

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



Legal Counsel Division

October 13, 2011

Fredericka Shaw
ANC Staff Assistant
Office of the D.C. Auditor
717 – 14th Street, N.W., Suite 900
Washington, DC 20005

**Re: ANC 5C Grant of \$3,828 to Bloomingdale Civic Association for
House Tour and Art Show**

Dear Ms. Shaw:

This letter responds to your September 16, 2011 email, which referred a request from the Treasurer of ANC 5C for an opinion on whether the above grant to the Bloomingdale Civic Association (“BCA”) was permissible under the ANC law, given that the event will involve fundraising by BCA. The event itself involves a self-tour of various homes in the Bloomingdale section of the District, followed by an art show and reception. The Treasurer also raised concerns about whether the grant involved a conflict-of-interest, given that Commissioner John Salatti serves as a 2nd Vice-President of BCA, while two other commissioners serve as “delegates” from BCA to the DC Federation of Civic Associations.

As set forth below, we conclude the grant was legally permissible based on the information given to us, provided the two commissioners who are “delegates” are not considered as employees or officers of BCA.

According to BCA’s grant application, as well as additional information I received from the Chairperson of the BCA House Tour Committee, the above project will involve participants gathering at 1st and Rhode Island Avenue, N.E., where they will be given a booklet that contains photographs and descriptions of select homes within Bloomingdale. The booklet will also contain a map, with each particular residence being identified by number to guide visitors on their tour. I understand that many of the owners have agreed to open their homes to tour participants. The final numbered location on the map will be a converted gallery space donated to BCA for this event, wherein approximately 14 local artists will showcase their works (paintings, sculpture, photographs, etc.), followed by a reception that will be catered free-of-charge by a donating organization. The art that will be displayed at the show has already been approved by a BCA curator for the event, and

there will be descriptions of the artists and their creations in the above-referenced booklet.

The funds granted by ANC 5C would primarily be used for the design and printing of the program booklets, although it will also be used for 20 yard posters, a banner, and small stipends for youth who will be enlisted from local organizations to distribute flyers about the event. The entire program would be expected to last just over 6 hours, and is designed to attract persons from inside and outside the Bloomingdale neighborhood.

BCA does intend to use the event for fundraising, in part by requiring tickets for the program that can be purchased in advance, or at the gathering site (\$20 in advance/\$25 on-site; \$10 for youth). In exchange for the tickets, wristbands will be given to participants that will allow entry to the art show and reception.¹

Section 16 (m) of the Advisory Neighborhood Commissions Act of 1975, effective March 6, 1991 (D.C. Law § 8-203; D.C. Official Code § 1-309.13(m) (2011 Supp.)) (“ANC Act”) governs ANC grants, and provides, in pertinent part, that:

(m)(1) 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. . . .²

The ANC Act goes on to require that grant proposals describe the project that is to be funded by the ANC, state its expected benefits for the public, and include a budget that also indicates other sources of funding for the project. *Id.* Within 60 days of the grant issuance, recipients are to provide the Commission with a statement of use of the funds consistent with the grant application, including receipts.

These requirements of the ANC Act would ordinarily prohibit an organization from receiving ANC monies to run an event solely for fundraising. In that circumstance, the particular grant being awarded would benefit only the grantee, not the commission community. Moreover, even if the organization at issue were unquestionably involved in other constructive activities in the area which would be supported from funds raised at such an event, the details of those other projects would not have gone through the scrutiny of a public ANC meeting for determination of whether ANC funds should be

¹ While my understanding is that the booklets will also be provided at that time, the booklets will also be available as a PDF file on the BCA website which the public may access.

² Our review of the legislative history behind this provision led us to interpret the phrase “that are public in nature and benefit persons who reside or work within the Commission area” as modifying the term “grant” in this provision, rather than an attempt to describe the nature of the organizations that may receive grants. (Letter to Douglas E. Smith, Sr., May 19, 2011.) Though inartfully worded, it is reflective of the language in the immediately preceding section of the ANC Act that expressly states that ANC expenditures “may be in the form of grants by the Commission for public purposes within the Commission area.” D.C. Official Code 1-309.13(1)(1) (2011 Supp.).

used to assist those efforts. (Letter to Stephen A. Whately, May 6, 2011); *see* (Letter to Lynard Barnum, August 22, 2011) (grant could not be used to assist organization with writing other grant proposals).

However, we have also advised that an ANC grant is not otherwise improper simply because it will accord secondary benefits to other groups or individuals apart from the wider community. (Letter to Philip C. Spalding, July 13, 2005.) In our letter to Mr. Spalding, we approved a grant to Sankofa Books and Video, a local business, so that it could rent or purchase audio equipment as part of its participation in a weekly "Arts Under the Stars" program that featured an "open mike" forum for community members to share art (poetry, song, rap) or views on local issues. We stated that:

[t]he concept of an ANC grant is that money is needed to secure a community benefit. Sometimes this can only be achieved by directly benefiting private parties [footnote omitted]. As a practical matter, the indirect benefits that flow from an ANC grant are a necessary consequence of any expenditure. In fact much of the power and importance of the grants funds is that they do provide secondary benefits to many businesses and people in the community.

Thus, the mere fact that an organization will raise funds during a project that is financed by an ANC grant does not make the grant improper if it also has the requisite public purpose benefitting the Commission area. That is what is happening here. My understanding is that BCA is arranging this event in part to help dispel an old reputation Bloomingdale may have previously acquired, fairly or not, as a neighborhood beset by crime and drugs. In addition, it is thought that the increasing diversity of residents in the Bloomingdale area has created a need for more cohesion in the neighborhood. The house tour and art show is expected to showcase the beauty and creativity of Bloomingdale and its members to the entire District community, while also presenting an opportunity for Bloomingdale's residents to communicate and share in a relaxed and meaningful environment.

While these benefits could be said to be intangible, they are in the nature of promoting civic pride, as well as the enrichment of a neighborhood's members, although an enhanced perception of Bloomingdale, District-wide, could also lead to more patrons or residents for Bloomingdale in the future, as well as increased commercial traffic on the day of the event. Moreover, the ANC grant in particular will primarily go toward the printing of the booklets that participants will presumably keep. These booklets, by themselves, are educational for readers, including, of course, the residents of Bloomingdale. I therefore view the project as having what would commonly be thought of as a public purpose, and one that would also be expected to benefit a significant number of persons residing or working in the Commission area. D.C. Official Code § 1-309.11(m)(2011 Supp.).³

³ I note that our office in prior years determined whether a project had a "public purpose" by using a test that asked whether a project would "confer[] a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." (Letter

However, I note some concern with the fact that BCA is charging for admission to the event. See Letter to Phillip Spalding, *supra* at n. 2. While this is not, in and of itself, a barrier to grant money from an ANC, to the extent such a fee would have the effect of precluding attendance by a significant number of people, it would diminish the public nature of the project and its benefits to members of the Commission area. Without more information, I am unable to determine whether the fee BCA intends to charge would have these effects, though I am inclined to believe it would not. Moreover, I note again that the bulk of the ANC grant appears to be for production of the booklets that will provide benefits beyond the event, and are available free of charge through access on the Internet. We conclude, under the totality of facts presented here, that BCA's particular fundraising methods at this occasion do not make the grant impermissible.

With respect to whether a conflict-of-interest is present for any commissioners, our ethics specialist advises that federal law on this issue, which applies to ANC commissioners, prohibits commissioners from participating in a matter in which they --or anyone whose interests are imputed to them -- has a financial interest. 18 U.S.C. § 208(a). This latter category -- individuals and entities whose interests are imputed to the Commissioner -- includes any organization in which the employee "is serving as officer, director, trustee, general partner or employee," and this would include non-profit organizations. *Id.* The reason for this restriction is to ensure impartiality by the person in performing their duties. Thus, Commissioner Salatti's position as a Vice-President for BCA does present a conflict for the Commissioner that could have tainted this grant.

However, the Treasurer of ANC 5C has advised that when this issue was raised with Commissioner Salatti, he recused himself from deliberations and voting on the grant. If Commissioner Salatti did not participate personally and substantially in this grant, as the Treasurer appears to be indicating, then it was not tainted by this type of conflict-of-interest.⁴

to James E. Nathanson, June 3, 1991). I view this test as more applicable to situations where a grant that benefits only a small segment of the relevant population purports to result in larger benefits to the community as a result of the activities of the smaller group. In any event, the possibility of increased cohesion or pride from an organized community activity does not strike us as "remote," much like the benefits that result from beautification projects, or organized community recreational activities that we have approved as properly funded by ANC grants.

⁴ I note that there is ambiguity as to whether the District's local conflict-of-interest statute applies to the situation where a public official has an association with a non-profit organization. That law prohibits public officials, including ANC Commissioners, from using their official position or office to obtain financial gain for themselves or a business with which the official is associated, but then defines the term "business" in a fairly broad fashion. D.C. Official Code §§ 1-1106.01 (b) and (i)(2) and 1-1106.02(i)(2) (2011 Supp.). However, recusal from influence over the actions and decisions involved that create the conflict is permitted, although at some point a written statement by the official is required concerning the matter. D.C. Official Code § 1-1106.01(g) (2011 Supp.); 3 DCMR § 3300 *et seq.* Thus, to the extent this law applies, Commissioner Salatti's recusal, again as described by the Treasurer, appears to have cured any conflicts, making the grant award permissible.

We do not have sufficient information on the nature or functions of the BCA "delegates" to the DC Federation of Civic Associations, or the nature or functions of the DC Federation for that matter, to independently determine if commissioners serving in this capacity have a conflict from the grant, and should have recused themselves from the grant-making process in order to avoid tainting the grant. If the delegates are not considered "employees" or "officers" of BCA, then we see no conflict from those commissioners being involved in the award to BCA. I understand from the Chairperson of the BCA House Tour Committee that these delegates are not paid by BCA, nor are they considered officers of BCA in BCA's by-laws. Their role is simply to attend meetings of the DC Federation of Civic Associations, and report back to BCA as to how those meetings unfolded. Under those circumstances, we conclude the grant may go forward.⁵

I hope this letter is helpful.

Sincerely,

IRVIN B. NATHAN
Attorney General

By: 

Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-11-445)

cc: Gottlieb Simon, Office of Advisory Neighborhood Commissions
Albrette "Gigi" Ransom, ANC 5C

⁵ Please note that these conflict-of-interest statutes authorize criminal penalties for individuals violating their provisions. This letter does not purport to advise individual commissioners on their obligations arising from these statutes, but rather, our view of whether actions taken by the commission as described to us would appear to be legally valid.