

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



Legal Counsel Division

February 4, 2005

Gottlieb Simon  
Executive Director  
Office of Advisory Neighborhood Commissions  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Use of Appropriated Funds to Purchase ANC Business Cards

Dear Mr. Simon:

This responds to your memorandum of December 27, 2004 in which you query whether appropriated funds may be used by Advisory Neighborhood Commissions (ANCs) to purchase business cards for individual commissioners. For the reasons that follow, we agree that such an expenditure is permissible.

You advise that a long-standing rule of federal appropriations law (as interpreted by the Government Accountability Office (GAO)) prohibiting the use of public funds for the purchase of business cards for government officials has since been overruled by subsequent decisions. You are correct.

Traditionally, the GAO considered business cards to be a personal expense and therefore any expenditures for that purpose were prohibited. 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 GAO began with 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* 4-16 (1991). Though agencies were permitted a range of discretion to decide whether the expenditure met the first prong, that discretion was limited to whether the purported function was so attenuated as to exceed the permissible range. Such was the case with business cards, which the GAO likened to social “calling cards.” *See* 68 Comp. Gen. 467 (1989).

In fact, we recognized this general prohibition as applying to the District on at least one other occasion, in a memorandum dated February 28, 1991 to Mildred W. Goodman, formerly the Acting Secretary of the District of Columbia (attached hereto). We nonetheless permitted the expenditure of funds for the Mayor’s business cards owing to

an exception that permits such expenditures where otherwise authorized by law.<sup>1</sup> But for that exception, the expenditure would not have been permitted.

On August 11, 1997, the Office of Legal Counsel, Department of Justice, issued an opinion effectively overruling the GAO's previous decisions on this subject.<sup>2</sup> See *Memorandum for Emily C. Hewitt, General Counsel, General Services Administration (GSA)*, August 11, 1997 (DOJ Opinion)(attached hereto). While recognizing the general framework employed by GAO for determining discretionary expenditures of lump-sum agency appropriations, the Office of Legal Counsel rejected the notion that business cards were *per se* personal items and instead likened them to "letterhead stationery, fax coversheets, and agency telephone directories." It concluded that: "an agency head may reasonably determine that the appropriate use of business cards by agency employees who deal with outside organizations will further the agency's statutory mission and therefore constitutes a proper expenditure . . ." *Id.* Consequently, GSA's determination that "business cards would provide information to enable the public, GSA's vendors, and GSA's agency customers to communicate more efficiently and effectively," was accepted.<sup>3</sup>

Applying this standard to ANCs, we first look to an ANC's duties and responsibilities, which appear intended to create a liaison relationship between the District government and the community. For instance, ANCs serve an advisory function to the District government, which includes advising the government on matters of public policy involving "planning, streets, recreation, social service programs, education, health, safety, budget and sanitation." Section 13(a) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(a) (2004 Supp.)(the ANC Act). ANCs may also initiate proposals for District government action and hold public hearings on such proposals; they are required to monitor complaints of commission area residents with respect to the delivery of District government services and file comments with the Council and the agency against which a complaint has been levied. See section 13(h) and (m) of the ANC Act (D.C. Official Code § 1-309.10(h) and (m) (2004 Supp.)). ANCs also have the ability to directly impact the community through their statutory power to expend the ANC's allotted funds for public purposes either in the form of direct expenditures, or by way of grants to organizations that are public in nature and benefit persons who reside or work within the commission area. See section 16(l) and (m) of the ANC Act (D.C. Official Code § 1-309.13(l) and (m)(2004 Supp.)).

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<sup>1</sup> We determined such an expenditure to be permissible under the statute creating the Mayor's discretionary fund. See section 26(a) of An Act to authorize certain programs and activities of the government of the District of Columbia and for other purposes, Pub. L. 93-140, 37 Stat. 509, D.C. Official Code § 1-333.10(a) (2001).

<sup>2</sup> The Department of Justice, Office of Legal Counsel, is the controlling authority for rendering legal advice to departments or agencies of the executive branch. See 28 C.F.R. § 0.25(a) (1996); *Bowsher v. Synar*, 478 U.S. 714 (1986).

<sup>3</sup> The GAO followed suit shortly thereafter, and, citing the DOJ opinion, approved a request by the Department of the Army to purchase business cards for its civilian contractors. See 98-2 Comp. Gen 114 (1998).

With all of this in mind, we turn to your memorandum in which you state the following:

As members of their respective Advisory Neighborhood Commissions, Commissioners are expected to be liaisons between residents of their Single Member Districts and their Commission, as well as with various agencies and branches of the District of Columbia government, the Federal government, and other stakeholders in their neighborhoods. ***Sharing their contact information is an integral and continuing part of their advisory responsibilities; business cards facilitate the exchange of this information to the benefit of their respective commissions and the District government.*** [Emphasis added.]

The representations in this statement are consistent with the duties and responsibilities of ANCs set forth above, and we accept them for purposes of this analysis. As a result, we agree that an expenditure for business cards would make a direct contribution to carrying out the authorized functions of the 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 business cards,<sup>4</sup> nor are we aware of any direct appropriation currently in existence for the purchase of business cards.

Accordingly, we conclude that ANCs may expend funds to provide individual commissioners with business cards.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

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RJS/dps

Attachments: LCD Mem., Feb. 28, 1991.  
DOJ Opinion, Aug. 11, 1997.

(AL-O4-782)

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<sup>4</sup> In fact, the ANC Act expressly permits the expenditure of funds for the “functioning of the commission office,” which we construe to provide authorization to purchase office supplies. *See* section 16(l) of the ANC Act (D.C. Official Code § 1-309.13(l) (2004 Supp.)). Like the Office of Legal Counsel’s analogy to letterhead and fax cover sheets, business cards could be similarly construed as office supplies.