

FILE

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:
L&O:LNG:lng
(89-51) (LCD-4063)

March 31, 1989

Betty Ann Kane
Councilmember At-Large
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Charging of fees for tapes and transcripts
of ANC meetings

Dear Councilmember Kane:

This is in reply to your February 27, 1989 letter in which you request the views of this Office on the legal propriety of policies proposed by Advisory Neighborhood Commission (ANC) 6-B concerning the charging of fees to members of the public who request tape recordings and transcripts of ANC 6-B meetings.

By letter dated February 2, 1989, Caesar L. Marshall, Jr., the Executive Secretary of ANC 6-B, has supplied this Office with a copy of these proposed policies and has asked us to review them for legal sufficiency. As set forth in Mr. Marshall's letter, the proposed policies are as follows:

6B POLICY FOR COPYING MEETING TAPES AND PROVIDING MEETING TRANSCRIPTS

1. PERSONAL TAPING WHICH IS DISTRACTING TO ATTENDEES OF 6B MEETINGS WILL NOT BE ALLOWED.
2. COMMISSION MEETING TAPES MAY BE HEARD IN THE 6B OFFICE ONLY, AT THE CONVENIENCE OF THE 6B OFFICE, SO AS NOT TO DISRUPT THE OPERATIONS OF THE OFFICE.
3. COPIES OF A 6B MEETING TAPE MAY BE PURCHASED FOR \$10 PER TAPE.
4. IF A WRITTEN TRANSCRIPT IS REQUESTED, IT WILL BE PROVIDED BY THE COMMISSION WITH PREPAYMENT BY THE REQUESTER.

5. ANC 6B WILL RETAIN A COPY OF ANY REQUESTED TRANSCRIPT FOR FURTHER USE AT ITS DISCRETION.

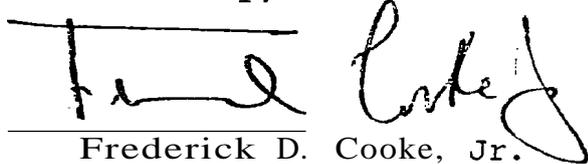
The General rule applicable here is that absent express authorization by the legislature, a municipal agency is not permitted to charge fees in connection with services it renders to the public. See Newman v. Willard's Hotel Company, 47 App. D.C. 323 (1918) (absent express authorization by Congress, D.C. Commissioners have no power to make regulations requiring the payment of a fee for the inspection of hotel elevators and fire escapes). See also the enclosed copy of a memorandum, dated August 5, 1983, from Inez Smith Reid to Cheryl Crawford advising that the D.C. Commission for Women has no authority to charge a fee for written materials supplied to participants in a conference sponsored by the Commission.

Section 2 of the Freedom of Information Act of 1976 (FOIA), D.C. Law 1-96, D.C. Code § 1-1522 (1987), authorizes a modest fee of 5 cents per page for copying public records. See Title 1 DCMR § 408.1. No other law, including section 738 of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-251 (1987), authorizes ANCs to charge fees for services or materials provided to members of the public. Therefore, ANC 6-B may not charge a fee for providing to a member of the public a copy of a tape or a transcript of the proceedings of one of its meetings beyond the 5 cents per page limit on written materials.

On the other hand, while ANC 6-B must allow members of the public to have access to its records under the FOIA, it is under no obligation to create a record where none exists solely for the purpose of satisfying an FOIA request, for example by preparing a written transcript of a taped public meeting. Since no fee has been established for making copies of tape recordings, ANC 6-B could either lend out its tape for copying, or require that the person requesting the tape bring to ANC 6-B's office his or her own blank tape and, if necessary, a recorder which can make a copy of the ANC's tape. With respect to a transcript of an ANC 6-B meeting, the ANC may, if it chooses, make its tape available to the person requesting a transcript, or make its tape available to a third person for transcribing. Whichever alternative it chooses, ANC 6-B should not be involved in any arrangements for payment for the preparation of a transcript that is requested by a member of the public. Those arrangements, if any, should be made directly between the person requesting the transcript and the person preparing the transcript. In this regard, ANC 6-B has no authority to require that a member of the public who requests a transcript shall provide a copy of that transcript to the ANC free of charge, since such a requirement would be equivalent to the charging of a fee without statutory authority.

I trust that the foregoing satisfactorily answers the questions raised in your February 27, 1989 letter. I have enclosed a copy of the reply of this Office to the February 2, 1989 letter of ANC 6-B Executive Secretary Caesar L. Marshall, and have sent to Mr. Marshall a copy of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Cooke, Jr.", written over a horizontal line.

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

Enclosures

None

cc

1989-02-27 letter to
requesting

cc