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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-5589) .

June 3, 1991

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

Re: Mayan ANC make grants so that organizations
operating summer youth programs may hire staff?

Dear Chairman Nathanson:

This is in response to your May 14, 1991 request for legal advice concerning whether three grant requests received by an Advisory Neighborhood Commission (ANC) are allowable under the provisions of law applicable to such grants.

In your letter you describe these grant requests in pertinent part as follows:

1. One is for a school recreation council (formed in 1970), which sponsors a day camp open to all members of the community [T]he council has requested funding from the ANC for 1 or 2 summer aides.
2. A second is for a community center summer enrichment program, which is an eight-week day camp for children ages 6-12 years. "... [W]e employ District of Columbia resident teen workers as camp counselors.... The teens are paid minimum wage, for five hours a day, eight weeks of the summer." ... "[W]e are asking for financial support in the sum of \$425.00 which would pay for four teen workers at minimum wage, each for one week."
3. The third request is from a tax exempt nonprofit corporation which operates a summer program which "serves youth in the Northwest Washington, DC area in many ways such as locating summer jobs, job interview

skills workshops, resume writing seminars, arts, drama and music workshops, entrepreneurial opportunities, publication writing and production, on-the-job-training in computers and basic job skills. . . . Specifically this funding will be used to bring its program coordinator on board two weeks early to coordinate employment listings and to prepare seminar materials."

Subsections 16(1) and (m) of the Advisory Neighborhood Councils Act of 1975, as amended, D.C. Code §§ 1-264(1) and (m) (1991 Supp.), provide in pertinent part:

(1) A Commission shall expend funds received through the annual allocation . . . , or other donated funds, for public purposes within the Commission area Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section

(m) A grant approved by a Commission shall provide a ~~—~~ benefit that is public in nature and that benefits persons who reside or work within the Commission area. A grant to an individual shall be prohibited as a non-public purpose expenditure. A Commission shall adopt guidelines for the consideration and award of grants that shall include a provision that requires the proposed grantee to present the request for a grant at a public meeting of the Commission. A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting. The award of a grant by a Commission shall not be conditioned on support for a position taken by the Commission.

The October 25, 1990 Report of the Committee on Government Operations on Bill 8-626, the Advisory Neighborhood Commission Act of 1990, states at page 7:

The new subsection (m) of []section 16 establishes guidelines and procedures for the consideration and award of grants by ANCs. Essentially, grants must be for a "public purpose" as that term has been defined in case law and legal treatises.

The phrase "public purpose" or "public purposes" is common in state laws dealing with the expenditure of public funds. Thus, the phrase has been construed by state courts in many different factual contexts. See 15 McQuillin, Municipal Corporations, §§ 39.19 and 39.21 (1985). One frequently enunciated test is "whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." Opinion of the Justices, 384 So.2d 1051, 1053

(Ala. 1980), citing Opinion of the Justices, 347 Mass 797, 197 N.E.2d 691 (1964).

The three grant requests described above meet the public purpose test, in that the grant money would be used by the requesting organizations to provide benefits of a reasonably general character to young persons in the ANC area. However, before the ANC may properly make these grants, it must follow all the procedures set forth in § 16(m) of the Advisory Neighborhood Councils Act, D.C. Code § 1-264(m) (1991 Supp.).

On page 2 of your letter you state that your office has been "informed by the D.C. Auditor that grants for these summer youth programs would not be proper because the public purpose requirement precludes general organizational support. The Auditor states that general support for an organization includes expenditures for staff." The text of the statute and the sources of interpretation suggested in the legislative history, namely case law and legal treatises, do not support the Auditor's suggested limitation on the meaning of the term "public purpose." Rather, the relevant criterion is whether there is a direct relationship between the use of the requested ANC funds and the provision of tangible benefits of a reasonably general character to all or to a significant part of the persons residing or working in the ANC area.

Sincerely,



John Payton
Corporation Counsel, D.C.

cc: Otis H. Troupe
Virgil Thompson