

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



FILE

IN REPLY REFER TO:

L&O:LNG:pmcK
(87-206)(LCD 2741)

September 14, 1987

Otis H. Troupe
District of Columbia Auditor
The Presidential Building
415 12th Street, N.W.
Washington, D.C. 20004

Re: Use of ANC public funds to
support the D.C. Public Schools.

Dear Mr. Troupe:

This is in response to your August 13, 1987 letter in which you seek advice regarding whether it is legally permissible for Advisory Neighborhood Commissions to expend public funds "in support of public schools for various purposes; books, supplies, athletic programs, class trips."

By letter, dated October 31, 1985, Caesar L. Marshall, the Office Manager of ANC 6-B, asked the Corporation Counsel whether it was legally permissible for that ANC to make grants of public funds to the public schools or to public school parent-teacher associations for such purposes as computer literacy programs, musical instruction, and cultural field trips. In our January 10, 1986 reply (copy enclosed), this Office responded as follows:

The activities mentioned in your letter appear to be activities which an ANC could fund by a grant to a PTA, if they do not duplicate existing public school programs. Parent-Teacher Associations are private nonprofit organizations. In general, a governmental entity may grant appropriated funds to a private organization if the funds are granted for a public purpose within the statutory authority of the granting entity. See [63A Am. Jur. 2d Public Funds §60

(1984)]. An ANC has statutory authority to expend public funds for public purposes within its neighborhood commission area. Sec. 738(c)(2) of the Self-Government Act, D.C. Code § 1-251(c)(2) (1981). Specifically, an ANC may operate neighborhood or community enhancement campaigns; an ANC may operate other programs only in conjunction with existing governmental activities and only to the extent that activities on behalf of the ANC do not duplicate already existing programs and services. Sec. 2 of D.C. Law 1-58, effective March 26, 1976, D.C. Code § 1-261(k) (1981).

But an ANC may not make a direct grant to a public school. Congress appropriates separate amounts for expenditure by ANCs and by the public schools. There are significant statutory restrictions on shifting appropriated funds. See, e.g., D.C. Law 3-100, effective September 16, 1980, D.C. Code §§ 47-361 through 47-364. ANCs are also prohibited from conducting programs on a contractual basis with existing governmental agencies, such as public schools. See D.C. Code § 1-261(k) supra.

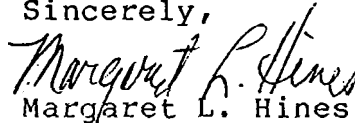
In the past, this Office has commented to you and others on the intent of the "public purposes" requirement of D.C. Code § 1-251(c)(2) (1987). See our May 22, 1986 letter to you with attached thereto a copy of our May 19, 1986 letter to ANC 1-E Chairman Stanley Allen. At pages 3-4 of the letter to Chairman Allen, we stated:

The phrase "public purposes" is common in state laws dealing with the expenditure of public funds. Thus, the phrase has been construed by state courts in many different factual contexts. See 15 McQuillin Municipal Corporations, §§ 39.19 and 39.21 (1985); see also 35 Words and Phrases, "Public Purpose" (1963). One frequently enunciated test is "whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." Opinion of the Justices, 384 So.2d 1051, 1053 (Ala. 1980), citing Opinion of the Justices, 347 Mass. 797, 197 N.E.2d 691 (1964). In this regard, the Supreme Court of New Jersey has stated that the

concept of "public purpose" connotes "an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government." Roe v. Kervick, 42 N.J. 191, 199 A.2d 834, 842 (1964). Thus, the phrase "public purposes" is "incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare." Roe v. Kervick, *supra*.

Here, it is appropriate to note that, in some circumstances, ANC programs that also benefit children outside the public schools would be permissible, since some forms of public financial support to children attending sectarian schools or to their parents have been held to be consistent with the Establishment Clause of the First Amendment to the Constitution. See generally Mueller v. Allen, 463 U.S. 388 (1983) for a review of the Supreme Court's major decisions concerning what types of aid are impermissible and what types are permissible. (A copy of this decision is enclosed.)

Sincerely,



Margaret L. Hines

Deputy Corporation Counsel, D. C.
Legal Counsel Division

Enclosures