

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

May 1, 2019

Commissioner Mike Silverstein
ANC 2B
1301 20th Street, N.W. #705
Washington, D.C. 20036

Re: Use of ANC Funds for Car and Throws in Capital Pride Parade

Dear Commissioner Silverstein:

You asked us two questions about your Advisory Neighborhood Commission's (ANC's) participation in the Capital Pride Parade:

- (1) May ANC funds be used for a car that travels the parade route, displaying the ANC's banners and transporting honored guests and Commissioners who choose not to walk or cannot walk the full route? **Yes.**
- (2) May ANC funds be used for "throws," *i.e.*, small items thrown to the assembled crowd along the parade route? **No.**

I. ANC Funds May Be Used for the Vehicle

The ANC may spend its funds to participate in the Capital Pride Parade with a vehicle that will bear the ANC's banner, and that will transport Commissioners who are unable or unwilling to walk the parade route. These purposes are consistent with the Home Rule Act,¹ the Advisory Neighborhood Commissions Act of 1975 ("ANC Act")² and federal appropriations law.

A. The ANC May Rent a Car to Participate in the Parade

Participating in this parade by paying for a car to traverse the parade route fits within the broad limits of existing law. Under the Home Rule Act, an ANC may "expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it," including

¹ Approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

² Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

to “conduct programs for the welfare of the people in a neighborhood commission area.”³ The ANC Act echoes this authority,⁴ and elaborates that, to be for a public purpose, an expenditure must “benefit[] the community as a whole and [not be] done for the primary purpose of benefiting a private entity.”⁵

Based on the description you have provided, the ANC’s participation in this parade serves a public purpose. The parade’s stated objectives are social and historical in nature: to support the LGBTQ community and commemorate its history.⁶ Amplifying the parade’s historical significance is the fact that it takes place in the 50th anniversary year of the Stonewall riots, one of the formative events in LGBTQ history.⁷ Moreover, you have told us that this event is especially important to your ANC area. The parade starts in, and takes place predominantly in, your ANC.⁸ Moreover, your ANC has participated in the parade in previous years,⁹ and recently voted – unanimously – to “enthusiastically support[]” the parade organizer’s special event application.¹⁰ Taking this context into account, we conclude that your ANC’s decision to participate in this public event as a representative of the event’s host community meets the statutory public-purpose requirement.

Our prior letters bolster our conclusion that this expenditure serves a public purpose. We previously concluded that the ANC could lawfully expend funds to support an “open mike” night. We explained that the grant would serve a public purpose because the performances involved, like the parade here, “would occur within the ANC area and are freely open to the public.”¹¹ We likewise approved the use of ANC funds to sponsor community members in attending a Black History Month event because the event was an “educational, community event

³ D.C. Official Code § 1-207.38(c)(2) and (e).

⁴ *Id.* § 1-309.13(l)(1) (authorizing each ANC to expend its allocated funds “for public purposes within the Commission area”).

⁵ *Id.*

⁶ See <https://www.capitalpride.org/parade-2019/> (describing the parade’s purposes) (all websites last visited May 1, 2019).

⁷ See History, Stonewall Riots, <https://www.history.com/topics/gay-rights/the-stonewall-riots>.

⁸ Maps for the parade indicate that only 3 blocks of the parade’s 1.5-mile-long route take place outside ANC 2B; those 3 blocks rest in ANC 2F. See <https://www.bing.com/maps?osid=5c2960a7-7ce9-47c7-9a14-4c92a3a1e3c7&cp=38.911997~-77.043361&lvl=16&v=2&sV=2&form=S00027> (parade route); Office of Planning, 2013 ANC and SMD Ward 2 Map, available at https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/WebsitePDF_New_24x36_WardMap2_ANCSMDs_100.pdf (Ward 2 ANC boundaries).

⁹ See, e.g., <https://www.capitalpride.org/celebration-2018/participants/>.

¹⁰ Letter from Daniel Warwick, Chairperson, ANC 2B, to Ms. Tanya Mitchell, Mayor’s Special Event Task Group, Homeland Security and Emergency Mgmt. Agency, Mar. 26, 2019, available at <http://www.dupontcircleanc.net/wordpress/wp-content/uploads/2019/03/ANC-2B-RESOLUTION-2019-Capital-Pride-Parade-MSETG.pdf>.

¹¹ *Id.* at 3. This event’s benefits will not be limited to ANC 2B. The event is open to (and likely to be attended by) residents of other neighborhoods, and it will not take place entirely in the ANC area. This does not present a legal concern. Nothing in the ANC Act prevents an ANC from participating in an event that benefits other neighborhood areas so long as the event still significantly benefits the ANC’s own neighborhood area. See, e.g., Letter to Deborah K. Nichols, Dist. of Columbia Auditor, Nov. 9, 2006, at 2 n.2, available at <http://app.occ.dc.gov/documents/2006/20061109.pdf>.

that would not otherwise be impermissible,” and because the ANC opened those sponsorships up to all members of the community.¹²

Based on the information you have provided, renting a car to participate in the parade also would not amount to impermissible entertainment. Under federal appropriations law,¹³ read against the backdrop of the Home Rule Act, an ANC cannot expend its funds to passively entertain Commissioners or the public.¹⁴ It can, however, spend money for community events that involve active community participation.¹⁵ For example, in approving the “open mike” night in 2005, we explained that this event would not be entertainment because it would actively enable community members to perform their art.¹⁶ We likewise concluded that an ANC could fund the exhibition of a film designed to offer educational content about Islam because its purpose was not to “passively entertain or amuse an audience,” but rather to offer educational content that would be followed by a group discussion.¹⁷ Similarly, the ANC’s participation in this parade would not be passive entertainment. The ANC would be participating in an active community event for the purpose of recognizing and appreciating the history of the LGBTQ community.¹⁸

B. Using the Vehicle to Transport Commissioners and Guests Along the Parade Route is Permissible

Allowing guests (and Commissioners who so desire) to ride in the car along the parade route, as part of the ANC’s participation in the parade, is consistent with the public purpose described above. Moreover, allowing Commissioners who are unable to walk the parade route to ride in the car strengthens that public purpose by ensuring that these Commissioners may fully participate in the event, a purpose recognized as important national policy in the Americans with Disabilities Act (ADA).¹⁹

¹² Letter to ANC 1B Vice Chair Sinclair Skinner, Feb. 20, 2004, at 2, available at <http://app.occ.dc.gov/documents/2004/20040220.pdf>.

¹³ Federal appropriations law applies here because ANC funds are appropriated by Congress. See, e.g., District of Columbia Appropriations Act, 2019, approved Feb. 15, 2019 (133 Stat. 13; Pub. L. No. 116-6).

¹⁴ See Letter to ANC 1B Comm’r Philip C. Spalding, July 13, 2005, at 3, available at <http://app.occ.dc.gov/documents/2005/20050713.pdf>; Letter to Deborah Nichols, Dist. of Columbia Auditor, Aug. 9, 2006, available at <http://app.occ.dc.gov/documents/2006/20060809.pdf> (ANC cannot purchase amusement park tickets).

¹⁵ See Letter to Comm’r Spalding, *supra*, at 4-5.

¹⁶ See *id.* at 5.

¹⁷ Letter to Lynard Barnum, Financial Auditor/ANC Program Manager, Nov. 16, 2010, at 3-4, available at <http://app.occ.dc.gov/documents/2010/20101116.pdf>.

¹⁸ We note, of course, that the car cannot be used to participate in any entertainment events that may take place during or after the parade.

¹⁹ See 42 U.S.C. § 12101(a)(7) (“the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals”). Because we conclude that this accommodation is a permissible one, we do not resolve the more difficult question of whether the ADA would require the ANC to grant it. See Letter to ANC 6C Chairperson Karen Wirt, Oct. 4, 2018, available at <https://oag.dc.gov/sites/default/files/2019-01/ANC-6C-Questions-RE-Reasonable-Accommodations-ANC-Commissioners.pdf> (discussing when and to what extent the ADA requires reasonable accommodations for Commissioners).

The Office of Advisory Neighborhood Commissions has suggested that using ANC funds to convey Commissioners along the parade route is a specific kind of expense – “local transportation expenses” – that, by law, an ANC may pay only when a Commissioner is “officially representing the Commission or a committee of the Commission at public hearings or meetings or is engaged in official Commission business.”²⁰ Our prior letters do not resolve the difficult question of whether paying for a car used in a parade amounts to “local transportation expenses.” But even if it does, this expenditure would still be lawful because the Commissioners being conveyed are “engaged in official Commission business.” They, like Commissioners walking along the route, are officially representing the ANC at the event.

II. ANC Funds May Not Be Used for Throws

The ANC may not expend its funds for small items, such as beads or candy, to throw to pedestrians. Paying for items to be tossed into the crowd risks crossing the line into funding entertainment. Moreover, the ANC cannot pay for such items because those would amount to personal gifts,²¹ and it cannot pay for candy in particular because the ANC generally lacks statutory authority to spend its money on food.²²

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Brian K. Flowers, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

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By: 

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(AL-19-329)

²⁰ See D.C. Official Code § 1-309.13(l)(1).

²¹ See Letter to ANC 1B Chairperson Mary Treadwell *et al*, Mar. 25, 1997, available at <http://app.occ.dc.gov/documents/1997/mar/19970325.pdf>.

²² See Letter to ANC 2E Chairperson Westy McDermid, May 26, 1994, available at <http://app.occ.dc.gov/documents/1994/may/19940526.pdf>.