

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

L&O:LNG:lng

(92-458-L) (LCD-6573)

January 25, 1993

Kathryn A. Pearson-West
Commissioner, ANC 5A-02
P.O. Box 91377
Washington, D.C. 20090

Re: May ANC Commissioners of different Commissions meet to discuss issues, develop training, and share concerns within an organized body?

Dear Ms. Pearson-West:

This is in reply to your November 14, 1992 letter to the Corporation Counsel asking whether "it is legal for ANC Commissioners to meet to discuss issues, develop training, and share concerns within an organized body." You state that in conducting such activities, the Commissions would "not use any public funds."

There is nothing in the statutory law governing the Advisory Neighborhood Commissions (ANCs) that prohibits individual Commissioners from meeting informally with each other for the purpose of discussing matters of common concern or developing a training program. In conducting such activities, however, such Commissioners could not act in their official capacity as commissioners, could not bind their respective Commissions, and could not spend public funds.

The use of the phrase "within an organized body" in your question and your statement that this would be an "attempt to revive the ANC Assembly" as an organization of Commissioners rather than as an organization of Commissions warrants further discussion about an opinion issued by the Corporation Counsel and Council legislation that became effective in 1991.

On July 3, 1989, Mr. Deairich Hunter wrote to the Corporation Counsel seeking advice as to whether ANC Commissioners were "prohibited from organizing on a city-wide basis." Mr. Hunter described himself as the chairman of the "Advisory Neighborhood Commission Assembly" which he stated was "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.¹¹ In his July 24, 1989 reply (copy enclosed), the Corporation Counsel concluded that under existing law ANC commissioners could not organize on a city-wide basis. The concluding paragraph of the Corporation Counsel's letter summed up his opinion in the following language:

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 livery statutory scheme of the ANC Act," namely lito 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.

This excerpt from the Corporation Counsel's opinion makes clear that the Corporation Counsel did not distinguish between Commissioners organizing on a city-wide basis and Commissions organizing on a city-wide basis. In the context of the question posed by Mr. Hunter, the Corporation Counsel viewed an ANC Assembly of commissioners to be functionally the same as an ANC Assembly of Commissions.

You note in your letter that in council Period 8, after the Corporation Counsel issued this opinion, there was a bill introduced, the "Advisory Neighborhood Commission Power of Assembly Act of 1989,¹¹ Bill 8-409, that was never enacted. Bill 8-409 would have authorized the Commissions to "affiliate" to form an "Assembly," rather than, as provided by the law then in effect, merely to 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." See D.C. Code § 1-263(a) (1987).¹

¹ In addition, Bill 8-409 would have authorized the Assembly to be headed by a Chairman" who would have been authorized to "employ staff as needed with annual appropriations." The duties of the Assembly would have been to: "(1) Meet, discuss, and advise the government of the District of Columbia...on positions on common issues that affect the Commissions; (2) Organize work-shops so that commissioners may share their expertise; and (3) Lobby the government of the District for changes to improve the role and functioning of Commissioners."

The Council's response in council Period 8 to the question of whether ANCs should be permitted to form an assembly was § 3(e) (1) of the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203, which amended subsection (a) of § 15 of the Advisory Neighborhood Councils Act of 1975. This subsection, presently codified at D.C. Code § 1-263(a) (1992), provides:

(a) Commissions may meet jointly either formally or informally to deal more effectively with or respond to common issues and concerns. A Commissioner of an individual Commission may represent and participate in a formal joint meeting only after the individual Commission has authorized the participation of the Commission in the joint meeting. The commissioner selected by the individual commission to represent the commission at a formal joint meeting may only vote on issues or concerns that have been discussed at a public meeting of the Commission and on which the Commission has voted to take a formal position. The commissioner selected by the individual Commission to represent the Commission at a formal joint meeting shall, in the Commissioner's official capacity, follow the general direction of the individual Commission in all discussions at a formal joint meeting.

At page 6 of its October 25, 1990 Report on Bill 8-626, the bill that became D.C. Law 8-203, the Council's Committee on Government operations stated that the purpose of this amendment was to:

clarify that ANC Commissions can meet jointly on an informal basis without prior authorization of their member Commissions or formally with the approval of those Commissions that wish to participate in the joint meeting to share information or to respond to common issues or concerns. In order for the Commission representative to vote on issues or concerns discussed at the joint meeting, the Commission must have discussed the issues or concerns at a public meeting of the Commission and have voted to take a public position. The amended section removes the requirement for posting of notice of a formal joint meeting in individual SMDs.

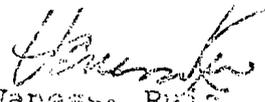
Thus, under the law as amended, ANC Commissioners from different Commissions may meet together in a joint meeting that is either formal or informal. If Commission representatives vote on issues or concerns at such a joint meeting and such votes are to be considered as binding on their respective Commissions (e.g., vote to adopt a resolution for presentation to the Mayor, the Council, or an agency), the meeting must be a formal meeting that complies with the above-quoted statutory requirements. In an informal joint meeting, Commissioners from different Commissions may discuss com-

more issues and concerns but may not, as official representatives of their Commissions, vote on such issues and concerns. **Consistent** with the right of the Commissions to hold formal and informal joint meetings, all of the Commissions or a smaller group of Commissions (e.g., all the Commissions in a Ward) may establish a committee-type organization, consisting of representatives from each participating Commission, whose function would be to coordinate the hold-

In so doing, Commissioners from different Commissions may meet informally to discuss matters of mutual concern. If they vote at their meetings, then the requirements of D.C. Code § 1-263 (a) shall be followed.

Please to not hesitate to contact me or Leo Gorman of my staff at 202-727-3400.

Sincerely,


Vanessa Ruiz
Deputy Corporation Counsel
Legal Counsel Division

Enclosure

cc: The Honorable Harold Mazza
Chairman, Committee on Government Operations
Council of the District of Columbia

Otis Iroupe
D.C. Auditor

La Thomas
Director, Office of Constituent Services