

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004



IN REPLY REFER TO:
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LCD-3458

June 9, 1988

B. Harold Smith
Chairman
Advisory Neighborhood Commission 1-C
2425 - 18th Street, N.W.
Washington, D.C. 20009

Re: Elected Official Conflict of Interest

Dear Chairman Smith:

This is in reply to your letter, dated May 27, 1988 and received June 7, 1988, in which you seek advice concerning whether some Commissioners on Advisory Neighborhood Commission 1-C are in a conflict-of-interest situation because they also sit on the Board of the New Adams Morgan Day Festival Committee.

The conflict of interest laws and regulations applicable to District government employees are found at Title 1 D.C. Code Chapter 6, Subchapter XIX and at Chapter 18 of the D.C. Personnel Regulations. However, since ANC Commissioners are not regarded as employees of the District for purposes of the District of Columbia Comprehensive Merit Personnel Act, these laws and regulations are not applicable to ANC Commissioners.

Each Advisory Neighborhood Commission, however, has the authority and the duty to "establish bylaws governing its operation and internal structure." See section 14(d) of the Advisory Neighborhood Councils Act of 1975 ("ANC Act"), D.C. Law 1-21 as amended, D.C. Code § 1-262(d) (1987). Pursuant to this authority, each ANC may promulgate rules governing the conduct of its Commissioners and its employees, and such rules may include conflict-of-interest provisions similar to those contained in Chapter 18 of the D.C. Personnel Regulations.

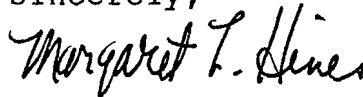
If a Commission employee violates a Commission conflict-of-interest rule, that employee may be disciplined in accordance with applicable Commission disciplinary rules, if any. Such discipline may take the form of dismissal from employment since

"employees" of a commission...serve at the pleasure of the commission." See section 16(c) of the ANC Act, as amended, D.C. Code § 1-264(c) (1987).

As regards ANC Commissioners who violate Commission conflict-of-interest rules, they may be removed from office pursuant to the recall process provided for in section 8 of the ANC Act, as amended, D.C. Code § 1-257(g)(1) and (2) (1987). See also, Title 3 DCMR Chapter 12.

Finally, ANC Commissioners are covered by section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, Public Law 93-376, approved August 14, 1974, 88 Stat. 465, D.C. Code § 1-1461 (1987), which prohibits public officials from realizing "personal gain through official conduct." See D.C. Code §§ 1-1461(a) and 1-1462(i)(2) (1987). The District of Columbia Board of Elections and Ethics and that Board's Office of Campaign Finance are responsible for enforcement of D.C. Code § 1-1461 (a copy of which is attached). See D.C. Code §§ 1-1431, 1-1432, and 1-1435 (1987). Accordingly, questions concerning an alleged violation of D.C. Code § 1-1461 by an ANC Commissioner should be addressed to the Office of Campaign Finance at Suite 420, 2000 - 14th Street, N.W., Washington, D.C. 20009. Advisory opinions from that Office on questions arising under D.C. Code § 1-1461 (1987) are specifically provided for by statute and regulations. See D.C. Code § 1-1435(c) (1987) and Title 3 DCMR Chapter 3.

Sincerely,



Margaret L. Hines
Ethics Counselor, D.C.

Attachment

cc: Marianne Coleman Niles
Director
Office of Campaign Finance

§ 1-1457

ADMINISTRATION

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Legislative history of Law 1-79. - See note to § 1-1302. Legislative history of Law 2-101. - See note to § 1-1301.

Legislative history of Law 1-126. - See note to § 1-1302.

§ 1-1457. Penalties; prohibition from serving as lobbyist; citizen suits.

(a) Any person who willfully and knowingly violates any of the provisions of this subchapter, except as provided in subsection (c) of this section, shall be fined not more than \$5,000, or imprisoned for not more than 12 months, or both.

(b) In addition to the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified therein may be prohibited, for a period of 3 years from the date of such conviction, from serving as a lobbyist.

(c) Any person who files a report or registration form required under this subchapter, in other than a timely manner, shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) the report or registration form is late. The Board may waive the penalty imposed under this subsection for good cause shown.

(d) Should any provision of this subchapter not be enforced by the Board, a citizen of the District of Columbia may bring suit in the nature of mandamus in the Superior Court of the District of Columbia, directing the Board, to enforce the provisions of this subchapter. Reasonable attorneys fees may be awarded to the citizen against the District should he or she prevail in this action, or if it is settled in substantial conformity with the relief sought in the petition, prior to order by the Court. (1973 Ed., § 1-1177; Aug. 14, 1974, 88 Stat. 464, Pub. L. 93-376, title V, § 507; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(r), (s), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458.)

Section reference. - This section is referred to in § 1-1302.

Legislative history of Law 1-126. - See note to § 1-1302.

Legislative history of Law 1-79. - See note to § 1-1302.

Legislative history of Law 4-88. - See note to § 1-1301.

Subchapter VI. Conflict of Interest and Disclosure.

§ 1-1461. Conflict of interest.

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official: (1) On any

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matter which affects a class of persons (such a class shall include no less than 50 persons) of which such public official is a member if the financial gain to be realized is de minimus; or (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board, or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to § 1-1416 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or herself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or she or a member of his or her family or a business with which he or she is associated, has financial interest.

(g) Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest, shall:

(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the "Board"), and to his or her immediate superior, if any;

(3) If he or she is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall

cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) If he or she is not the Mayor or a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict existsj and

(5) During a period when a charge of conflict of interest is under investigation by the Board, if he or she is not the Mayor or a member of the Council of the District of Columbia or a member of the Board of Education, his or her superior, except the Mayor, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he or she has no immediate superior, he or she shall take such steps as the Board shall prescribe through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(i) As used in this section, the term:

(1) "Public official" means any person required to file a financial statement under § 1-1462.

(2) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.

(3) "Business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.

(4) "Household" means the public official and his or her immediate family.

(5) "Immediate family" means the public official's spouse and any parent, brother, or sister, or child of the public official, and the spouse of any such parent, brother, sister, or child. (1973 Ed., § 1-1181; Aug. 14, 1974, 88 Stat. 465, Pub. L. 93-376, title VI, § 601; Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 14(b)j Sept. 2, 1976, D.C. Law 1-79, title II, §202, 23 DCR 2050j Apr. 23, 1977, D.C. Law 1-126, title I, § 102(b), title IV, § 402,24 DCR 2372;

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ELECTION CAMPAIGNS; LOBBYING; CONFLICT OF INTEREST § 1-1462

Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(b), 27 DCR 963; Mar. 16, 1982, D.C. Law 4-88, § 3(p), 29 nCR 458.)

Cross reference. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in §§ 1-637.1, 1-1451, 1-1453 and 1-1462.

Legislative history of Law 1-79. — See note to § 1-1302.

Legislative history of Law 1-126. — See note to § 1-1302.

Legislative history of Law 2-101. — See note to § 1-1301.

Legislative history of Law 2-139. — See note to § 1-601.1.

Legislative history of Law 3-58. — See note to § 1-1451.

Legislative history of Law 4-88. — See note to § 1-1301.

Thrust of Conflict of Interest and Disclosure Act is directed at the individual government official, and the onus is on him to decide whether the action he is to take would affect directly or indirectly his financial interests or those of a member of his household. Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 364 A.2d 610 (1976).

§ 1-1462. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, who does not occupy any such office, shall file within 1 month after he or she becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, the President and each member of the Board of Education, and persons serving as subordinate agency heads or serving in positions designated as within the Excepted Service (regardless of date of appointment) and paid at a rate of GS-13 or above or designated in § 1-610.8, and each member of the District of Columbia Board of Accountancy, established by § 2-103; the Board of Examiners and Registrars of Architects, established by § 2-201; the Board of Barber Examiners for the District of Columbia, established by § 2-403; the District of Columbia Boxing and Wrestling Commission, established by § 2-604; the Board of Dental Examiners, established by § 2-1201; the District of Columbia Board of Cosmetology, established by § 2-902; the Educational Institution Licensure Commission, established by § 31-1603; the Electrical Board, established by Commissioners' Order No. 54-1301, dated June 17, 1954; the Board of Funeral Directors, established by § 2-2803; District of Columbia Taxicab Commission, established by Chapter 17 of Title 40; the Commission on Licensure to Practice the Healing Art in the District of Columbia, established by § 2-1303; the Board of Examiners for Nursing Home Administrators, established by Commissioner's Order No. 70-37, effective October 15, 1970; the Board of Occupational Therapy Practice, established by § 2-1705.5; the Board of Optometry, established by § 2-1803; the Board of Pharmacy, established by Chapter 20 of Title 2; the Practical Nurses' Examining Board, established by § 2-1702.6; the Physical Therapists Examining Board, established by § 2-1703.5; the Board of Psychologist Examiners, established by § 2-1704.5; the Plumbing Board, established by § 2-2101; the Board of Podiatry Examiners, established by § 2-2201; the District of Columbia Board of Registration for Professional En-