601.1 *et seq.* (1992).

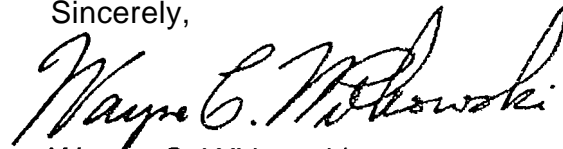
This office previously has advised that employees of ANCs are considered District government employees **under the CMPA** solely for the purposes of health and life insurance benefits. See enclosed: Office of the Corporation Counsel letter dated September 28, 1979, published at 4 Op.C.C.D.C. 296 (concluding that ANC employees are not employees of the District government in the context of employee rights and benefits of the kind covered by the CMPA); Letter to Patricia Wamsley, Chairman, ANC 3-C, dated January 14, 1994 (ANC employees are not District employees for the purposes of unemployment compensation and workers' compensation under the CMPA); and Letter to Diane E. Smith, Office Manager, ANC 5-8, dated May 1, 1997 (ANC employees are not District employees for the purposes of sick and annual leave under the CMPA). However, ANC employees may be considered D.C. employees for purposes of statutes other than the CMPA that have different objectives. Since the statute under which Mr. White receives his disability pension is broadly written to include anyone "employed by the government of the District", of which ANCs are a part, and since D.C. Code § 4-629(e) has the broad purpose to cover any person employed by any entity of the District government after retirement from the government, I conclude that ANC employees are "employed by the government of the District" for the

¹Two statutory exceptions to the double dipping rule permit non-disability retired members of the D.C. police and fire departments to return to work as temporary police officers or school security personnel without any offsetting reduction of salary. D.C. Code § 4-629(e).

purposes of D.C. Code § 4-629(e).²Therefore, Mr. White's salary as an employee of an ANC must be reduced in accordance with the formula in D.C. Code § 4-629(e) because of his simultaneous receipt of a disability pension.³

If you have any further questions with regard to this matter, please do not hesitate to contact me or Annette Elseth of my staff at 727-3400.

Sincerely,



Wayne C. Witkowski
Deputy Corporation Counsel
Legal Counsel Division

Enclosures

cc: The Honorable David A. Catania
Chairperson
Committee on Local and Regional Affairs
Council of the District of Columbia

²You should note that the conclusion that Mr. White's ANC salary is to be offset by his disability pension does not apply to all retired D.C. government employees. Civilian D.C. government employees and non-school employees who retire and then return to work are governed by the double-dipping provisions of D.C. Code § 1-612.3. Since ANC employees are not considered to be D.C. government employees under the CMPA, the salary paid to a civilian D.C. government retiree employed by an ANC is not subject to the double-dipping provision of D.C. Code § 1-612.3.

³Prior to requiring a deduction in salary to Mr. White, both Mr. White's status as a retiree under D.C. Code § 4-629(e) and his status as an employee of the ANC, and not as an independent contractor of the ANC, should be confirmed. His status as an independent contractor might affect the amount of his disability pension under D.C. Code § 4-620, but would not affect his compensation from the ANC. (D.C. Code § 4-620(c) requires that a disability retiree who receives income from wages or self-employment in any year in excess of an amount prescribed by a formula, is subject to a reduction of his/her pension by \$.50 for each \$1 of income. Therefore, if Mr. White is receiving income as an independent contractor, his pension is subject to reduction if he exceeds the annual earnings limitation.)