

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



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

August 19, 2022

Jonah Goodman
Commissioner, ANC 4C10
4217 4th Street, N.W.
Washington, D.C. 20011

Re: ANC Grant to an Abortion Fund

Commissioner Goodman:

You asked whether an Advisory Neighborhood Commission (“ANC”) may issue a grant to an abortion fund. While we cannot provide a definitive answer outside the context of a particular grant application, we can offer general guidance. Any grant to an abortion fund would need to satisfy the requirements of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),¹ as well as a rider in federal law. We recommend contacting our Office before such a grant is issued so that we can determine whether the grant would conform to District and federal law.

This letter summarizes the requirements in these two bodies of law, noting that each individual grant application must be reviewed on its own terms and mindful of the unique facts involving each grant and of the evolving state of the law in this area.

The ANC Act

Section 16 of the ANC Act (D.C. Official Code § 1-309.13) allows an ANC to issue grants for its neighborhood area so long as the grant satisfies the procedural and substantive statutory requirements. Procedurally, after the grant-seeking organization submits an application, the ANC holds a public meeting with a public presentation of the grant request and then votes on whether to award the grant.² Substantively, any grant issued by an ANC must be for a “proposed project”³ and must serve “public purposes within the Commission area.”⁴ Additionally, it must

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

² D.C. Official Code § 1-309.13(m)(1), (2).

³ *Id.* § 1-309.13(m)(2)(A).

⁴ *Id.* § 1-309.13(l)(1); *see id.* § 1-207.38(c)(2).

“benefit persons who reside or work in the Commission area,”⁵ and the services to be provided by the grantee organization cannot “be duplicative of any that are already performed by the District government.”⁶ The Act also prohibits certain grant purposes, such as “any purpose that involves . . . travel outside the Washington metropolitan area.”⁷

The Council adopted the detailed substantive and procedural requirements applicable to grants – some of which were adapted from prior law – as part of a 2000 omnibus reform measure, in order to “address[] concerns raised about grants.”⁸ The requirements were intended to “restrict[] the purposes for which [grants] may be given and explicitly require[] accountability by the Commissioners at public meetings.”⁹ We highlight two of these substantive requirements – the proposed project and public purpose requirements – that would be especially pertinent for any proposed abortion-fund grant.

(1) The proposed-project requirement

Section 16 of the ANC Act requires that any grant application seek funding for a “proposed project.”¹⁰ As our past letters have explained, the requirement that grant funding be for a “project” means that it must be for a particular undertaking, not just for general support of the applicant organization, and the requirement that a project be “proposed” prevents an ANC from reimbursing the applicant for expenses it has already incurred on an existing or past project.¹¹

We explained this “proposed project” requirement in a May 6, 2011 letter involving a grant to the Wilson High School crew team (“Wilson Crew”) to purchase a boat.¹² That grant was impermissible, we said, because the grant applicant sought funding for a boat it had already purchased. “[T]he clear intent from the [ANC] Act’s language” is that “grants be awarded prospectively.”¹³ Moreover, we said that the grant would at this point effectively be a donation to Wilson Crew.¹⁴ This posed a serious problem, because ANC 4A would then be “funding

⁵ *Id.* § 1-309.13(m)(1).

⁶ *Id.*

⁷ *Id.* § 1-309.13(l)(2).

⁸ 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).

⁹ *Id.*

¹⁰ D.C. Official Code § 1-309.13(l)(2)(A).

¹¹ See Letter to Comm’r Israel, July 19, 2022, at 2; Letter to Interim Executive Director Grant, April 14, 2022, at 2-3. The principle that grants for organizational support are impermissible echoes long-standing advice by the Office of the District of Columbia Auditor. See Letter to Comm’r Allen, May 19, 1986, at 1 (quoting the Auditor’s view that, for an ANC expenditure to meet a public purpose, it must “not be for the general support of the organization” (internal brackets omitted)). It also dovetails with the statutory requirement that public-purpose grants not be “for the primary purpose of benefitting a private entity.” D.C. Official Code § 1-309.13(l)(1).

The letters cited in this footnote and elsewhere in this letter are available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited Aug. 4, 2022).

¹² See Letter to Comm’r Whatley, May 6, 2011.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

matters without the opportunity for review and voting at a public meeting by the ANC, as required by the Act.”¹⁵

Like the Wilson Crew grant, any grant to an abortion fund would need to be prospective in nature. The grant would need to fund a future endeavor the organization seeks to undertake rather than supporting the general operations of the fund or supporting assistance that the organization has already provided.

(2) The public-purpose requirement

Any grant awarded by an ANC must also be for “public purposes within the neighborhood area,” *i.e.*, a “purpose that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”¹⁶ It must “benefit persons who reside or work in the neighborhood commission area.”¹⁷ Any abortion fund seeking a grant from an ANC would therefore need to show, not only that the project for which it seeks funding would benefit people who live or work in the granting ANC’s neighborhood area,¹⁸ but also that the project would benefit the neighborhood area as a whole.

Our previous letters have explained what this requires. Drawing from the law of other jurisdictions, we have advised that a grant would not satisfy a public purpose unless it “confer[red] 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 or theoretical benefit.”¹⁹ We have understood this to require that the benefits of a grant be generally available and accessible to the public, and that the grant confer a direct benefit to a significant part of the Commission area. In a pair of 2011 letters, for example, we explained that a grant that solely benefited 15 students, or another for the sole benefit of 7 adoptees, would not serve a public purpose.²⁰ We made the same point in our 2011 letter analyzing the Wilson Crew grant, since one of the questions about that grant was whether it would satisfy the public-purpose requirement:

If the benefit of the new crew boat were to redound only to the four or five students currently on the crew team, we would be compelled to find the grant unlawful as benefitting too few persons within a commission area numbering thousands of residents, no matter how constructive the activity for those youth.²¹

¹⁵ *Id.*

¹⁶ D.C. Official Code § 1-309.13(l)(1).

¹⁷ *Id.* § 1-309.13(m)(1).

¹⁸ *See* Letter to Comm’r Fletcher, Mar. 15, 2022.

¹⁹ Letter to Comm’r Allen, May 19, 1986, at 4; *see* Letter to Comm’r Seegars, Feb. 11, 2011, at 3 (echoing the “significant number” standard); Letter to Comm’r Anthony, Dec. 10, 2008, at 2 (noting that an ANC grant’s primary purpose must be to “provide a benefit that is public in nature to the community”); Letter to Comm’r Seegars, June 25, 2004, at 2 (noting that, among other things, a grant must “serve a significant number of your ANC’s residents”); Letter to Comm’r Roth, Feb. 19, 2004, at 2 (“A public purpose is one which benefits or potentially benefits a significant number of persons who either reside or work within the commission area”).

²⁰ Letter to Fredericka Shaw, Oct. 14, 2011, at 3; Letter to Comm’r Seegars, Feb. 11, 2011, at 3.

²¹ Letter to Comm’r Whatley, May 6, 2011, at 4; *see* Letter to Comm’r Treadwell *et al.*, Mar. 25, 1997, at 3 (“An ANC grant that benefits only one or two or a few persons is not one that serves a public purpose and is not ‘public in nature’”).

The proposed project was, however, consistent with the public-purpose requirement because the expenditures on the boat would not be confined to the four students currently on the team. It would, we said, benefit generations of students, as well as their families and the broader community who could attend crew events.²² An abortion fund seeking an ANC grant would need to show that the proposed project for which it sought ANC assistance could meet the statutory public-purpose standard.

Federal Law

Even if a grant could satisfy the requirements of the ANC Act, it would need to abide by federal law. Since 2017, Congress has provided:

No funds available for obligation or expenditure by the District government under any authority shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of rape or incest.²³

We have carefully reviewed the language of this prohibition against the backdrop of other appropriations language, including similar riders in prior appropriations measures. For both this and earlier enactments, we have also reviewed applicable legislative history, case law, and opinions by the federal Attorney General (who interprets federal law generally) and the U.S. Government Accountability Office (“GAO”) (which interprets federal appropriations law). Based on our review, any grant to pay for one or more abortion procedures that do not fall within the prohibition’s delineated exceptions would be impermissible.²⁴ Costs incidental to the abortion procedure, however, do not appear to be barred by the language of the amendment.²⁵ Accordingly, any grant that does not fund an abortion procedure would appear consistent with the prohibition.

We hope this this general guidance is helpful to your ANC. Please feel free to reach out to us with any questions you may have about how this guidance may apply to particular grant applications your ANC receives.

²² Letter to Comm’r Whatley, May 6, 2011, at 5.

²³ Financial Servs. and Gen. Gov’t Appropriations Act, 2022, § 810, approved March 15, 2022 (Pub. L. 117-103; 136 Stat. 49). This language, which bears some resemblance to restrictions elsewhere in federal law, was first adopted in section 810 of the Financial Services and General Government Appropriations Act, 2017 (Pub. L. 115-31; 131 Stat. 135).

²⁴ See, e.g., *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474 (1996); *Hope Medical Grp. for Women v. Edwards*, 63 F.3d 418 (5th Cir. 1995); *Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d 247 (Ind. 2003); *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253 (Tex. 2002).

²⁵ See Congressional Research Service, District of Columbia: A Brief Review of Provisions in District of Columbia Appropriations Acts Restricting the Funding of Abortion Services (Jan. 24, 2014) (discussing the history of District Hyde amendments). Our approach here mirrors our approach on a federal rider prohibiting the expenditure of “to enact” any law “legalizing the sale, possession, or use of any schedule I substance.” See Financial Services and General Government Appropriations Act, 2019, §809, approved February 15, 2019 (Pub. L. 116-6; 133 Stat. 13). Our Office concluded, and GAO agreed, that this prohibition reached no further than its language. See Application of an Appropriations Act Prohibition and the Antideficiency Act to a D.C. Bill, B-331312 (2021).

Sincerely,

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