

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:

LCD:L&O:LNG:lng
AL-95-592

November 7, 1995

Gottlieb Simon
Acting Executive Secretary
Advisory Neighborhood Commission 6-B
921 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Re: Proposed legal services agreement between ANC
6-B and the Georgetown University Law Center's
Institute for Public Representation

Dear Mr. Simon:

This is in reply to your October 24, 1995 letter to Leo Gorman of this Office in which you request advice concerning the legal propriety of Advisory Neighborhood Commission (ANC) 6-B's entering into a legal services agreement with Georgetown University Law Center's Institute for Public Representation (IPR).

Under the proposed agreement, the IPR would represent the legal interests of ANC 6-B with regard to environmental matters "concerning the site contamination at the Washington Gas East Station Site at 12th and M Street[s], S.E." The IPR would not charge ANC 6-B for the legal services provided to it under the agreement, but ANC 6-B would agree "to reimburse IPR for reasonable costs incurred in connection with IPR's provision of such legal services, exclusive of any costs for routine copying of materials."

Section 16(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(1) (1992), provides in pertinent part that an ANC may not expend its funds for "legal expenses other than for Commission representation before an agency, board, or commission of the District government...." Thus, so long as any ANC 6-B funds that are paid to the IPR fall within this category, such payments are permissible. You state in your letter that the proposed IPR representation will "not involve the initiation of any litigation." In this regard, section 13(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(g) (1992), provides in pertinent part that a "Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts." This Office has construed this language also to

prohibit an ANC from using its funds to finance litigation by any other person or organization. Thus, no funds paid to IPR by ANC 6-B may be used by IPR either to initiate litigation or otherwise to defray the costs of litigation in the District of Columbia or Federal courts.

The first sentence of the fifth paragraph of the proposed agreement states: "The ANC 6B hereby authorizes the ANC 6B Chairperson to approve any action taken on ANC 6B's behalf under this Agreement." Under the ANC statutory scheme, each ANC commissioner has a legal duty to represent the interests of those persons who reside or do business in his or her own single-member district. The exercise of that public duty cannot be transferred by a *carte blanche* delegation to another person, including another ANC commissioner. (Compare section 15(a) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-263(a) (1992) (copy enclosed), relating to representation of a commission at a joint meeting of commissions.) Because ANC commissioners cannot delegate the performance of their public duties to another person, any action of substantial significance taken by the IPR on behalf of ANC 6-B must be approved by the full commission at a public meeting of the commission. Therefore, I recommend that the fifth paragraph of the proposed agreement be revised to reflect these principles.

Sincerely,

Charles F.C. Ruff
Corporation Counsel
by:


Karen L. Cooper, Chief
Legislation & Opinions section
Legal Counsel Division

Enclosure

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

Lavonna Johnson
Director
Office of Constituent Services

Ayo Bryant
Director
Office of Diversity and Special Services

Russell A. Smith
D.C. Auditor

incorporation, provided that no member of the Commission may be liable for action taken as an elected representative from a single-member district.

(e) Each Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, secretary, and treasurer. Each Commission may also elect any other officers the Commission deems necessary. The Chairperson shall serve as convener of the Commission and shall chair the Commission meetings. The vice-chairperson shall fulfill the obligations of the Chairperson in the Chairperson's absence. The secretary shall ensure that appropriate minutes of Commission meetings are kept and that appropriate notice of Commission meetings is provided in accordance with subsection (c) of this section. The treasurer shall perform the duties provided for in § 1-264. The views or recommendations of each Commission shall only be presented by its officers, Commissioners, or representatives appointed by the Commission at a public meeting to represent the Commission's views on a particular issue or proposed action. Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order.

(f) Chairmanship of each Commission committee or task force shall be open to any resident of the Commission area. The chairperson of each such committee or task force shall be appointed by the Commission. Each Commission shall make a good faith effort to involve all segments of the Commission population in its deliberations regardless of race, sex, age, voting status, religious or economic status.

(g) Each Commission shall be subject to the provisions of §1-1504(a). (1973 Ed., § 1-171j; Oct. 10, 1975, D.C. Law 1-21, § 14, 22 DCR 2065; Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5460; Sept. 26, 1984, D.C. Law 5-111, § 2(d), 31 DCR 3952; Mar. 6, 1991, D.C. Law 8-203, § 3(d), 37 DCR 8420.)

Section references. - This section is referred to in § 1-261.

Effect of amendments. - D.C. Law 8-203 repealed (a); rewrote (b); in (d), deleted the second sentence in the introductory language and in (d)(2), in the first sentence, substituted "within 30 days of any amendment to the by-laws" for "within 7 days of their initial adoption"; in (e), rewrote the first and second sentences, deleted "the" preceding "convenor" in the third sentence, substituted "the Chairperson's" for "his" in the fourth sentence, inserted the present fifth and sixth sentences, and rewrote the seventh sentence.

Legislative history of Law 1-21. - See note to § 1-252.

Legislative history of Law 1-58. - See note to § 1-261.

Legislative history of Law 5-111. - See note to § 1-252.

Legislative history of Law 8-203. - See note to § 1-264.1.

References in text. - "This act," referred to in subsection (d)(1) of this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

§ 1-263. Same - Joint meetings; involvement of neighborhood groups; service area coordinators; service area manager; citizen's advisory mechanism.

(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 partici-



pation 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.

(b) Each Commission may involve representatives of other neighborhood groups in the work of its standing or special committees.

(c) The Mayor shall appoint a service area coordinator for each ward who shall act as the chairperson of the service area committee in that ward and shall coordinate all District government services at the ward level to residents of the ward. The head of each District government department or agency which delivers services at the ward level shall appoint a service area manager who shall oversee the day-to-day operations of the department or agency within the ward and shall represent that department or agency on the service area committee of that ward. The service area coordinators and managers shall work closely with the Commissions in their service area ward and shall provide them with any technical assistance necessary to the performance of their duties and responsibilities.

(d)(1) The Council may assist the individual Commissions in the following areas:

(A) Dispute resolution between the entities of the District government and the individual Commissions to facilitate the advisory process;

(B) Providing the training to Commissioners with respect to the procedures and content of District laws, including, but not limited to, laws governing zoning and licenses to sell alcohol; and

(C) Any other assistance necessary and feasible to enable the Commissions to perform their statutory duties.

(2) The District of Columbia Auditor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

(A) Review of quarterly financial reports to ensure compliance with current law; and

(B) Monitoring of Commission expenditures and responses to inquiries from individual Commissions on the legality of proposed actual expenditures.

(3) The Mayor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

(A) Legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations are to be obtained from the Corporation Counsel and may be requested directly by any Commission;

(B) Liaison efforts between the individual Commissions and District government entities to ensure responsiveness to Commission requests and compliance with current law; and

(C) Any other assistance necessary to ensure that a Commission is able to perform its statutory duties.

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