

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL  
DISTRICT BUILDING  
WASHINGTON, D. C. 20004

**FILE**



IN REPLY REFER TO:

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(87-108)(LCD-2497)

May 19, 1987

Mr. Absalom Jordan  
Chairman ANC 8-E  
Washington Highland School  
2nd Floor  
8th and Yuma Streets, S.E.  
Washington, D.C. 20032

Re: ANC participation in litigation.

Dear Chairman Jordan:

This is in response to your April 30, 1987 letter to Acting Corporation Counsel Frederick D. Cooke, Jr., in which you seek guidance concerning whether Advisory Neighborhood Commissions may initiate litigation.!/ Specifically, you seek legal advice on the meaning of the underscored language in below-quoted § 13(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21, effective March 26, 1976, D.C. Law 1-58, D.C. Code § 1-261(g) (1981). Section 13(g) provides:

The Commission shall not have the power to initiate a legal action in the Courts of the District of Columbia or in the Federal courts, provided that this limitation does not apply to or prohibit any Commission from bringing

*now: ep ← change made by statutory amendment*

1/ In your letter you refer generally to opinions of this Office on the subject of the use of ANC funds to finance litigation. This Office has consistently taken the position that the statutory prohibition against an ANC itself instigating litigation also applies to the use of ANC funds to finance litigation by others. See, e.g., letter, dated December 1, 1986, from this Office to ANC 5-A Chairman Paul M. Washington, a copy of which is enclosed.

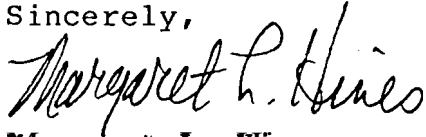
suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required. [Emphasis added.]

If you were to conclude that, since a "Commission" cannot be characterized as a "citizen," the use of the word "Commission" in the above-quoted, underscored language does not make any sense, you would be right. The answer to the question of how the word "Commission" ended up in the underscored language is revealed by an examination of the legislative history of the provision. Section 13(g) of the Advisory Neighborhood Commissions Act of 1975 was added in § 2 of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58. The bill which became D.C. Law 1-58 was Bill 1-193. As introduced, Bill 1-193 did not contain the phrase in question. In the November 19, 1975 committee print of the bill and in the engrossed original (i.e., the bill after first reading by the Council), the phrase appeared as follows: ". . . provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen" (emphasis added). In the enrolled original of Bill 1-193 (i.e., the bill as passed after second reading), the word "Commission" appears rather than the word "Commissioner.". Since the word "Commission" makes no sense, and since there is nothing in the legislative history of the bill which indicates that the Council sought to amend the bill in this regard between the first and second readings, it appears that the word "Commission" ended up in the enrolled original (and therefore in the law) because of a typographical error. See generally, 2 Sutherland, Statutory Construction § 43.37 (4th ed. C. Sands ed.). This legislative history demonstrates that the intent of the Council was to permit persons who are ANC Commissioners, who have legal standing as individual citizens, to initiate litigation on their own behalf to assert their own rights (which may also be the rights of the ANC). Kopffv. "District of Columbia Alcoholic Beverage Control Board, 38IA.2d1372, 1376-1377 (D.C. 1977). Such litigation, however, cannot be financed in whole or in part with ANC funds. See footnote 1, supra.

Your second concern relates to an asserted failure of an agency of the District government to provide your Commission with thirty days notice of a proposed action, pursuant to D.C. Code § 1-261(b) (1981). In this regard you state that "the agency in

question holds that notification to a commission is not required until final action has been taken." Since your letter does not identify the agency or the nature of the proposed action in question, we are unable to render advice on whether the agency's position conforms to the law.

Sincerely,



Margaret L. Hines  
Deputy Corporation Counsel  
Legal Counsel Division

Enclosure