

## Government of the District of Columbia

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MEMO TO: All Department Directors and Agency Heads

FROM: John R. Risher, Jr.  
 Corporation Counsel, D.C.

BY: Louis P. Robbins *SPR*  
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RE: The effect of Kopff v. 'District of Columbia Alcoholic Beverage Control Board on District government agencies with regard to their consideration of Advisory Neighborhood Commission recommendations and with regard to notice of proposed governmental action provided to ANCs

On December 30, 1977, the District of Columbia Court of Appeals decided Kopff v. District of Columbia Alcoholic Beverage Control Board, D.C.C.A. No. 11374, a case involving the issuance of a Class C liquor license to a restaurant located in northwest Washington, D.C. A copy of that decision is attached hereto.

Substantial issues of first impression regarding the application of certain provisions of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, (D.C. Code 1-171 a, 1977 Supp.) to District government agencies were addressed and resolved by the court.

Among the issues decided were two which affect every District agency. The first, which proposed governmental actions must ANCs receive 30 days written notice of, pursuant to sec. 13(a), (b) and (c) of D.C. Law 1-58, and the second, what constitutes "great weight" in agency consideration of ANC recommendations pursuant to section 13(d) of D.C. Law 1-58 (D.C. Code 171i(d), 1977 Supp.).

t. Sufficiency of notice of proposed action by District agencies

Section 13(a), (b) and the pertinent part of (c) of D.C. Law 1-58 read as follows:

"Sec. 13(a). Each Advisory Neighborhood Commission (hereinafter the 'Commission') may advise the Council of the District of Columbia, the Mayor and Each Executive Agency and all independent, agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rule-making is required pursuant to section 5(a) of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505(a)) or as pertains to the Council of the District of Columbia.

n(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission and shall, as of the effective date of this act, be published on Friday of each week.

U(c)(1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the Executive Branch or independent agency. In addition to those notices required in subsection (a) above, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District

Budget and city goals, and priorities, proposed changes in District government service delivery and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b). Each District of Columbia agency shall maintain a record of such notices sent to each Commission..."

The D.C. Court of Appeals found, in Kopff, that the requirement of 30 days notice to ANCs of "proposed matters of District government policy" applies to not only legislative proposals (rulemaking and actions of the Council of the District of Columbia) but also

"requires timely written notice to ANCs in adjudicative situations, such as the issuance of particular liquor licenses; we do not believe that the words 'policy decision or guideline', as used in § 1-171(c), indicate an intent to limit such special notice to legislative-type actions."

The court also relied on section 738(d) of the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198, 87 Stat. 774) (the Home Rule Act) in delineating what proposed government actions fall within the scope of the written notice requirements of D.C. Law 1-58. Section 738(d) requires that ANCs be given written notice of matters "of significance to neighborhood planning and development." Using this language, together with the relevant language in section 13(a), (b), and (c) of D.C. Law 1-58, the court concluded that

"every proposed governmental decision affecting neighborhood planning and development, as defined in § 1-171(c) [sec. 13(c) of D.C. Law 1-58], for which a prior hearing is required by law is sufficiently significant to require written notice... to the affected ANC or ANCs."

Thus, every District agency must provide to each affected ANC 30 days written notice of any proposed action considered to be rulemaking, pursuant to sec. 13(a) of D.C. Law 1-58, as well as those proposed actions enumerated in sec. 13(c) of D.C. Law 1-58 which require a hearing before a decision can be reached.

II. What an agency must do to comply with section 13(d) of D.C. Law 1-58 (D.C. Code sec. 1-171i(d))

Section 13(d) of D.C. Law 1-58 provides, in pertinent part, as follows:

"...The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken." (Emphasis supplied.)

In Kopff, the court determined that "great weight" means

"that an agency must elaborate, with precision, its response to the ANC issues and concerns. It is a statutory method of forcing an agency to come to grips with the ANC view--to deal with it in detail, without slippage...That is, the agency must articulate why the particular ANC itself, given its vantage point, does--or does not--offer persuasive advice under the circumstances...

"We believe that 'great weight' implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each."

Each District agency, therefore, in its written findings and conclusions regarding the taking of a specific action, must deal specifically and separately with each issue and concern raised by the ANCs, and such issues and concerns must be identified as having been raised by the ANCs. This should be done in a separate heading devoted to the consideration of ANC issues. There is no requirement, however, that greater deference be given to the ANC issues and concerns than to those comments submitted by others.

While this memorandum deals with those issues decided in Kopff which are generally applicable to all District agencies, additional guidance may be sought from this Office by agencies with further questions regarding compliance with D.C. Law 1-58 or Kopff.