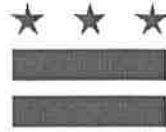


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

September 26, 2017

Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: OANC Financial Authority

Mr. Simon:

You asked us to advise you on the nature and scope of the authority that the Office of Advisory Neighborhood Commissions (“OANC”) may exercise over ANC finances in light of the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (“Omnibus Act”).¹ This letter responds to your request. OANC may exercise significant advisory responsibilities under the Omnibus Act. Consistent with the Home Rule Act, however, OANC may not exercise any control over ANC finances because that is an executive function.

The Omnibus Act vests OANC with several advisory responsibilities that enable it to “provide technical, administrative, and financial reporting assistance to the [ANCs].”² These include “[m]onitoring . . . Commission expenditures,” “respon[ding] to inquiries from individual Commissions on the legality of proposed actual expenditures,” and “[t]raining . . . Chairpersons and treasurers regarding required financial reports and submissions.”³ It also includes “review[ing] quarterly financial reports”⁴ that ANCs must file under section 16 of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),⁵ in order to “ensure compliance with

¹ Effective April 7, 2017 (D.C. Law 21-269; 64 DCR 2162). We note that some of the Omnibus Act’s provisions governing OANC functions (specifically, a new reimbursement program and a separate list of OANC duties) are not cited in this letter because they are not yet applicable. *See* Subject to Appropriations Emergency Amendment Act of 2017, § 7036, effective July 20, 2017 (D.C. Act 22-104; 64 DCR 7127).

² D.C. Official Code § 1-309.15(a).

³ *Id.* § 1-309.12(d)(2)(B) and (C). For example, if more than \$50 of ANC funds are disbursed for personal service expenditures, and the ANC fails to approve those expenditures within 90 days, OANC is responsible for informing OAG. *See id.* § 1-309.13(g).

⁴ *Id.* § 1-309.15(a).

⁵ Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13).

current law.”⁶ These reports, which an ANC must file in order to continue receiving quarterly allotments, must document the ANC’s financial activities, including any grants it has disbursed, any contracts it has executed, and any contributions it has received.⁷

Some of the functions that the Omnibus Act attempts to vest with OANC, however, are not advisory. They would give OANC administrative authority over ANC finances. The Act states that OANC shall “approv[e] or disapprov[e] the release of Commission quarterly allotments,”⁸ shall exercise control over the checkbook of an ANC that has thrice failed to file compliant quarterly reports,⁹ and may “prohibit all Commissions from providing a grant to any past grant recipient that used grant funds contrary to the associated grant agreement.”¹⁰ These administrative functions are executive in nature.

OANC cannot carry out these executive functions because it is a legislative agency that was created by, and reports to, the Council.¹¹ OANC may advise ANCs, train ANC Commissioners, and review ANC financial documents, but may not exercise authority over ANC finances. That authority rests with the executive branch, including the Office of the Chief Financial Officer (“OCFO”).¹² OCFO, which exercises “broad authority over the District’s finances and financial personnel,”¹³ is responsible for “[g]overning the accounting policies and systems applicable to the District government,” and for “[m]aintaining custody of all public funds belonging to or under the control of the District government.”¹⁴ Thus, the authority to decide whether an ANC may receive a pending quarterly allotment rests with OCFO. OANC may send OCFO its findings on whether a given ANC has properly filed its quarterly reports, and OCFO may defer to those findings to the extent that it finds them persuasive, but the final decision as to whether quarterly allotments may be released is an executive decision that must be made by OCFO, not OANC. Likewise, the authority to implement financial controls over an ANC’s checkbook, or to establish financial controls on ANC grants, must rest with OCFO or with another executive agency.

⁶ D.C. Official Code § 1-309.12(d)(2)(A).

⁷ See *id.* § 1-309.13(j)(1) and (2).

⁸ *Id.* § 1-309.15(c)(16).

⁹ *Id.* § 1-309.13(j)(2).

¹⁰ *Id.* § 1-309.13(m)(3)(A).

¹¹ See *id.* § 1-309.15(b) (“The OANC shall be headed by an Executive Director who shall be appointed by the Council”).

¹² See *id.* § 1-204.24a(a) (2012 Repl.) (“There is hereby established within the executive branch of the government of the District of Columbia an Office of the Chief Financial Officer of the District of Columbia”); *Bowsher v. Synar*, 478 U.S. 714, 726 (1986) (Congress “cannot grant to an officer under its control” the authority to “execute the laws”).

¹³ Opinion of the Attorney Gen., *Authority of the Dist. of Columbia Chief Financial Officer Over the Financial Functions and Financial Personnel of the Dist. of Columbia Housing Auth.*, at 3, Feb. 8, 2011, available at <https://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/HousingAuthority.pdf> (last visited Sept. 12, 2017).

¹⁴ D.C. Official Code § 1-204.24d(22) and (11) (2012 Repl.).

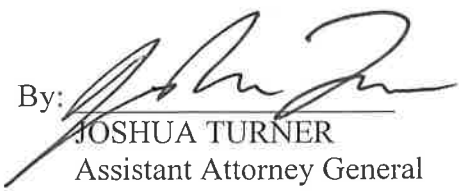
The principle that restrictions on ANCs are administered by the executive branch flows from this office's prior advice. In a letter to the District of Columbia Auditor,¹⁵ for example, we explained that "[w]ithin the District of Columbia government, the authority to take corrective action with respect to improper expenditures lies with the Council through its legislative power to regulate ANCs . . . , and with the Mayor through his authority to administer the financial affairs of the District government."¹⁶ Similarly, in a letter to the Chairman of the Council's Committee on Government Operations,¹⁷ we observed that the Council "has legislative authority to regulate the handling of funds and accounts by each [ANC]," whereas the Mayor's administrative authority empowered him or her to "reduce an ANC's quarterly allotment by an amount equal to that ANC's unauthorized expenditures," and to "impose appropriate fiscal controls where financial irregularities are found."¹⁸ We have also cautioned that Council legislation governing ANCs must be consistent with this administrative authority. For example, in a letter to ANC 1E Commissioner Stanley Allen,¹⁹ we explained that when the Council adopts legislation governing ANC finances, that legislation must be "read together with" the executive branch's Home Rule Act authority to "administer the financial affairs of [the] District government."²⁰

If you have questions about the contents of this letter, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By:


JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

¹⁵ Letter to Otis Troupe, May 22, 1986, available at <http://app.occ.dc.gov/documents/1986/mar/19860522.pdf> (last visited Aug. 3, 2017).

¹⁶ *Id.* at 1-2 (emphasis omitted).

¹⁷ Letter to the Hon. William R. Spaulding, Aug. 26, 1986, available at <http://app.occ.dc.gov/documents/1986/mar/19860326.pdf> (last visited Aug. 3, 2017).

¹⁸ *Id.* at 3.

¹⁹ Letter to Stanley Allen, May 19, 1986, available at <http://app.occ.dc.gov/documents/1986/may/19860519.pdf> (last visited Aug. 3, 2017)

²⁰ *Id.* at 5.