

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
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Legal Counsel Division

June 10, 2022

Schannette Grant
Interim Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W., Ste. 11
Washington, D.C. 20004

Re: ANC Employee Eligibility for Housing Assistance Program

Director Grant:

You asked whether a person employed by an Advisory Neighborhood Commission (“ANC”) as its Executive Director is a “District of Columbia government employee” and thus able to qualify for the Government Employer-Assisted Housing Program, a program designed to assist District employees who are first-time homeowners. The answer is yes.

To answer your question, we apply ordinary principles of statutory interpretation. We read the relevant statutory language “according to its terms,” *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020), giving “effect, if possible, to every clause and word.” *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 111 (2012). When construing it, we also consider the broader statutory context, since the “words of a statute must be read in their context and with a view to their place in the 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).

The program operates under the Government Employer-Assisted Housing Amendment Act of 1999 (“1999 Act”).¹ Under the 1999 Act, a person “shall be eligible” for the program if the person meets two criteria.² One is that they must be a “first-time homebuyer in the District.”³ The other – the one at issue here – is that they must be:

¹ Effective May 9, 2000 (D.C. Law 13-96; D.C. Official Code § 42-2501 *et seq.*).

² D.C. Official Code § 42-2503(a).

³ *Id.* § 42-2503(a)(2).

A District of Columbia government employee, an employee of a District of Columbia public charter school, a first-responder, or a person who has accepted an offer to be a District of Columbia public school teacher or public charter school teacher.⁴

Someone hired as an ANC's Executive Director qualifies as a "District of Columbia government employee." The 1999 Act does not define this phrase (or any part of it), so we interpret it according to its ordinary meaning. *Hamilton v. Lanning*, 560 U.S. 505, 513 (2010); *Facebook, Inc., v. Pepe*, 241 A.3d 248, 255 (D.C. 2020). That Executive Director is an "employee" in the ordinary sense of that word, and is a "District of Columbia government employee" because an ANC is part of, and thus its employees work for, the District government.

Start with the first question: whether someone employed by an ANC as its Executive Director is an "employee." In ordinary language, an employee is:

Someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.⁵

ANC employees neatly fit this description. The statutory framework governing them describes them as employees, directs the ANC to give them position descriptions as one would an employee, and gives them many of the same benefits that District government employees generally receive. The District of Columbia Home Rule Act⁶ authorized each ANC to "employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it."⁷ Along those same lines, the Advisory Neighborhood Commissions Act of 1975 ("ANC Act")⁸ allows each ANC to "employ any person necessary to provide administrative support to the Commission."⁹ An ANC must "establish position descriptions for employees," and these employees "shall serve at the pleasure of the Commission."¹⁰ ANC employees receive health insurance, life insurance, and workers' compensation under the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("Merit Personnel Act"),¹¹ although they are exempt from most of the requirements and protections generally applicable to District employees.¹²

⁴ *Id.* § 42-2503(a)(1).

⁵ *Employee*, Black's Law Dictionary (11th ed. 2019).

⁶ Effective December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

⁷ D.C. Official Code § 1-207.38(c)(2). It likewise directed the Council to allot funds to ANCs so that they could, among other things, "employ such staff as may be necessary." *Id.* § 1-207.38(e).

⁸ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

⁹ D.C. Official Code § 1-309.13(o).

¹⁰ *Id.*

¹¹ Effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*); *see* D.C. Official Code § 1-309.13(o).

¹² D.C. Official Code § 1-309.13(o).

From all these considerations, we conclude, as we did in a 2021 letter,¹³ that ANC employees employed under this framework are “employees” in the ordinary sense of that word. The question in that letter was whether an ANC “may hire someone to manage communication and documents, and designate that person as an independent contractor.”¹⁴ We explained that, whatever label the ANC chose to use, that person “would be an employee, not a contractor, for the purposes of the District of Columbia Home Rule Act (“Home Rule Act”) and the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).”¹⁵

The benefits ANC employees receive under the Merit Personnel Act illustrate that ANC employees work for the District government, since ANCs themselves are part of the District government.¹⁶ Indeed, ANC employees fall under the Merit Personnel Act’s general definition of a District government “employee”: an “individual who performs a function of the District government and who receives compensation for the performance of such services.”¹⁷ And the Merit Personnel Act specifically lists them as District employees. Section 202 of the Act (D.C. Official Code § 1-602.02), which clarifies how broadly the Act applies, says that the Act’s provisions “apply to the following employees of the District government only to the following extent.”¹⁸ Listed among the “following employees of the District government” is “[e]ach person employed by an Advisory Neighborhood Commission.”¹⁹

This conclusion echoes the conclusion we reached in a 1999 letter involving someone who retired from the District government and then worked for an ANC.²⁰ That person was receiving a pension from the District government, and the question was whether that pension affected the amount of compensation he could receive from his work for the ANC.²¹ We said yes, because he was subject to a statute applicable to someone who, after retirement, was “subsequently employed by the government of the District of Columbia.”²² Subsequent employment for an ANC, we said, met this description. We noted that, although the Merit Personnel Act does not treat ANC employees as District employees in every respect, the pension statute at issue was broadly written to encompass anyone employed by any District government entity. Since ANCs are a District government entity, that statute covered ANC employees.²³ The same is true here. The language of the 1999 Act, like the language of the pension statute we previously interpreted,

¹³ Letter to Comm’r Fletcher, June 21, 2021. This letter is available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited June 10, 2022).

¹⁴ *Id.* at 1.

¹⁵ *Id.* (internal citations omitted). As was true of our 2021 letter, none of this discussion should be taken to resolve whether an ANC employee is an “employee” for federal or District tax purposes. Tax-related questions about ANC employees should go to either the District’s Office of Tax and Revenue (for questions about District taxes) or the federal Internal Revenue Service (for questions about federal taxes). *See id.*

¹⁶ *Kane v. Dist. of Columbia*, 180 A.3d 1073, 1078 (D.C. 2018) (An ANC is a “*non sui juris* body” – *i.e.*, one that cannot sue and be sued in its own name – “within the District government”).

¹⁷ D.C. Official Code § 1-603.01(7).

¹⁸ *Id.* § 1-602.02.

¹⁹ *Id.* § 1-602.02(5).

²⁰ *See* Letter to Donald Wright, Feb. 3, 1999.

²¹ *Id.* at 1.

²² *Id.*

²³ *Id.* at 2.

broadly reaches anyone employed by the government of the District, which includes anyone employed by an ANC.

Based on all of the above, an ANC Executive Director qualifies as a “District of Columbia government employee” under the 1991 Act.

Sincerely,

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(AL-22-261)