

# Government of the District of Columbia

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# FILE

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July 24, 1989

Deairich Hunter  
Interim Chairman  
The Advisory Neighborhood Commission Assembly  
P.O. Box 73631  
Washington, D.C. 20056

Re: Are Advisory Neighborhood Commissions prohibited from organizing on a city-wide basis?

Dear Mr. Hunter:

This is in reply to your July 3, 1989 letter in which you seek the advice of this Office as to whether Advisory Neighborhood Commission members "are prohibited from organizing on a city-wide basis."

In connection with your question, you state in your letter that you are the chairman of the Advisory Neighborhood Commission Assembly which is a "non-partisan organization designed to bring ANC members from across the city together on a regular basis to take positions on city-wide issues, to organize workshops so that commissioners can share their expertise, and to lobby for changes in the ANC Act to strengthen ANCs."

Advisory Neighborhood Commissions (ANCs) are authorized by § 738 of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-251 (1987). Subsection (c)(1) of § 738 authorizes each ANC to advise the District government only with respect to matters of public policy affecting "that neighborhood commission area." Subsection (c)(2) authorizes each ANC to expend public funds for public purposes; but only "within its neighborhood commission area." In Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1376, 1377 (D.C. 1977), the D.C. Court of Appeals stated: "... [T]he role of the ANCs is 'advisory,' as their very name suggests; they do not have an enforcement responsibility--or authority... ANCs exist, and are granted statutory rights, powers, and duties, for the benefit of the neighborhood residents they represent... Further, the very statutory scheme of the ANC Act is designed to assure effective presentation of neighborhood

views through the ANC instrumentality." Thus, the advisory role of an ANC is limited to matters of public policy which directly affect that commission's area. For example, the ANC which represents the residents of the Adams Morgan area has no authority to appear before the ABC Board to advise that body by timely-submitted written recommendations on whether it should grant or deny an application for a liquor license for premises located in Georgetown or Friendship Heights.

In § 738(c)(3) of the Self-Government Act, D.C. Code § 1-251 (c)(3) (1987). Congress provided that ANCs "shall have such other powers and duties as may be provided by act of the Council." In 1975, the Council considered authorizing ANCs to affiliate on a city-wide basis for any purpose, but rejected the idea. By memorandum, dated August 8, 1975, Council Chairman Sterling Tucker transmitted to the Council members the "recommendations made to the Council by citizen task forces on the duties and responsibilities of Advisory Neighborhood Commissions." There were a number of recommendations that ANCs be authorized to "affiliate" or "federate" by ward and on a city-wide basis.<sup>1</sup> On October 7, 1975, Chairman Tucker introduced Bill-193, the "Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975." This bill, later to become D.C. Law 1-58, embodied many of the recommendations presented to the Council by the citizen task forces. Section 2 of the bill proposed to add several new sections to D.C. Law 1-21. Proposed new § 14(a) provided in pertinent part that "Advisory Neighborhood Commissions within an electoral ward may affiliate with each other to deal more effectively with policy and operational issues which affect the entire ward and for informational and other purposes." When this proposed new section reached the committee print (engrossed original) stage, this language had been modified as follows: "Advisory-Neighborhood Commissions may associate informally with each other to deal more effectively with or respond to similar concerns and issues, which transcend and affect these areas and for informational purposes." At page 12 of the November 19, 1975 Committee Report No. 1 of the Special Committee on Advisory Neighborhood Commissions, the following appears relating to this committee print language:

Section 14(a) has been amended to clarify that the various Commissions may associate informally regarding issues of mutual concern or for information sharing. This limitation clearly would restrict the Commissions to acting on matters of local concern or where similar issues are present in various Commission areas. Again, the focus of the Commission especially in these forma-

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<sup>1</sup> The recommendations came from Wards 2, 3, and 8, and from Councilmember Jerry A. Moore, Jr. See pages 17, 20, 24, and 25 of the recommendations.

tive stages is deliberately circumscribed. [Emphasis added.]

As enacted by the Council, the language of proposed new § 14(a) of the committee print was redesignated as § 15(a) (D.C. Code § 1-263(a) (1987» and was changed by the full Council to read in pertinent part as follows:

Commissions may hold joint meetings to deal more effectively with or respond to similar concerns and issues which transcend and affect the areas of the Commissions jointly meeting and for informational purposes. Joint Commission meetings may be held only after authorization to participate in such joint meetings and to discuss such matters as have been given to each participant Commission in a Commission meeting held prior to such joint meetings. Commission members shall reflect but shall not necessarily be bound by the views of their Commissions. Associated Commissions shall have no power other than those which their constituent Commissions shall have agreed upon not inconsistent with the provisions of this act.

This evolution from "may affiliate" within a ward to "may associate informally" to "may hold joint meetings," coupled with (1) the language restricting the purposes for which such joint meetings may be held, (2) the above-quoted statement in the Committee Report expressing the Council's intent that it was deliberately circumscribing the ANCs' authority to act jointly, and (3) the fact that "the very statutory scheme of the ANC Act is designed to assure effective presentation of neighborhood views" (Kopff, supra, 381 A.2d at 1377, emphasis added), combine to make clear that the Council did not intend, by adding new § 15(a) to D.C. Law 1-21, to confer upon ANCs general authority to organize on a city-wide basis. Indeed, in view of the explicit written recommendations from some of the citizen task forces and from Councilmember Jerry A. Moore, Jr. that ANCs be given general authority to affiliate on a city-wide basis, and the Council's legislative response thereto in D.C. Law 1-58, it may be said that in enacting that law, the Council expressly rejected the idea that ANCs be given general authority to affiliate on a city-wide basis.<sup>2</sup> Accordingly, it must be

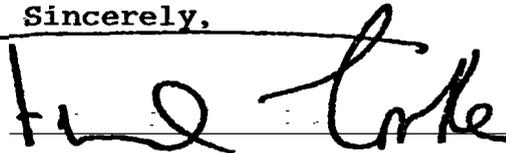
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<sup>2</sup> In any event, applicable here is the basic rule of statutory construction expressed by the Latin phrase "expressio unius est exclusio alterius," namely that "when a legislature makes express mention of one thing, the exclusion of others is implied. because 'there is an inference that all omissions should be understood as exclusions.'" McCray v. McGee, 504 A.2d 1128, 1130 (D.C. 1986), citing 2A Sutherland. Statutes and Statutory.

concluded that the ANCs have no general authority to affiliate on a city-wide basis. Stated otherwise, while ANCs have the authority under § 15(a) of D.C. Law 1-21, D.C. Code § 1-263(a) (1987), to hold joint meetings to deal with concerns and issues which affect more than one ANC and to exchange information, that authority to hold joint meetings is not authority otherwise to affiliate or organize on a city-wide basis.

In sum, the intent of § 738 of the Self Government Act and the laws enacted by the Council to implement that section is that ANCs be an "instrumentality" by which "neighborhood residents" make their views on issues and concerns directly affecting their neighborhoods known to the Council and to the agencies of the Executive Branch of the District government. *Kopff, supra*, 381 A.2d at 1377. Therefore, for ANCs to organize on a city-wide basis would be incompatible with the "very statutory scheme of the ANC Act," namely "to assure effective representation of neighborhood views." *Id.*, emphasis added. Thus, the answer to your question whether "ANC members are prohibited from organizing on a city-wide basis" is yes, they are so prohibited.

Sincerely,



Frederick D. Cooke, Jr.  
Corporation Counsel, D.C.

cc: Councilmember Betty Ann Kane.  
Councilmember Harry Thomas  
Gregory E. Mize, Esq.  
Otis L. Troupe  
Anita Bonds

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Construction § 47.23 (4th ed. 1984). In D.C. Law 1-21, as amended by D.C. Law 1-58, the Council explicitly legislated on the subject of the extent to which ANCs could act jointly. Since the Council did not in that legislation authorize ANCs to affiliate on a city-wide basis, it may be inferred that Council's intent was that ANCs not have such authority.