

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



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

March 15, 2022

Tiera J. Fletcher
Vice-Chairperson, ANC 7E
3939 Benning Road, N.E.
Washington, D.C. 20019

Re: Expenditures for Public Purposes “Within the Commission Area”

Dear Commissioner Fletcher:

You asked whether section 16 of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)¹ prevents an ANC from expending funds on an event that would serve public purposes but is scheduled to be held outside the ANC’s boundaries. It does not, as long as the expenditure is still for the benefit of the ANC area.

To determine what section 16 means, we interpret its words in a way that is “consistent with their ordinary meaning at the time [the Council] enacted the statute.” *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) (cleaned up, with brackets added). We read this language in context, mindful of its “place in the overall statutory scheme.” *Davis v. Mich. Dep’t of the Treasury*, 489 U.S. 803, 809 (1989); *In Re Edmonds*, 96 A.3d 683, 687 (D.C. 2014).

Your question stems from section 16(l)(1),² which says that ANC expenditures that are not for the “functioning of the Commission office” must be “for public purposes within the Commission area,” and similarly says that any expenditures *via* grant must be “for public purposes within the Commission area.” The phrase “within the Commission area,” read on its own, might suggest that any event funded by an ANC must take place inside the Commission area. Read this way, it would be comparable to one of the ANC Act’s notice provisions, which says that notices of ANC meetings must be posted in conspicuous locations “in each single-member district within the Commission area.”³ Critically, however, section 16(l)(1) does not say that public-purpose expenditures, or the events they fund, must themselves operate within the Commission area. Instead, it requires that these expenditures be for “*public purposes* within the Commission area.”

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

² D.C. Official Code § 1-309.13(l)(1).

³ *Id.* § 1-309.11(c)(1). It would also be comparable to section 16(l)(2) of the ANC Act (D.C. Official Code § 1-309.13(l)(2)), which says that ANC expenditures cannot be “for travel outside of the Washington metropolitan area.”

In that phrase, what “within the Commission area” modifies is not “expenditures” but “public purposes.” What must be “within the Commission area,” therefore, are the public purposes an expenditure or event is intended to serve. In other words, as this Office has long advised, this language means that these expenditures must serve a public benefit in the specific context of the ANC area.

This interpretation aligns neatly with the way the Home Rule Act frames these types of expenditures. Section 738 of the Home Rule Act, which section 16(l)(1) borrows from, authorizes each ANC to “employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it.”⁴ Section 738 fleshes out this language further by saying that the Council must allot funds to ANCs “[i]n order to pay the expenses of the Advisory Neighborhood Commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area.”⁵

Accordingly, we have consistently advised that the relevant question for a public-purpose expenditure is not whether the expenditure is for an activity in the ANC area; it is whether the expenditure is for the welfare of that ANC area. For example, in a 1991 letter to Commissioner Carolyn Johns-Gray, we were asked whether ANC funds could “be refused a resident of a commission area and granted to a resident of another commission area in another ward.”⁶ After we clarified that an ANC had to grant funds to organizations, not individuals, we explained that “funds could go to an entity outside the commission area that benefits residents of the commission area.”⁷ We said the same in a 1997 letter to Commissioner Tom Coumaris, who had asked whether a grant to a day-care center that operated outside the ANC’s ward was permissible.⁸ We said that it could be, as long as the activities funded by the grant sufficiently benefited children in the granting ANC’s neighborhood area.⁹

That question – whether an expenditure sufficiently benefits the relevant neighborhood area – is the one our letters have consistently asked when analyzing whether grants or other public-purpose expenditures serve the public purposes the ANC Act requires.¹⁰ And in 2017, the Council reaffirmed and focused that inquiry, by providing (through an amendment to section

⁴ D.C. Official Code § 1-207.38(c)(2).

⁵ *Id.* § 1-207.38(e).

⁶ Letter to Comm’r Johns-Gray, March 27, 1991, at 1, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-6C-08-Letter-to-Commissioner-Johns-Gray-Re-How-do-conflict-of-interest-laws-and-other-laws-limit-actions-by-Advisory-Neighborhood-Commissions%3F-.pdf> (all websites last visited March 14, 2022).

⁷ *Id.* at 2.

⁸ Letter to Comm’r Coumaris, March 12, 1997, at 3, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-1-B-March-12-1997-Bylaws-Expiration.pdf>.

⁹ *Id.*

¹⁰ See, e.g., Letter to Comm’r Speck, July 20, 2021, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-3G03-Letter-to-Commissioner-Speck-Re-Grant-to-Food-the-Family-Pantry-.pdf>; Letter to Comm’r Anthony, December 10, 2008, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-4-C-07-December-10-2008-Purchase-of-Electronic-Communication-Equipment.pdf>; Letter to Comm’r Spalding, July 13, 2005, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-1B-02-Letter-to-Commissioner-Spalding-Re-Whether-an-ANC-is-permitted-to-issue-a-grant-to-a-non-profit-organization-for-the-purchase-or-rental-of-sound-equipment-for-community-performances-in-a-commercial-establishment.pdf>.

16(l)(1) that “[a] public purpose shall be a purpose that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”¹¹ That is the question an ANC should ask when it considers whether a proposed expenditure would satisfy the ANC Act’s public-purpose requirement, regardless of whether the expenditure or event would lie within or outside the ANC’s boundaries.

Even so, geography matters. The further removed an event or activity is from an ANC’s boundaries, the more of a question there may be as to whether an expenditure for the activity is aimed specifically at benefiting that ANC area. For example, in our earlier-cited letter to Commissioner Coumaris, even though we said that a grant to a day-care center outside the granting ANC’s ward *could* serve the required public purpose, we expressed significant skepticism that it actually would.¹² Accordingly, it is entirely appropriate for an ANC that is considering an expenditure on an event outside the ANC to evaluate with special care whether that expenditure will really be for the benefit of the ANC area.

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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(AL-22-172)

¹¹ See Advisory Neighborhood Commissions Omnibus Amendment Act of 2016, § 2(h)(6)(A)(ii), effective April 7, 2017 (D.C. Law 21-269; D.C. Official Code § 1-309.13(l)(1)).

¹² Letter to Comm’r Coumaris, *supra*, at 3.