

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



March 29, 1994

IN REPLY REFER TO:

L&O:LNG:lng

(94-093-L) (x.ref. 93-067)

James C. Wilson, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

Re: Disapproved quarterly financial reports
of Advisory Neighborhood Commission 2-E

Dear Mr. Wilson:

This is in reply to your February 22, 1994 letter to the Corporation Counsel concerning Advisory Neighborhood Commission (ANC) 2-E.

You state that you represent "a number of current members of ... [ANC] 2E in their attempt to determine the ultimate disposition of a dispute involving improper expenditures of ANC funds by members of the 1991-1992 ANC 2E." In this regard you state:

The dispute is relatively straightforward. Agreement could not be reached between 1991-1992 ANC 2E Commissioners over specific proposed expenditures. Notwithstanding the lack of required authorization, Commissioners acting in their individual capacities spent ANC funds, thereby depleting the ANC's financial reserves. Once this was done, ANC Commissioners were unable to approve quarterly financial reports, thereby causing the District of Columbia to withhold ANC funding for four quarters.

It is the position of a number of the current Commissioners that the District of Columbia government should not penalize the current ANC 2E for the improper conduct of former Commissioners. Thus, we respectfully request that you either provide the current ANC 2E the funds hitherto withheld, or in the alternative, determine the extent of improperly disbursed funds by the previous ANC 2E Commissioners and institute proceedings to recover

these funds.¹

On January 12, 1993, the District of Columbia Auditor received 6 overdue quarterly financial reports from ANC 2-E. These reports covered the six calendar quarters from April 1, 1991 to September 30, 1992. These reports were not approved by ANC 2-E. These reports did not comply with the requirements of § 16(j) of the Advisory Neighborhood Commissions Act of 1975 (the "act"), D.C. Code § 1-264(j) (1992).² The statutory requirement that ANC 2-E submit "approved" quarterly financial reports does not mean that ANC 2-E must approve each expenditure set forth in those reports. However, it is the responsibility of ANC 2-E initially to determine which expenditures are approved and which are disapproved. If ANC 2-E disapproves of particular expenditures, it should furnish the Auditor with the reasons for its disapproval.

On April 8, 1993, the D.C. Auditor received five quarterly financial reports for the five calendar quarters beginning April 1, 1991 and ending June 30, 1992. At the bottom of each report, the word "Approved" was changed to "Disapproved," indicating that the

At page 1 of your letter you purport to quote the last sentence of § 16(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(g) (1992), for the proposition that an expenditure made without the required authorization of the Commission shall be deemed the personal expense of the officer who authorized the payment. You did not quote the last sentence of § 16(g) accurately. You omitted the phrase "required to be approved pursuant to this subsection." Subsection (g) deals only with "[d]isbursements of Commission funds exceeding \$50 for personal service expenditures."

² This section 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 record of the vote adopting the report 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.]

report was disapproved.³ These five reports also do not satisfy the requirements of § 16(j) of the act, which, as noted above, requires an ANC to submit to the Auditor quarterly financial reports that have been "approved" by the ANC. See n. 2, supra. Some or all of the expenditures contained in these five reports may be approved or disapproved, but the reports themselves must be approved by the ANC in order to be accepted by the Auditor as in compliance with law.

The statement on page 1 of your letter that the current commissioners of ANC 2-E were "unable" to approve these quarterly financial reports suggests that some or all of them may be under the impression that they are legally prohibited from approving the expenditures listed in these five reports. Such a view constitutes a misapprehension of the law. An expenditure by an ANC must be authorized by that ANC, and if not authorized is an improper expenditure. See §§ 16(f) and (g) of the act, D.C. Code §§ 1-264(f) and (g) (1992). Normally, an expenditure should be authorized by the ANC before it is made. However, the last sentence of § 16(g) of the act, D.C. Code § 1-264(g) (1992), explicitly recognizes that the impropriety of making a personal services expenditure exceeding \$50 without prior ANC authorization can be cured by authorization after the expenditure has occurred. And we do not interpret § 16(f) of the act, D.C. Code § 1-264(f) (1992), relating to other kinds of expenditures, to preclude after-the-fact authorization. Thus, the current commissioners of ANC 2-E are not prohibited by law from approving the expenditures listed in the quarterly financial reports in question. They are not required to approve these expenditures, but they must tell the Auditor in writing which expenditures they approve, which they disapprove, and their reasons for disapproval. The last sentence of § 16(g) of the act suggests that an ANC should not disapprove an expenditure solely because it was not authorized in advance. The purposes of the quarterly financial reports are: (1) to require each ANC to perform its own audit of its financial activities for the just-ended quarter, and (2) to enable the D.C. Auditor to monitor, on a quarter-by-quarter basis, the financial activities of each ANC to ensure that public funds are being properly spent. If the Auditor or an ANC deter-

³ The minutes of the April 7, 1993 meeting of ANC 2-E indicate that ANC 2-E voted to disapprove the quarterly reports in question, rather than the expenditures contained therein. The minutes state in pertinent part:

C. Beatty made a motion to disapprove the Quarterly Reports of the first three quarters of Fiscal Year 1992*~~1992~~* and the last two quarters of Fiscal Year 1991. The motion was seconded by C. Sawaya and passed by 6 commissioners with C. Turner and C. Jacobs opposed.

(Emphasis added.)

mines that an expenditure during a quarter was improper, then the quarterly allotment that is triggered by that quarter's financial report is generally reduced by the amount of the improper expenditure. For example, if an expenditure reported in the quarterly financial report covering the quarter from April 1, 1991 to June 30, 1991 is determined to be improper, the quarterly allotment for the quarter from October 1, 1991 to December 31, 1991 would, upon the recommendation of the Auditor, be reduced accordingly.

At page 2 of your letter, you cite § 601(b) of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (the "Act"), D.C. Code § 1-1461(b) (1992), which provides in pertinent part that "[n]o 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...." In a footnote you cite the case of an ANC commissioner who was convicted/in 1987 of stealing ANC funds by writing checks to himself on the ANC's bank account.

section 601(b) of the Act applies to ANC commissioners. See § 602(i) (2) of the Act, D.C. Code § 1-1462(i) (2) (1992). There is nothing in the quarterly financial reports in question that indicates that a commissioner of ANC 2-E was engaging in conduct that violated § 601(b) of the Act. Stated otherwise, the quarterly financial reports do not, on their face, indicate expenditures of ANC 2-E funds for the personal financial benefit of any commissioner of ANC 2-E, or any member of his or her household, or any business with which that ANC commissioner was associated. However, if you have other documents or information that evidence a violation of § 601(b) of the Act by a current or former commissioner of ANC 2-E, you should provide those documents or information to this Office.

Sincerely,



Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

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

Regena Thomas
Director, Office of Constituent Services

Russell A. Smith
D.C. Auditor

ANC 2-E Commissioners