

FILE

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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(91-060-L)

March 27, 1991

Carolyn Johns-Gray
Commissioner, ANC 6C-08
Suite 300
2041 Martin Luther King, Jr. Avenue, S.E.
Washington, D.C. 20020

Re: How do conflict-of-interest laws and other laws limit actions by Advisory Neighborhood Commissions?

Dear Commissioner Johns-Gray:

This is in response to your February 8, 1991 letters to the Acting Corporation Counsel in which you seek advice concerning a number of questions relating to the operation of Advisory Neighborhood Commission (ANC) 6-C.

Your first question is as follows: "Can ANC funds be used to pay for courses for commissioners? If so, exactly what type(s)?" The general answer to this question is "no." See (enclosed) copy of memorandum, dated March 13, 1991, from this Office to Virgil Thompson.

Your second question is whether it is a "conflict of interest for ANC funds [to be used] to pay for a course for commissioners that is being taught by another commissioner of the same commission." Since there is no statutory authority to use ANC funds to pay for such a course in the first instance, this question need not be addressed.

Your third question is: "Can ANC funds be used to purchase tickets for commissioners to attend a program to listen to various persons speak?" The answer to this question is "no" for the reasons stated in the enclosed memorandum of March 13, 1991.

Your fourth question is: "Can ANC funds be refused a resident of a commission area and granted to a resident of another commission area in another ward." Section 16(m) of the Advisory Neighborhood Councils Act of 1975 ("act") (as amended by § 3(f) of the Advisory Neighborhood Commission Amendment Act of 1990,

effective March 6, 1991, D.C. Law 8-204), D.C. Code § 1-264(m) (1991 Supp.), provides in pertinent part that "[a] grant to an individual shall be prohibited as a non-public purpose expenditure." Generally, ANC funds are to be expended for public purposes "within the Commission area." § 16(1) of the act, D.C. Code § 1-264(1) (Supp. 1991). Consistent with this requirement, funds could go to an entity outside the commission area that benefits residents of the commission area. See (enclosed) copy of letter, dated March 6, 1991, from Councilmember Nathanson to ANC 4-B Chairperson Amanda Lyon.

Your fifth question is as follows: "Is it against the law or rules of the ANC Charter to remove office files from the commission office? More specifically, financial reports, minutes and correspondence?" D.C. Law 8-204 added a new § 16(e) to the act, D.C. Code § 1-264(e) (Supp. 1991), which provides in pertinent part as follows: "Each Commission shall, by resolution, designate the location at which the Commission's books and records shall be maintained which shall, if the Commission has a regular office, be the Commission office." Thus, if a Commission has an office, its books and records must be kept at that office. Therefore, it would violate this provision for a person to remove an ANC's original books and records from the ANC's office.

Your sixth question is: "Is it against the law or rules of the ANC Charter to house ANC office supplies and/or equipment in the home of a commissioner thereby denying use of said supplies by other commissioners?" D.C. Law 8-204 added a new § 16(p) to the act, D.C. Code § 1-264(p) (Supp. 1991), which provides: "Any Commissioner within an individual Commission shall have equal access to the Commission office in order to carry out Commission duties and responsibilities." This right of equal access to the Commission office implies a right of access to Commission supplies and equipment necessary for commissioners to carry out their official duties. "Therefore, it would be a violation of this provision for a commissioner to prevent other commissioners from having equal access to ANC supplies or equipment.

Your seventh question is: "Is it against the law or rules of the ANC Charter for past staff or commissioners to retain alarm and door keys to the commission office." The act does not address this question. Rather, it is a matter of policy that should be addressed in the commission's by-laws or by resolution. It certainly would be proper for the commission to require former staff personnel or former commissioners to surrender such keys.

Your eighth question is as follows: "Is it public corruption for an ANC or individual Commissioner to vote against the wishes of the community? What recourse, through your office, does the community have in this type of case?" Prior to the March 6, 1991 effective date of D.C. Law 8-204, § 14(a) of the act, D.C. Code § 1-262(a), provided in pertinent part that "[r]esident views

shall be incorporated in positions taken by the Commissions." Section 14(a) of the act was repealed by § 3(d)(1) of D.C. Law 8-204. In newly amended § 14(b) of the act, D.C. Code § 1-262(b) (Supp. 1991), the following sentence appears: "Community views shall be adequately considered in positions taken by the Commission." In the October 25, 1990 Committee on Government Operations Report ("Committee Report") on Bill 8-626 (the bill that became D.C. Law 8-204), the following appears at page 6: "The requirement that resident views must be incorporated in positions taken by the Commissions has been retained in amended subsection 14(b)." Thus, although the Committee on Government Operations (and ultimately the full Council) changed the statutory language, the Committee Report indicates that the general intent is the same, namely that commissioners are required to report the views of residents in making recommendations to government agencies. However, commissioners may exercise their own judgment in voting.

Finally, in answer to the second part of your question, if a commissioner votes against the wishes of his or her constituents, the recourse is via the ballot box, either at the next regular election or between regular elections through the recall process.

Your ninth question is: "Is it public corruption for a commissioner to accept lunches and other like materials from persons who come before the commission for support?" ANCs should have conflict of interest provisions in their by-laws. Thus, you should consult your ANC's by-laws to see if this situation is addressed there. If not, you should consider adopting rules addressing *this* situation. ANC commissioners are expressly covered by the conflict of interest provisions of D.C. Code § 1-1461 (1987). See D.C. Code § 1-1462(i)(2) (1987). Subsection (f) of D.C. Code § 1-1461 provides:

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. {Emphasis added.}

Thus, to establish a violation of this provision it is not necessary to prove that an ANC commissioner consciously took something of value in exchange for his or her vote. All that

need be established is that the acceptance of the thing of value by the ANC commissioner created a reasonable inference that his or her vote was thereby influenced. Violations of D.C. Code § 1-1461 are punishable by civil penalties under D.C. Code § 1-1435 (1987) and by criminal penalties under D.C. Code § 1-1471 (1987). Civil enforcement is by the Director of Campaign Finance (investigation and prosecution) and the Board of Elections and Ethics (hearing and disposition of charges). See D.C. Code §§ 1-1432(c) and 1-1435(a)(2) (1987). Criminal enforcement is by the "United States attorney for the District of Columbia in the name of the United States." D.C. Code § 1-1471.1(d) (1987).

Your tenth question is, as follows: "Can ANC's accept free rent from a developer in-exchange for voting against the community and in favor of the developer?" No law specifically addresses this situation. D.C. Code § 1-1461 applies to situations involving a public official's selling his or her vote for personal gain. However, the conflict of interest inherent in such a situation is obvious, and would tend to weaken the persuasiveness of the position taken. As suggested in the answer to your eighth question, if commissioners, are voting contrary to the wishes of their constituents, the remedy is in voting booth, at a regular or recall election.

Your eleventh question is as follows: "Can ANC's rent space in a developer's building when said developer has to come before it for support?" There is nothing in the law which addresses this question. While it would not appear to be illegal for an ANC to do so, it could put the ANC in a conflict of interest situation, and thus could adversely affect the persuasiveness of a position taken by the commission involving the developer.

Your twelfth question is: "Can ANC's refuse to convene the community as, stated in the ANC manual, 'ANC's must convene residents of its commission area regularly, at least four (4) times a year to obtain their views on problems in the commission area. sec. 14(a). What recourse do individual commissioners or residents have in their area?" [Emphasis in original.] As noted above in the answer to your eighth question, § 14(a) of the act was repealed by D.C. Law 8-204. Thus, there is no longer any requirement that ANCs must hold "a minimum of 4 town meetings per year." Committee Report at 6.

Your thirteenth question is as follows: "Can a chairperson, without the vote of the full commission and in a non-emergency situation, cancel meetings because of the chair's vacation or desire to attend a political party when the ANC manual states, 'ANC's must meet regularly, at least nine (9) times a year to consider any actions or proposed actions by government entities"? Section 14(b) of the act, D.C. Code § 1-262(b) (Supp. 1991) (as amended by D.C. Law 8-204), provides in pertinent part that each Commission "shall meet in public session at regular

intervals at least 9 times per year," and that "[t]o the extent possible, each Commission shall, at its 1st meeting of the calendar year, adopt a schedule of regular Commission meetings for the remainder of the calendar year." Section 14(e), D.C. Code § 1-262(e) (Supp. 1991) (as amended by D.C. Law 8-204), provides that the "Chairperson shall serve as convener of the commission and shall chair the Commission meetings" and that the "Vice-Chairperson shall fulfill the obligations of the Chairperson in the Chairperson's absence." As the "convener" of the Commission, it appears that, absent a Commission rule or by-law to the contrary, the Chairman has the authority to cancel a scheduled Commission meeting. On the other hand, the policy of the act, as indicated above, is that ANC's annually adopt a "schedule of regular Commission meetings" for the calendar year. Moreover, as also indicated above, the Chairperson's presence is not necessary for the conduct of a meeting, since the Vice-Chairperson is authorized to assume the duties of the Chairperson in the latter's absence. Therefore, if a Commission wishes to limit the authority of the Chairperson to cancel a scheduled meeting, it may do so by the adoption of an appropriate by-law, such as, for example, a by-law that provides that no scheduled Commission meeting may be cancelled by the Chairperson unless a majority of the commissioners consent to the cancellation. In the absence of such a by-law, the Chairperson could cancel the meeting.

Your fourteenth question is: "Can ANC's deny the public access to executive committee meetings and what type of meetings other than to discuss personnel matters can an ANC hold in private?" Section 14(g) of the act, D.C. Code § 1-262(g) (1987), makes § 742(a) (the "open meetings" provision) of the Self-Government Act, D.C. Code § 1-1504(a) (1987), applicable to ANC's. Section 742(a) provides:

All meetings (including hearings) of any department, agency, board, or commission of "the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

By memorandum (copy enclosed), dated June 18, 1985, this Office advised the Director of the D.C. Public Library concerning when it is permissible for the Board of Library Trustees to meet in "executive session." That advice applies equally to ANC's. Your question assumes that there exists an exception to the open meetings requirement when ANC Commissioners "discuss personnel matters." No such exception is set forth in § 742(a) of the Self-Government Act or in any other law applicable to ANC's. Therefore, your assumption in this regard is incorrect. Contrast Goodwin v. District of Columbia, 343 A.2d 63 (D.C. 1975) (open

meetings provision of Self-Government Act does not apply where a specific statute authorizes the Board of Education to close a meeting to the public). (See D.C. Code § 31-101(e)(1) (1988), which provides that the Board of Education "[m]ay close to the public any meeting (or part thereof) dealing with the appointment, promotion, transfer, or termination of employment of, or any other related matter involving, any employee of the Board of Education").

In your fifteenth and last question, you ask: "Under what circumstances can counter-productivity be identified as fraud against the community." This question is not sufficiently specific to permit an answer.

Sincerely,



Thomas E. Bastow
Chief
Legislation & Opinions Section
Legal Counsel Division

cc: Honorable James E. Nathanson
Virgil Thompson
Otis Troupe

Enclosures