

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

August 22, 2022

Kyle Mulhall
Commissioner, ANC 2B09
1537 T Street, N.W.
Washington, D.C. 20009

Re: Proposed ANC Expenditures

Commissioner Mulhall:

You have asked us about the lawfulness of three direct expenditures your Advisory Neighborhood Commission (“ANC”) is contemplating:

- (1) A sign that would explain a street-name redesignation your ANC supports;¹
- (2) A localized “safe streets” education program; and
- (3) A design competition for redesigning and redeveloping a commercial strip in your ANC.

Based on the description you have provided of these proposals, we conclude that your proposed expenditures are permissible. They serve a public purpose and do not appear to conflict with any other requirement in the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)² or any federal appropriations requirement.

Answering your question requires us to interpret section 16 of the ANC Act (D.C. Official Code § 1-309.13). We read section 16 “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).

¹ See <https://www.dupontcircleanc.net/wordpress/wp-content/uploads/2022/07/ANC-2B-RESOLUTION-Swann-Street-NW-Dedication-DC-COUNCIL.pdf> (ANC 2B resolution supporting the redesignation) (all internet sites last visited Aug. 22, 2022).

² Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

The expenditures you have asked about are not for the maintenance of the ANC office, so they must serve a public purpose.³ This means they must “benefit[]the community as a whole” and not be “for the primary purpose of benefitting a private entity.”⁴ Moreover, these expenditures must not involve any purpose prohibited by section 16(1)(2) of the ANC Act,⁵ and must not violate any restriction in federal appropriations law.⁶

Based on the descriptions you have provided, the expenditures you have asked us about appear consistent with these requirements. These do not appear to serve any of the purposes prohibited by section 16(1)(2) of the ANC Act, or to violate any prohibition in federal appropriations law.⁷ Moreover, they all appear to be for public purposes in the Commission area. A new sign explaining a redesignation of a street would be designed to inform the whole neighborhood community. A safe-streets education campaign composed of signs, flyers, and advertisements would be designed to promote the safety of the whole neighborhood area. And a competition to generate redesign and redevelopment proposals would be designed to support the improvement of an area available for the enjoyment of the whole community. For any such competition, though, we recommend that the ANC not include a monetary prize for the winner. Any use of the ANC’s allotted funds for this purpose would likely violate federal appropriations law, and any significant expenditure for such an award from allotted or donated funds could call the public purpose of the expenditure into question.⁸

You have indicated that some of the programs funded by these expenditures, such as the public safety awareness programs, might resemble programs that District government agencies have the authority to conduct. This potential for duplication would raise concerns if these were grants, since the ANC Act prohibits grants for any services that would “be duplicative of any that are already performed by the District government.”⁹ But it is not problematic here, since nothing in the ANC Act prohibits duplicative direct expenditures.

A few of our past letters have suggested that duplicative direct expenditures are problematic,¹⁰ so a bit more context may be helpful. Before 2000, a public-purpose expenditure that duplicated existing District government programs would raise significant legal concerns. Then, as now,

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

⁴ *Id.*

⁵ Section 16(1)(2) provides that ANCs may not expend funds “for any purpose that involves partisan political activity, legal expenses other than for Commission representation before an agency, board, or commission of the District government, or travel outside of the Washington metropolitan area.” *Id.* § 1-309.13(1)(2).

⁶ *See, e.g.*, Letter to Gottlieb Simon, July 7, 2017, at 1 (noting that an ANC cannot directly expend its funds for food or entertainment). This letter, along with other prior letters from our Office, is available at <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs>.

⁷ They would not, for example, impermissibly augment any District agency’s appropriation by funding or participating in any agency program. *See* GAO, Principles of Federal Appropriations Law at 6-162 (3d ed. 2006) (“As a general proposition, an agency may not augment its appropriations from outside sources without specific statutory authority”).

⁸ *See* GAO, Principles of Federal Appropriations Law at 3-158 (4th ed. 2017) (“absent specific statutory authority,” appropriated funds generally cannot be “used to purchase such items as medals, trophies, or insignia for the purpose of making awards”).

⁹ D.C. Official Code § 1-309.13(m)(1).

¹⁰ *See, e.g.*, Letter to Councilmember Catania, Mar. 23, 2004; Letter to Comm’r Christophe, Oct. 30, 2000.

when an ANC wanted to expend its funds not for the maintenance of its own office but for public purposes in the neighborhood area,¹¹ the law offered it two ways to do that. The ANC could issue a grant, which would be subject to section 16(m) of the ANC Act,¹² or it could expend its funds directly.¹³ Under section 13(k) of the Act, a direct expenditure that was not for a neighborhood or community enhancement campaign would have to be made “in conjunction with existing governmental activities,” and that expenditure could not “duplicate already available programs or services.”¹⁴ Accordingly, we advised that an ANC “may not use its funds to operate a program or provide a service that duplicates an ‘already available’ District government program or service.”¹⁵

Today, however, the rules are different. In 2000, the Council tightened the requirements for grants but loosened the requirements for direct expenditures. It added new substantive and procedural requirements for grants, including a requirement that services provided by the grantee would not “be duplicative of any that are already performed by the District government.”¹⁶ These requirements “restrict[ed] the purposes for which [grants] may be given and explicitly require[ed] accountability by the Commissioners at public meetings.”¹⁷ At the same time, the Council repealed the direct-expenditure limits in section 13(k) of the ANC Act, including the duplication ban.¹⁸ Consequently, the Act no longer prohibits an ANC from making duplicative direct expenditures.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: *Joshua A. Turner*
JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

(AL-22-462)

¹¹ See D.C. Official Code § 1-309.13(l) (identifying these as the two lawful purposes for ANC expenditures).

¹² See *id.* § 1-264(m) (1999 Repl.).

¹³ See *id.* § 1-264(l).

¹⁴ *Id.* § 1-261(k).

¹⁵ Letter to Crystal Lynch, Aug. 7, 1996, at 1.

¹⁶ Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, § 3(d), effective June 27, 2000 (D.C. Law 13-135; 47 DCR 2747).

¹⁷ Report of the Comm. on Local and Regional Affairs on Bill 13-468, the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 (“2000 Report”), at 11 (Jan. 11, 2000).

¹⁸ *Id.* at 8.