

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



**ATTORNEY GENERAL
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Legal Counsel Division

August 4, 2022

Schannette Grant
Interim Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W., Ste. 11
Washington, D.C. 20004

**Re: Use of Grant Funds to Hire Off-Duty MPD Officers, and Grant Application
Requirement to Secure SMD Commissioner Support**

Director Grant:

You asked us two questions about grants issued by Advisory Neighborhood Commissions (“ANCs”):

- (1) If an ANC lawfully grants funds to provide security at an event, may the grantee use those funds to hire off-duty Metropolitan Police Department (“MPD”) officers?
- (2) May an ANC require prospective grantees to secure the support of the relevant single-member district (“SMD”) Commissioner before their grant application may be considered?

Our general answer to both questions is yes.

We start by summarizing the relevant law. Any grant issued by an ANC must meet the requirements in section 16 of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),¹ which we recently fleshed out in an April 14, 2022 letter to your Office.² To name just a few prominent examples, a grant must be for a proposed project,³ must serve a public purpose,⁴ and cannot duplicate existing District government functions.⁵ A grant must also satisfy any

¹ Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13).

² See Letter to Interim Executive Director Grant, Apr. 14, 2022. This letter, like others we cite, is available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited July 26, 2022).

³ See D.C. Official Code § 1-309.13(m)(2)(A).

⁴ See *id.* § 1-309.13(l)(1) and (m)(1).

⁵ See *id.* § 1-309.13(m)(1).

lawful requirements imposed by the ANC's bylaws,⁶ and be otherwise consistent with District law.

This leads us to your first question, about whether grant funds for event security can be used to pay off-duty MPD officers. Generally, yes. Section 16 of the ANC Act allows an ANC to grant funds for security at an event as long as the grant serves a public purpose, does not duplicate any existing security functions that the District government is performing, and does not violate any of section 16's other requirements.⁷ If the ANC issues such a grant, the grantee may use grant funds to hire MPD officers for this purpose as long as three requirements are met. The use of ANC grant funds for this purpose must be consistent with the ANC's bylaws,⁸ must be consistent with the terms of the grant itself (including any applicable grant agreement), and must operate in a way that satisfies the outside-employment requirements for these officers elsewhere in District law.⁹

As to your second question, we conclude that an ANC may, through its bylaws, require each prospective grantee to obtain the support of the relevant SMD Commissioner.

We recognize that requiring a particular Commissioner's support for a grant would be a significant departure from the normal operation of ANCs under the ANC Act. Such a requirement would effectively give a single Commissioner veto power over a proposed grant. Ordinarily, ANC operations do not work that way. When a Commissioner is not acting as an ANC officer¹⁰ and is not representing the ANC in a particular matter,¹¹ that Commissioner ordinarily cannot unilaterally exercise any authority over ANC business. That authority is usually exercised by the ANC as a whole in a formal ANC meeting.¹²

Nonetheless, we conclude that an ANC may impose this requirement as a criterion that each proposed grant must meet. The ANC Act directs each ANC to adopt bylaws "governing its operation and internal structure."¹³ Since the issuance of grants falls comfortably within the "operation and internal structure" of an ANC, this broad authority allows an ANC to establish, through its bylaws, grant criteria that go above and beyond what the ANC Act requires, as long as those criteria are consistent with the ANC Act¹⁴ and other applicable law. For example, an ANC may limit grants to nonprofit corporations even though the ANC Act does not require that a grantee be incorporated at all.¹⁵ Along the same lines, we have identified nothing in the ANC

⁶ See *id.* § 1-309.11(d)(1).

⁷ For example, the event cannot "involve[] partisan political activity." *Id.* § 1-309.13(1)(2).

⁸ See *id.* § 1-309.11(d).

⁹ Those requirements can be found in Title 6-A, Chapter 3 of the District of Columbia Municipal Regulations.

¹⁰ See D.C. Official Code § 1-309.11(e) (describing ANC officer functions).

¹¹ See *id.* § 1-309.11(e)(1A)(E) ("The views or recommendations of each Commission" may be presented by "representatives appointed by the Commission at a public meeting to represent the Commission's views on a particular issue or proposed action").

¹² See *id.* § 1-309.11(b)(1) (ANC ordinarily acts by vote of a quorum of its members in a properly convened meeting).

¹³ *Id.* § 1-309.11(d).

¹⁴ See *id.* § 1-309.11(d)(2) (bylaws must be consistent with the ANC Act).

¹⁵ See Letter to Interim Exec. Dir. Grant, Apr. 14, 2022, at 3.

Act that would, expressly or by implication, prohibit requiring a relevant SMD Commissioner's support for a proposed grant, as long as this criterion is written clearly enough that a prospective grantee can reasonably identify the "relevant" Commissioner (or possibly Commissioners, for a project spanning multiple SMDs). Nor are we aware of anything elsewhere in District law that would prohibit this.

Even if the ANC established this requirement, it could prevent a single Commissioner from blocking a grant supported by the remainder of the ANC by adopting an overriding bylaw amendment. The ANC could also avoid this situation entirely by making the relevant Commissioner's support not a formal requirement but an informal norm, one the ANC is free to depart from where appropriate. This approach would resemble what is known as senatorial courtesy, a U.S. Senate custom of "refusing to confirm a presidential appointment of an official in or from a state when the appointment is opposed by the senators or the senior senator of the president's party from that state."¹⁶

Sincerely,

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¹⁶ *Senatorial courtesy*, Merriam-Webster's Collegiate Dictionary (11th ed. 2004).