

FILE

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:
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(93-067-L) (LCD-665)

March 19, 1993

otis H. Troupe
District of Columbia Auditor
The Presidential Building
415 12th street, N.W. Room 210
Washington, D.C. 20004

Re: Does the submission of an unapproved quarterly financial report to the Auditor by an ANC satisfy the requirements of the ANC law?

Dear Mr. Troupe:

This is in reply to your February 16, 1993 letter requesting the advice of this Office concerning whether the submission to you of unapproved quarterly financial reports by Advisory Neighborhood Commission (ANC) 2-E complies with the requirements of the ANC law. For the reasons stated below, I conclude that unapproved reports do not comply with the law, and therefore quarterly allotments that are dependent on such reports may not be paid to the ANC.

During the first half of 1991, a split developed within ANC 2-E, with three commissioners on one side and three commissioners on the other. As a result of this falling out, then ANC 2-E Chairperson Grace Bateman was unable to get a majority of the members of ANC 2-E to approve the quarterly financial reports for the four quarters starting with the April - June quarter of 1991 and ending with the April - June quarter of 1992. In January of this year, your office received from ANC 2-E the quarterly financial reports for these four quarters. On each of these reports, however, the space at the end of the printed line reading "Approved by Full Commission on" has been left blank. At the very bottom of each of these four reports there is a handwritten notation stating that "[t]he Commission's approval of the submission of this report on January 5, 1993 does not reflect the approval by the Commission of the expenditures contained herein." An "Exhibit A" attached to each report states that "[t]he expenditures listed in the attached quarterly report...did not receive approval from ANC 2E." Each exhibit is signed by the current chairperson, treasurer, and secretary of ANC 2-E. In a letter to the Corporation Counsel, dated February 23, 1993, ANC 2-E commissioner Edward B. Schwartz stated

that at its meeting on January 5, 1993, ANC 2-E voted to submit these four quarterly financial reports to the Auditor without either approving or disapproving the expenditures set forth in the reports.

In addition, on March 8, 1993, you received from ANC 2-E two quarterly financial reports for the two quarters beginning on July 1, 1992, and ending on December 31, 1992. These two reports indicate that they were approved by ANC 2-E on March 2, 1993.

section 16(j) of the Advisory Neighborhood Councils Act of 1975, as amended by the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203, D.C. Code § 1-264(j) (1992), provides in pertinent part:

The treasurer of a commission shall prepare a quarterly financial report on a form provided by the Auditor. The financial report shall be presented to the Commission for its consideration at a public meeting of the Commission within 30 days of the end of the quarter. A copy of the approved financial report, signed by the Chairman, the Secretary, and the Treasurer, shall be filed, along with a copy of the minutes of the meeting at which the report is considered, with the District of Columbia Auditor within 7 days of approval. No quarterly allotment shall be forwarded to a commission until the report of financial activity for the quarter preceding the immediate previous quarter is submitted to and reviewed by the Auditor. [Emphasis added.]

Thus, to comply with the requirements of § 16(j), a quarterly financial report must be approved by the commission before it is submitted to the Auditor. Therefore, I conclude that the four ANC 2-E quarterly financial reports that were submitted to you in January of this year for the four quarters starting with the April - June 1991 quarter are not in full compliance with the requirements of § 16(j). In this regard it is pertinent to note that § 16(f), D.C. Code § 1-264(f) (1992), provides that "[n]o expenditure of any amount shall be made without the specific authorization of the Commission." Where an expenditure is made without the prior specific authorization of a Commission, that expenditure may, however, be ratified by subsequent Commission approval. Compare the last sentence of § 16(g), D.C. Code § 1-264(g) (1992).

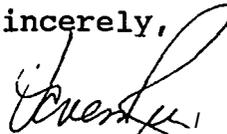
The underscored sentence in the above-quoted portion of § 16(j) links the submission of an ANC's quarterly financial report to that ANC's right to receive a quarterly allotment for the quarter following the quarter during which the report is required to be submitted. The ANC's allotment is not to be forwarded merely upon receipt by the Auditor of the ANC's quarterly financial report, but also upon a review of that report by the Auditor for its compliance with applicable law and the propriety of the expenditures reported

therein.¹

As discussed above, the four ANC 2-E reports for the four quarters beginning April 1, 1991 are deficient in an important respect, namely they have not been approved by ANC 2-E. Because of this deficiency, you could not properly approve these reports as in compliance with law and recommend payment of the allotments that their approval would otherwise trigger. Accordingly, it is my view that unless ANC 2-E corrects this deficiency in these four reports, the quarterly allotments that correspond to these four reports should continue to be withheld. This is not to say that ANC 2-E must approve all of the expenditures set forth in these four reports. But it is ANC 2-E's responsibility to determine, ab initio, whether the expenditures listed in these four reports were for proper purposes or for improper purposes and to approve or disapprove accordingly. If ANC 2-E disapproves of expenditures, it should furnish you with reasons for its disapproval action.

On the other hand, as noted above, ANC 2-E has submitted to you approved financial quarterly reports for the two quarters starting July 1, 1992 and ending December 31, 1992. Once you review and approve these two reports and make the appropriate favorable recommendations to the BUdget Office, ANC 2-E would then be entitled to receive allotments for the quarters starting January 1, 1993 and April 1, 1993. The payment of the January 1, 1993 allotment would be authorized on the basis of your review and approval of the JULY - September 1992 quarterly report, and the payment of the April 1, 1993 allotment would be authorized on the basis of your review and approval of the October - December 1992 quarterly report.

Sincerely,



Vanessa Ruiz
Deputy Corporation Counsel
Legal Counsel Division

It is my understanding that based upon your review of an ANC's quarterly financial report, you send a written recommendation to the BUdget Office regarding whether the ANC's next quarterly allotment should be paid in its full amount, withheld in its full amount, or paid in part and withheld in part. For example, if you determine that an ANC has spent funds for a purpose not permitted by law or has failed to document adequately-- the expenditure of funds, it is your practice to recommend to the Budget Office that the ANC's next quarterly allotment be reduced by the amount in question. such a practice is consistent with the intent of the Advisory Neighborhood Councils Act of 1975, and particularly with the intent of § 16(j) thereof, D.C. Code § 1-264(j) (1992).

cc: The Honorable Harold Brazil
Chairman, Committee on Government Operations

The Honorable Jack Evans
Councilmember, Ward 2

Regina Thomas
Director, Office of Constituent services

Westy McDermid
Chairperson, ANC 2-E

Andrew Jackson
Budget Analyst, Executive Office of the Budget