

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



Legal Counsel Division

June 20, 2005

Robert Vinson Brannum
Commissioner, ANC 5C-04
158 Adams Street, N.W.
Washington, DC 20001

Re: Are ANC's entitled to advance notice under D.C. Official Code § 1-309.10 for matters involving the District of Columbia Board of Education?

Dear Commissioner Brannum:

This responds to your letter of April 27, 2005 in which you ask us to provide advice concerning the D.C. Board of Education's statutory obligation to provide notice to an ANC under D.C. Official Code § 1-309.10.¹ The statute you reference is contained in section 13 of the Advisory Neighborhood Commissions Act of 1975, effective Oct. 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.10 (2004 Supp.) (collectively, the ANC Act).

Section 1-309.10, subsections (a) and (c) concern an ANC's general rights to receive notice.² The first, § 1-309.10(a), states in relevant part:

(a) Each Advisory Neighborhood Commission ("Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all **independent agencies, boards and commissions** of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, **education**, health, safety, budget, and sanitation which affect that Commission area. (Emphasis added.)

The second notice provision, D.C. Official Code § 1-309.10(c)(1), states:

¹ Also relevant to your inquiry is § 738 of the Home Rule Act, approved Dec. 24, 1973, Public Law 93-198, 87 Stat. 777, D.C. Official Code § 1-207.38 (2001).

² D.C. Official Code § 1-309.10(b) governs the time requirements for giving notice but not the subjects for which notice must be given.

(c) (1) Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or **independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section**, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia government entity shall maintain a record of the notices sent to each Commission pursuant to subsection (b) of this section. (Emphasis added.)

Education is expressly mentioned in § 1-309.10(a) as a subject for which an ANC may advise the other parts of the government. In § 1-309.10(c) the subjects listed in subsection (a) are included by reference in a larger list of matters for which an ANC shall receive notice. Thus, depending on the matter involved, the D.C. Board of Education may be required to give an affected ANC advance notice under D.C. Official Code § 1-309.10.

Nonetheless, not all matters affecting education within a neighborhood must be reported to the ANC. The D.C. Court of Appeals in Kopff v. Dist. of Columbia Alcoholic Beverage Control Board, 381 A.2d 1373, 1380-81 (D.C. 1977), stated that any notice obligations created in the D.C. Code are limited by the Home Rule Act. The pertinent section of the Home Rule Act can be found in the D.C. Official Code § 1-207.38. It states that timely notice shall be given to an ANC for matters “of significance to neighborhood planning and development within its neighborhood commission area.” D.C. Official Code § 1-207.38(d) (2001). The phrase “of significance” was interpreted by the Court in Kopff to place a limit on the situations in which an ANC was required to receive notice, even if the subject is explicitly listed in § 1-309.10(a). Kopff, 381 A.2d at 1381.

In general Kopff requires that notice be given to the ANC for actions which affect neighborhood planning and development if a public hearing is required by law. Id. The requirement to hold a public hearing is taken to be an implicit determination by the legislator that the proposed government action is significant. Id. However, there may be infrequent situations where an ANC is entitled to receive notice about matters affecting its neighborhood, but for which a public hearing is not required.³ Id.

³ The D.C. Court of Appeals stated in Kopff that “while it is difficult to conceive of many matters, not requiring a hearing, which would be sufficiently significant to neighborhood planning and development to warrant a special notice to an ANC, we do not wish categorically to exclude all such cases.” Kopff, 381 A.2d at 1381.

This Office has issued two recent interpretations concerning ANC notice requirements (attached for your reference). The first holds that notice is not required for the issuance of Asbestos Abatement Permits (April 23, 2004, Memorandum to Kenneth Campbell) and, the second, that the Office of Planning is not exempt from giving notice to ANCs (August 16, 2004, Letter to Absalom Jordan). The letters do not discuss the Board of Education but provide a relevant discussion of the analysis that is performed when specific issues regarding the notice requirement are raised.

Because you have not provided this Office with any factual circumstances for which notice might be required we cannot provide any further guidance beyond the general information provided in this letter. Further, nothing in this letter is intended to decide any particular notification disputes that may arise, but is merely to outline the law as it currently exists. If you have questions about specific issues, we will consider them if and when they are presented to us.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

(AL-05-295)

Attachments: Letter dated August 16, 2004
Memorandum dated April 23, 2004