

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



Legal Counsel Division

August 31, 2005

Ms. Sandra "S.S." Seegars  
Chairperson ANC 8E  
Post Office Box 7050  
Washington, D.C. 20032

Re: Use of ANC Funds for Cellular Phone Use

Dear Chairperson Seegars:

This responds to your letter of August 22, 2005 in which you ask whether Advisory Neighborhood Commissions (ANCs) may authorize the expenditure of ANC funds for cellular telephone use by Commissioners engaged in official ANC business. You state that Commissioners sometimes do their work out in the community and that "on the spot telephone calls" are necessary. For the reasons that follow, we agree that such expenditures are permissible.

ANC law provides no provision expressly allowing expenditures for cellular phone use. We therefore look to whether such expenditures may be implied from other provisions and from principles of federal appropriations law.

Though no express provision exists, ANC law permits the expenditure of funds for the "functioning of the Commission office." *See* section 16(l)(1) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(l) (2004 Supp.) (the ANC Act). We have, in the past, interpreted this as providing authorization to purchase office supplies, including such items as business cards. *See* letter to Gottlieb Simon, February 4, 2005. Other items, such as letterhead, telephones and telephone service, paper, computers and facsimile machines, might also be included among those types of items necessary for the functioning of an office. Within certain limits, the determinations regarding what is necessary for the functioning of the Commission office, generally are left to the ANC.

Whether cellular phones should be included in this list depends upon whether there is some discernible difference between the aforementioned types of office equipment and cellular phones. We do not believe there to be one. Conventional land-line telephones, for instance, are an undeniably permissible part of an ANC office. To be sure, a cellular phone is capable of also being used away from the office, but we believe this to be a distinction without a difference. As you point out, ANC Commissioners conduct ANC business outside of the office. Whether a cellular telephone is used within the confines of an ANC office or outside in the community, restrictions on use of government equipment for personal matters – whether it is a cellular phone, land-line phone or a copy machine – would apply and continue to be enforced.

Federal appropriations principles do not offer a different conclusion. Viewing the matter in terms of how agencies might expend generally appropriated (*i.e.*, lump-sum) funds (as opposed to funds programmed to an agency for a specific purpose) the federal government uses a three-prong test. First, the expenditure must make a direct contribution to carrying out an authorized agency function. Second, the expenditure must not be prohibited by law. And lastly, the expenditure must not be otherwise provided for by some other appropriation. *See* General Accounting Office, *Principles of Federal Appropriations Law*, 3<sup>rd</sup> ed., Vol.1, pp. 4-21 to 4-30 (2004). Though agencies are permitted a range of discretion to decide whether the expenditure meets the first prong, that discretion is limited to whether the purported function is so attenuated as to exceed the permissible range. We do not believe that range of discretion has been exceeded here. According to your letter, ANC Commissioners would utilize cellular telephones to work more efficiently in the community. Considering the community-based nature of ANCs and your own statements in your letter that you have, in fact, used your personal cellular phone for ANC business over the last three years, cellular telephones may be said to make a direct contribution to the functions of an ANC.

With regard to the final two prongs of the analysis, we see no obstacles. There is nothing in the ANC Act or other law that expressly forbids ANCs from expending money for cellular phones, nor are we aware of any direct appropriation currently in existence for the purchase and use of cellular phones.

Though we agree that ANCs may authorize cellular phone use by Commissioners, we do not go so far as to conclude that money previously designated by the ANC for conventional telephone service for the ANC office is sufficient, without more, to implicitly authorize expenditures for cellular phones as well. We view cellular phones as tantamount to a new item of office equipment, such as a copy machine or a new telephone system. Whatever decision-making procedures are followed by an ANC for purchase or lease of this type of office equipment should also be utilized for cellular phone expenditures.

Accordingly, we conclude that ANC's may expend funds to provide individual Commissioners with cellular phones.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

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RJS/dps

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