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Government of the District of Columbia

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



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August 28, 1991

The Honorable James E. Nathanson
Chairman
Committee on Government Operations
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Mayan Advisory Neighborhood Commission employ
a family member of one of its commissioners?

Dear Chairman Nathanson:

This is in response to your August 21, 1991 request for advice concerning whether it is contrary to District of Columbia law for an Advisory Neighborhood Commission (ANC) to employ on its office staff a family member of one of its commissioners.

Enclosed with your letter are copies of two letters, dated January 25, 1989 and July 3, 1991, to ANC commissioners from D.C. Auditor Otis H. Troupe in which Mr. Troupe opines that the hiring of a family member of a commissioner does not violate any District of Columbia law. Mr. Troupe cautions, however, that the ANC commissioner whose family member is under consideration for employment by the commission should recuse himself or herself from any participation in the hiring process. Also enclosed with your letter is a copy of a letter, dated April 5, 1989, from this Office to then ANC 2-B chairman Jack Evans in which this Office opined that it would not violate any District of Columbia law for ANC 2-B to hire one of its own commissioners on a temporary basis to clear up a backlog of administrative work. This Office cautioned that it would be improper for the commissioner in question to "to vote as a commissioner on any question related to her employment by ANC 2-B" (footnote 2 on page 2), and further stated (letter at page 2):

.. (I]t is important to be alert to the possibility that with regard to a specific matter that the commissioner may be asked to handle in her role as staff employee there may arise a conflict of interest. If such a conflict of interest does arise, it may be dealt with on an individual basis.

Neither § 738 of the Self-Government Act, D.C. Code § 1-251 (1987), nor the Advisory Neighborhood Councils Act of 1975, as amended, expressly limits ANC's concerning whom they may employ for administrative support. The most recent legislative expression in this regard is found in § 3(f) of the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203, which rewrote § 16 of the Advisory Neighborhood Councils Act of 1976, D.C. Code § 1-264. As amended, § 16(0), D.C. Code § 1-264(0) (1991 Supp.), provides in pertinent part that "[a] Commission may employ any person necessary to provide administrative support to the Commission."

The employment of persons by ANC's must, however, comport with applicable conflict of interest requirements. As the D.C. Auditor noted in his July 3, 1991 letter, the conflict of interest provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (the "Act") are applicable to ANC commissioners'. Thus, ANC commissioners are subject to the conflict of interest provisions set forth at § 601 of the Act, D.C. Code § 1-1461.¹ Subsection (b) of § 601 provides in pertinent part:

(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.

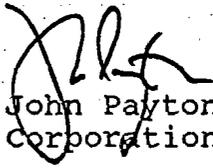
In subsection (i) (4) and (5) of § 601 the term "household" is defined to mean "the public official and his or her immediate family," and the term "immediate family" is defined to mean the public official's spouse and any parent, brother, or sister, or child of the public official, and the spouse of any such parent, brother, sister, or child."-- An ANC commissioner would violate § 601(b) if the commissioner were to "use his or her official position or office" as an ANC commissioner to recommend or to officially act upon a recommendation that the commissioner himself or herself or a member of the commissioner's household be employed by the commissioner's ANC. However, if the commissioner recuses himself or herself from any participation in the matter of the hiring, then it cannot be said that the commissioner has used his or her official position or office to achieve a financial gain for himself or herself or for a member of the commissioner's household.

¹ section 602(i)(2) of the Act, D.C. Code § 1-1462(i) (2), provides that "Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of section 601," which is codified as D.C. Code § 1-1461.

Thus, the hiring by an ANC of a member of the household of one of its commissioners is not prohibited by District of Columbia law. However, to avoid violating § 601(b) of the Act, the commissioner whose household member is under consideration for employment by the ANC must refrain from any participation in the hiring decision, by recommendation or otherwise. And, for so long as that person is an employee of the Commission, that commissioner must also refrain from recommending or taking any action, as a commissioner, that would have a direct and predictable financial effect on that employee. In order to avoid entirely the potential conflict of interest problems that could arise in these situations, ANCs may wish to adopt an employment policy that prohibits the hiring of any member of the household of one of its commissioners.

In providing this requested advice, I am cognizant of the fact that it is the Office of Campaign Finance and the Board of Elections and Ethics that enforce the provisions of the Act. Therefore, a final determination of what conduct constitutes a violation of the provisions of the Act is the legal responsibility of those agencies.

Sincerely,



John Payton
Corporation Counsel, D.C.

cc: William H. Lewis, Esq.
General Counsel
Board of Elections & Ethics
Marianne Coleman Niles, Esq.
Director
Office of Campaign Finance

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p.C. Auditor