

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

May 7, 2012

M. Tony Richardson
Commissioner, ANC 6C
P.O. Box 77876
Washington, DC 20013-7787

Re: Potential ANC 6C Grant to J.O. Wilson Parent-Teacher Association

Dear Commissioner Richardson:

This letter memorializes our email exchange concerning this office's review of the grant application submitted by the Parent-Teacher Association (PTA) of the J.O. Wilson Elementary School (J.O. Wilson), seeking \$3850 from ANC 6C to fund performances of the J.O. Wilson school play at the Atlas Theater. The play will be an adaptation of "Annie the Musical," and will involve five performances over four days in the latter part of May. Four performances will be for J.O. Wilson students from different grades, as well as for family members, while one evening performance will take place as a community event open to all residents of ANC 6C. The grant will go toward the purchase of the musical package, costumes, and the rental of the theatre.

It is my understanding that J.O. Wilson is unable to directly sponsor the school play this year, and that is why ANC monies have been requested by the local PTA. I note that J.O. Wilson, located at 660 K Street, N.E., is within ANC 6C. For the reasons set forth below, we conclude this grant may go forward.

Sections 16(l) and (m) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective June 27, 2000 (D.C. Law § 13-135; D.C. Official Code § 1-309.13(l) and (m) (2011 Supp.)) ("ANC Act") permit grants to be awarded by a Commission for projects that are public in nature, or which have a "public purpose," a phrase we have interpreted as requiring that the grant will benefit a significant number of persons. *See, e.g., Letter to Fredericka Shaw*, October 14, 2011 (disapproving grant to Living Story Book Organization to benefit 15 children). While such benefits are frequently visible, such as beautification projects, we have recognized that an eligible program can provide intangible public benefits, such as educating the community, promoting civic pride, or fostering neighborhood cohesion. *Letter to Fredericka Shaw*, October 13, 2011 (approving grant to Bloomingdale Civil Association relating to House Tour).

Nevertheless, the “significant number” of persons who must receive these benefits must be those **who reside and/or work in the Commission area**, even if those outside of the Commission area may also benefit. Further, grants may not be awarded for programs that duplicate District government services. D.C. Official Code § 1-309.13(m)(1) (2011 Supp.). In addition, because the ANC funding allocations come out of the District’s budget that is appropriated by Congress, the federal prohibition on appropriated monies being used for entertainment also applies to ANC grants. *Letter to Philip C. Spalding*, July 13, 2005.

In response to follow-up questions I posed, you indicated that there will be 30 students performing in the play. While it is not known how many of these students are residents of ANC 6C, the PTA has indicated that the “vast majority” live in the Commission area. Indeed, the boundary map for J.O. Wilson indicates that the neighborhood it serves is largely that of ANC 6C. Thus, the cast will clearly involve several students living in ANC 6C, even if J.O. Wilson, like many District public schools, may have out-of-boundary students. This will also mean that family members who live in ANC 6C will also watch their children participate, as will classmates attending the play on their designated days. Moreover, the community event will be open to all of ANC 6C. In our view, this comprises the requisite number of persons who must benefit from an ANC funded project. Moreover, the fact that J.O. Wilson would not otherwise sponsor the play means the grant would not duplicate District services.

The remaining and more difficult issue concerns whether the benefits of the play will be principally due to its nature as entertainment.¹ In addressing this issue for other grant proposals, we have drawn a general distinction between those activities which are participatory in nature versus those that simply passively amuse an observer. *Letter to Philip Spaulding, supra; Letter to Albrette “Gigi” Ransom*, September 22, 2011. Thus, for example, we have approved grants to fund a skating night for the community, but have disapproved proposals to fund a trip for children to a local amusement park, or to facilitate attendance at a jazz concert. *Letter to Sandra “S.S.” Seegars*, June 25, 2004; *Letter to Deborah Nichols*, August 9, 2006; *Letter to Alice W. Gilmore*, October 20, 1994.

Here, the children performing the play will unquestionably receive educational benefits in the dramatic arts that ANC grant funds may support. While those attending the

¹ While events classified as entertainment may not be funded by appropriated monies, it does not mean they have no value in terms of a person’s development or appreciation for the arts. As the Government Accountability Office (GAO) has commented on the entertainment prohibition, the prohibition exists because “public confidence in the integrity of those who spend the taxpayers’ money is essential, [and thus,] certain items which may appear frivolous or wasteful – however legitimate they may in fact be in a specific context – should, if they are charged to public funds, be authorized specifically by the Congress.” GAO, *Principles of Federal Appropriations Law*, 4-100 (3rd Ed. January 2004). ANC grants to facilitate attendance at dramatic performances have not been specifically authorized as a permitted form of entertainment with public monies. However, Congress did authorize the creation of ANCs to “conduct programs for the welfare of the people in a neighborhood commission area,” which we have reasoned allows for a flexible view in determining whether a program is prohibited as merely entertainment. See D.C. Official Code § 1-207.38(e) (2006 Repl.).

performances will, in contrast, be in a passive role, the fact that the cast will presumably include children residing in ANC 6C, coupled with the fact that the performances are a school event, persuades us that the program is not designed simply to entertain the audience. School events that are supported by the surrounding community can only enhance the pride felt by children attending the school, and can promote neighborhood cohesion around the school's educational mission, all of which provide benefits to the area that are hard to quantify, but which likely go beyond mere entertainment for one evening. Our analysis would be different if the event involved performances by a traveling group of talented child performers who brought their production to the District.

I hope this letter is helpful.

Sincerely,

IRVIN B. NATHAN

Attorney General

By: 

Jason Lederstein

Assistant Attorney General

Legal Counsel Division

(AL-12-107 B)

cc: Gottlieb Simon, Office of Advisory Neighborhood Commissions