

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

July 19, 2022

Zach Israel
Commissioner, ANC 4D
717 Gallatin Street, N.W.
Washington, D.C. 20011

Re: Proposed ANC 4D Grants

Commissioner Israel:

You asked about the lawfulness of five potential grants by your Advisory Neighborhood Commission (“ANC”). Four of these are specific grant applications that have been presented to your ANC. The fifth is a hypothetical grant to a mutual aid organization that you have asked us to consider in light of our Office’s prior letter explaining that grant expenditures on food and entertainment are not categorically impermissible. Your question is whether these grants would be permissible under the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).¹ In our view, two of these grants – the Life Success Center grant and the hypothetical grant you have described – may be permissible. The other three, however, are impermissible.

Any grant issued by an ANC must meet the requirements in section 16 of the ANC Act (D.C. Official Code § 1-309.13). We recently summarized those requirements in an April 14, 2022 letter to the Office of Advisory Neighborhood Commissions (“OANC”).² Two main considerations are relevant here.

- (1) **Public purpose:** A grant must be for “public purposes within the Commission area,”³ which means it must “benefit[] the community as a whole and [not be] done for the primary purpose of benefitting a private entity.”⁴ As we recently explained, the “within the Commission area” part – echoed in the ANC Act’s requirement that a grant “benefit persons who reside or work within the

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

² See Letter to Interim Executive Director Grant, Apr. 14, 2022. This letter, like others we cite, is available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited July 18, 2022).

³ D.C. Official Code § 1-309.13(1)(1).

⁴ *Id.*

Commission area”⁵ – means that a grant must “serve a public benefit in the specific context of the ANC area.”⁶

- (2) **Proposed Project**: A grant must be for a “proposed project.”⁷ As our recent letter to OANC explained, this means the grant must “be for a specific undertaking, not for general support of an organization,” and “cannot reimburse an organization for expenses connected to an existing or completed project.”⁸

With these considerations in mind, we take each grant proposal in turn, starting with the two potentially permissible grants.

1. **Life Success Center**

The first potentially permissible grant would be to the Life Success Center, for an August 27, 2022 “community event to engage all ages and populations of the Ward 4 community.”⁹ The event, the application maintains, would benefit the ANC area because it would be an “inclusive event,” open to “everyone and all ages.”¹⁰ ANC grant funding would be for a DJ, sound for the band, a “dump tank,”¹¹ food and drink, tableware, table and chair rental, and water toys.¹²

This grant may be permissible, but the ANC would need more information. On the one hand, this event is in the ANC’s ward and appears broadly open to the public.¹³ On the other hand, the event appears limited in the number of people it can serve,¹⁴ and it is not clear from the application whether the event will take place in or even near the ANC’s neighborhood area. Accordingly, it is difficult to tell from the application alone whether the event can be expected to “benefit persons who reside or work within the Commission area.”¹⁵ More information from the grantee would be necessary in order to establish this grant’s lawfulness.

2. **Mutual Aid**

The second potentially permissible grant is your hypothetical grant. Your question is: if a group like Ward 4 Mutual Aid – which supplies food to needy neighborhood residents – were based in a church in ANC 4D, could the ANC grant funds for the group to buy food for any ANC resident who needs it?

⁵ *Id.* § 1-309.13(m)(1).

⁶ Letter to Comm’r Fletcher, Mar. 15, 2022, at 2.

⁷ *See* D.C. Official Code § 1-309.13(m)(2)(A).

⁸ Letter to Interim Executive Director Grant, Apr. 14, 2022, at 2-3.

⁹ Life Success Center Grant Application at 1.

¹⁰ *Id.*

¹¹ Given context, it seems likely that this was intended to read “dunk tank.”

¹² Life Success Center Itemized Budget.

¹³ *See* Life Success Center Grant Application at 1.

¹⁴ *See id.* (“This project may serve 50-100 guests”).

¹⁵ D.C. Official Code § 1-309.13(m)(1).

Your hypothetical question springs from a July 7, 2017 letter from this Office.¹⁶ In that letter, we advised that, although federal appropriations requirements forbid an ANC from directly expending its funds on food and entertainment,¹⁷ they do not forbid an ANC grantee from expending grant funds on food and entertainment.¹⁸ The ANC Act does not forbid this either (although it previously did).¹⁹

Just as for the Life Success Center grant, the primary legal hurdle this grant would need to overcome is not a prohibition on food and entertainment. It is the public-purpose requirement. The question here would be similar to the one we confronted in a July 20, 2021 letter.²⁰ There, the question was whether a grant for a refrigerator and cooler to feed neighborhood residents in need would serve a public purpose. Ordinarily, we noted, grants for the benefit of particular individuals do not serve a public purpose. Accordingly, if this feeding project were confined to a select group of neighborhood residents, the grant “would not satisfy the public-purpose requirement because it would not benefit the community as a whole.”²¹ But we found the proposed grant permissible because, under the grantee’s most recent application, “the food stored in the refrigerator and cooler supported by the grant will be broadly available to needy residents” in the ANC area.²² Applying the same reasoning, a hypothetical grant to a mutual aid entity to make food available across the ANC area to those in need would satisfy the public-purpose requirement. It would thus be lawful as long as it did not run afoul of any other requirements in the ANC Act or other law.

We now turn to the third, fourth, and fifth grants you asked us about – each of which is impermissible.

3. United to Rise

The United to Rise grant would be for a summer camp, known as Camp-On-The-Go, that began on June 27, 2022 and ends on August 5, 2022.²³ According to the grant application, ANC funds would be used to “pay expenses for Commercial Liability (\$1,700/mth), Cyber (\$450/mth), Sexual Molestation (\$1,100/mth) and Workers Compensation (\$160/mth) Insurance” for the program.²⁴

This grant is impermissible because it is not for a proposed project. It reimburses expenditures for a camp that has already begun and is nearing its end. Moreover, it is doubtful that this grant could satisfy the ANC Act’s public-purpose requirement. Even if the summer camp itself served a public purpose – and the grant application does not establish a community benefit beyond the

¹⁶ See Letter to Executive Director Gottlieb Simon, July 7, 2017.

¹⁷ See Letter to Comm’r Israel, Sept. 23, 2021, at 2.

¹⁸ Letter to Gottlieb Simon, July 7, 2017, at 2.

¹⁹ At the time of our 2017 letter, the ANC Act forbade any use of ANC funds for “meals” or “personal subsistence expenses.” See *id.* at 1.

²⁰ Letter to Comm’r Speck, July 20, 2021.

²¹ *Id.* at 2.

²² *Id.*

²³ United to Rise Grant Application at 1.

²⁴ *Id.*

benefit to the camp’s limited number of participants – the expenditures would be principally for the benefit of United to Rise, rather than for the benefit of the public.

We also note one concerning feature of this grant application. In keeping with your ANC’s standard form,²⁵ the final page of the application includes a signed statement “[u]nder penalties of perjury” that the signer is acting on behalf of the applicant organization and that the information in the application is true and correct.²⁶ Although District law attaches perjury penalties for certain statements made under oath or affirmation,²⁷ nothing in District law authorizes ANCs – which are not enforcement bodies²⁸ and lack the power to administer oaths or affirmations – to attach perjury penalties to their grant applications.

4. Sela Public Charter School

The Sela Public Charter School grant would fund a professional development program for the school’s teachers.²⁹ This program does not satisfy the public-purpose requirement.

The school’s grant application cites benefits to neighborhood residents that might have been sufficient under prior law, but are not sufficient under current law. This development program, the school maintains, will benefit the 14 teachers and staff that would participate in it, as well as the 275 students the school expects to enroll next year, most of whom, the application says, live in the ANC’s ward.³⁰ Until the ANC Act was amended in 2016, one could make a reasonable argument that a benefit of this kind was enough to serve the public-purpose requirement. This was because a grant served a “public purpose” under prior law if it conferred a “direct public benefit of a reasonably general character, that is to say, to a significant part of the public.”³¹ Educational benefits to a large enough group of ANC residents might have been sufficient to satisfy this requirement, just as a large enough block party could.³²

Whatever the answer would have been under the prior law, however, current law makes clear that a grant does not serve a public purpose unless it benefits the community “as a whole.”³³ The immediate benefits of this grant, however, accrue only to the teachers who participate in the program. Even if we take into account the indirect benefits that this program is expected to bring to the school’s students, that still would not be sufficient. It is not clear from the application whether any significant proportion of these students are expected to hail from the ANC area itself, as opposed to other ANC areas within Ward 4. And even if they did, a grant that is for the

²⁵ See <https://anc4d.org/index.html> (containing a link to the grant application form). The Widow’s Pantry Life Skills Center and Life Success Center grant applications contain this same statement.

²⁶ United to Rise Grant Application at 3.

²⁷ See D.C. Official Code § 22-2402(a)(1).

²⁸ See *Kopff v. ABC Board*, 381 A.2d 1372, 1376 (D.C. 1977) (“the role of the ANCs is ‘advisory,’ as their very name suggests; they do not have an enforcement responsibility – or authority”).

²⁹ Sela Public Charter School Grant Application at 1.

³⁰ *Id.* at 2.

³¹ Letter to Comm’rs Teutch and Martin, June 30, 2017, at 1 (quoting earlier letters).

³² See *id.* at 1-2.

³³ D.C. Official Code § 1-309.13(1)(1).

benefit of a select group of individuals – even a significant number of students – is still for the benefit of those individuals, not for the benefit of the community as a whole.

Our conclusion here echoes the reasoning in our April 14, 2022 letter to OANC.³⁴ There, the question was whether an ANC could grant funds for (among other things) an educational performance specifically to the students of H.D. Cooke Elementary School.³⁵ We explained that, under current law, a performance “limited to a select group of elementary students” could not be said to serve a public purpose.³⁶ The same is true here.

5. The Widow’s Pantry Life Skills Center

This grant would support a project to give a limited number of homeless, unemployed, and underemployed ANC 4D residents “FREE classes in the areas of computer, leadership training, customer service, Finances, and Project Management while receiving a certificate in those areas of skills.”³⁷

This grant would not be for a proposed project. The classes funded by the grant began on April 19, 2022 and have been ongoing since that time.³⁸ Moreover, it does not appear that the grant would satisfy the ANC Act’s public-purpose requirement. The benefits of the grant appear to be limited to the 8 students that the Center can serve in person³⁹ and any additional students (the application does not elaborate how many) the Center can serve online.

Sincerely,

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(AL-22-453)

³⁴ See Letter to Interim Executive Director Grant, Apr. 14, 2022, at 5.

³⁵ *Id.* at 3-4.

³⁶ *Id.* at 5.

³⁷ Widow’s Pantry Life Skills Center Grant Application at 1-2.

³⁸ *Id.* at 1.

³⁹ See *id.* at 3 (“Due to COVID our in person program allows no more than 8 people at a time”).