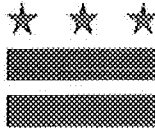


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

February 11, 2011

Sandra "S.S." Seegars
Commissioner, ANC 8E
1107 Savannah St., S.E.
Washington, DC 20032

Re: Funding of an "Adopt-a-Child/Youth" Program

Dear Ms. Seegars:

This letter responds to your e-mail question as to whether funds from an Advisory Neighborhood Commission (ANC) could be used for the above-referenced initiative.

Specifically, you have asked whether the ANC could create a program by which each commissioner "adopt[s] a child/youth, and set[s] a budget as to how much can be spent on the adopted [child/youth] -- school supplies, uniforms, sporting equipment, after school programs, bus fare to events within DC, rewards for good grades, etc. . . ." There are presently seven commissioners in ANC 8E.

We conclude that, while in theory, the ANC might legally undertake such a program, there are numerous concerns arising from local and federal prohibitions on ANC spending, as well as from the difficulty we perceive in effectively monitoring each commissioner's compliance with these requirements as the program is implemented. Consequently, we are unable to state that the initiative, as presently described, is legally sound.

The law governing use of ANC funds is found in 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 (2006 Repl.)) ("Act"), which provides that:

(l) A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area. . . . Expenditures may in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section. . .

(m) A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.

D.C. Official Code § 1-309.13(f) and (m) (2010 Supp.).

As a result, ANC funds, whether directly spent or provided by grant, may only be for public purposes that benefit members of the ANC community at issue. ANC funds cannot simply be provided to an individual, and they may not be used to provide services already performed by the District government.¹ In addition, while not stated in the Act, because ANC funds are appropriated by Congress, we adhere to the prohibition in federal appropriations law against using public funds purely for entertainment.

In light of these restrictions, the first question is whether spending money on behalf of seven children or youth residing in ANC 8E benefits enough ANC residents to be considered to have a public purpose. As we have stated previously, this is always a difficult question in light of the subjective analysis required. (Letter to Sinclair Skinner, February 20, 2004.) Indeed, our office has resisted use of a mathematical formula in our review, requiring only that a "significant number" of persons residing or working in the commission area receive a benefit from proposed ANC expenditures. (Letter to Chairperson Mary Treadwell, *et. al*, March 25, 1997.)

Thus, our Office found a proposed ANC grant to the Edward C. Mazique Parent Child Development Center to fund a scholarship that would be awarded to only one child, as one that would fail the public purpose test. (*Id.*) Likewise, we could not say an ANC grant to the YMCA Summer Camp that would benefit two children in a commission area was legally permissible. (*Id.*)

However, we have previously approved of a grant to the A.P. Shaw United Methodist Church Recreation Department to purchase sporting equipment pursuant to its sponsorship of a youth football team. (Letter to Otis H. Troupe, December 28, 1992.) We also approved of funds being used by your ANC for a "Gospel Skate Night" that did not include any requirements for the number of children who were expected to attend. (Letter to Sandra "S.S." Seegars, June 25, 2004.) These grants, however, were conditioned on ensuring that the equipment or roller skates were not given to participants, so that they could be used repeatedly for other children.

¹ Although these latter two statutory restrictions on use of ANC funds refer only to ANC grants, this Office has previously concluded that such a literal reading of the law would allow an ANC to circumvent the restrictions placed upon grants by simply engaging in direct expenditures. (Letter to Alan Roth, February 19, 2004.) In our view, the intent of the law as drafted was to ensure that appropriated District funds not be used twice for the same city services, and that ANC money not be handed out only to individuals.

Providing funds on behalf of seven children in a commission responsible for approximately 2000 residents is simply too narrow a population to be classed as a "significant number" under a public purpose requirement for spending ANC monies.² While we are loathe to erect barriers to ANC efforts in assisting even one child's positive development, we read the Act's "public purpose" language as seeking to ensure the limited resources of ANCs will have the broadest impact on the community. With no further overt benefits provided to the community by the seven children or youth "adopted" by each commissioner, the proposal would not be permissible under the Act.

However, even if the number of children benefitting from the program were substantially increased, spending by the ANC is also limited in that it must be for purposes that would be considered a public benefit, and not mere entertainment. (Letter to Westy McDermid, May 26, 1994); (Letter to Philip C. Spalding, July 13, 2005). We have declined a highly literal interpretation of the term "entertainment" in reviewing ANC grants or spending, and we thus have approved of ANC spending for participatory sporting or recreational activity for children, as that is thought to provide enrichment for the community beyond temporary amusement. However, not every endeavor engaged in by children can be funded with ANC money. Thus, we have disapproved of a grant from ANC 6C to allow 400 children from a low-income housing complex in the District to participate in an outing to the Six Flags of America theme park, despite its laudable family-centered purpose. (Letter to Deborah Nichols, August 9, 2006). Moreover, although we approved of the grant by your ANC for the above referenced "Gospel Skate Night" several years ago, we cautioned against use of ANC funds for a generator that would power equipment to pipe in music for the event.

The list of items you mention as potential categories for spending by each commissioner are broad, and could include items not allowed to be funded by an ANC. While basic school supplies or rental fees for sporting equipment might be permissible, you also list "bus fare to events in DC," and the potential for "rewards" to children or youth for their obtaining good grades in school. Without restriction, these broad areas could easily involve spending that would run afoul of the prohibition on using funds for entertainment, such as for movies, games, or even food.³ Moreover, ANC funds cannot be used to provide direct monetary payments to a child or youth, as that would constitute a grant of money to an individual and is prohibited under the Act.

² We realize that our Office has previously found two ANC grants to be lawful that were used to provide stipends to five young adults participating in a landscaping employment/entrepreneurship program (LEEP) (Letter to Deborah Nichols, August 4, 2000.) The LEEP project involved hiring five troubled youth to work twenty hours a week cleaning, picking up trash on sidewalks, and landscaping public areas including shrub trimming and beautification of public land within each ANC. We advised in our letter that while "only 5 persons would be granted employment in each ANC, the work that these persons would be performing would benefit the community as a whole, or a significant portion thereof. . . Therefore, there is a public benefit in addition to the 5 persons hired to perform the work." (*Id.*)

³ We note that the Act also strictly limits what the ANC may spend on food, allowing only nominal refreshments to be purchased for commission meetings, and prohibiting expenditures for meals or personal subsistence expenses. D.C. Official Code 1-309.13(f) (2010 Supp.).

ANC spending also cannot be for services already provided by another District agency. School supplies such as notebooks or pens might be the responsibility of parents and subject to assistance by an ANC, but textbooks and other instructional materials are to be provided by the District of Columbia Public Schools. D.C. Official Code § 38-701 (2010 Supp.). With respect to school uniforms, families may receive financial assistance from their school if they have difficulty purchasing them. 5-B DCMR § 2408.19 (2010). Thus, a more detailed itemization of allowable spending by the commissioners would be needed on these areas as well.

Even if the project were to be crafted with more detail as to permissible categorical expenditures by each commissioner, however, the law requires that every actual ANC expenditure have specific authorization by the commission, and all checks must be co-signed by the Treasurer. D.C. Official Code § 1-309.13(f) (2010 Supp.). While the law does allow for reimbursement of purchases made with personal credit or debit cards, the purchase must still be approved before reimbursement is provided, and a paper trail would have to be maintained for auditing purposes. *Id.* Indeed, all expenditures are subject to audit by the Office of the D.C. Auditor (ODCA). D.C. Official Code § 1-309.13(d) (2010 Supp.). It is doubtful that a full commission's one-time authorization of potential itemized expenditures by each commissioner on behalf of a child would satisfy the above requirements. Therefore, at a minimum, we foresee a burdensome increase in financial management tasks for both the ANC and the ODCA to ensure ANC funds are properly spent if the initiative were undertaken as described.

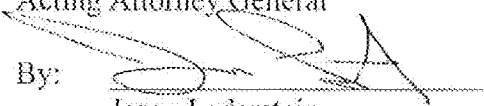
In short, we are unable to say the "Adopt a Child/Youth" program you propose is legally sufficient without more details on the expected expenditures, and a proposed system for commission approval of purchases, and for maintaining the proper documentation of commissioner spending to ensure compliance with the Act.

I hope the above is helpful to you. If you have additional questions, please feel free to contact our Office.

Sincerely,

IRVIN B. NATHAN
Acting Attorney General

By:


Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-11-022)

cc: Gottlieb Simon
Lynard Barnum