

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:
OLC:LNG:lng
(AL 96-581)

December 13, 1996

Gregory J. Ferrell
Commissioner
Advisory Neighborhood Commission 6-A
700 Constitution Avenue, N.E. suite 1-515
Washington, D.C. 20002

Re: Urban Risk Initiative Project

Dear Commissioner Ferrell:

This is in reply to your November 7, 1996 letter to the Corporation Counsel in which you seek the advice of this Office concerning the Urban Risk Initiative Project grant made by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) at the request of Ms. Jane Mergler to be used to pay for neighborhood improvement projects within the boundaries of Single-Member District 10 of Advisory Neighborhood Commission (ANC) 6-A.

First, you ask for advice concerning whether ANC 6-A commissioners who played some role in this Urban Risk Initiative Project were prohibited, on conflict of interest grounds, from voting on matters relating to an ANC 6-A investigation of the Urban Risk Initiative Project. In a letter, dated November 21, 1996, to ANC 6-A Chairman Marshall Williams, this Office discussed the relevant conflict of interest standards and stated that a determination as to whether these standards would be violated by a commissioner's voting on a particular matter should be sought from the Director of the Office of Campaign Finance. A copy of our November 21, 1996 letter to ANC 6-A Chairman Marshall Williams is enclosed.

Second, you ask whether ANC 6-A Chairman Williams' and ANC 6-A Treasurer Hans Moennig's establishment of a separate checking account at Nations Bank, into which the DCRA grant funds in question were deposited, violated District of Columbia law.

Section 16(b) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(b) (1992), provides in pertinent part:

Each Commission shall by resolution designate a commercial bank, savings and loan association, credit

union, or any combination thereof...which is located within the District of Columbia, as a depository of all funds received by the Commission. Each Commission shall establish no more than 1 checking or negotiable order of withdrawal account. The Commission may deposit into any savings account created pursuant to this section funds not immediately needed for the operation of the Commission. [Emphasis added.]

Thus, if the proceeds of the DCRA Urban Risk Initiative Project grant were "funds received by" ANC 6-A and were immediately to be used, then such funds were required to be deposited in ANC 6-A's checking account. However, a review of the documents you sent with your letter indicates that the grant funds in question were not "received by" ANC 6-A. In this regard, the documents you submitted with your letter, including a transcript of the September 26, 1996 special meeting of ANC 6-A (transcript), indicate that Jane Mergler, who is not an ANC 6-A commissioner, prepared and submitted to DCRA the written proposal which resulted in the grant. The proposal stated that Jane Mergler is the "person authorized to sign project documents." The September 19, 1995 agreement, pursuant to which the grant funds were distributed by DCRA, was signed by DCRA officials and Jane Mergler. No ANC 6-A commissioner signed this agreement. The grant check sent by DCRA was made out to "Urban Risk project." The grant proposal states that the proposal is being "[s]ubmitted under the auspices of: ANC6a(10), Representative: DeLeon Ware." The grant agreement states that the agreement is made by the District government and "Advisory Neighborhood Commission 6a(10) (hereafter referred to as the 'Contractor')...." (Underscoring original.) The documents you forwarded and the statements contained in the transcript support the conclusion that the grant proposal was a private initiative rather than an ANC 6-A initiative, and that the reference to ANC 6A(10) in the grant proposal and in the grant agreement was for the purpose of indicating that the grant funds were to be used for neighborhood improvement projects within the boundaries of Single-Member District 10 in ANC 6-A.\

section 13(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(1) (1992), prohibits an ANC from soliciting or receiving funds in excess of \$400 per year from a single source "unless specifically authorized to do so by the council." Whether this provision requires Council approval of an ANC solicitation of a grant from the District government need not be resolved here because ANC 6-A did not solicit the DCRA grant in question. Cf. the Authorization for the Solicitation and Acceptance of Grant Monies by Advisory Neighborhood Commission 2D Act of 1994, effective June 28, 1994, D.C. Law 10-130, 41 DCR 2585. In D.C. Law 10-130 the Council did not approve the solicitation of a grant from the District government, but rather approved the solicitation of a grant from a private source.

In sum, based on the foregoing, I agree with your statement, reported at page 71 of the transcript, when, referring to the grant funds in question, you stated: "It's not the ANC's money...² Therefore, because the DCRA grant funds in question were never ANC 6-A's money, the deposit of such funds into a checking account other than ANC 6-A's checking account was not a violation of the one-checking-account requirement set forth in section 16(b) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(b) (1992).

Finally, you request the advice of this Office as to the "conduct of Ms. Jane Mergler in her quest to seek the grant without official approval of ANC 6A and whether Ms. Mergler possibly misrepresented herself as an ANC [commissioner]." I am not aware of any law that required Ms. Mergler to seek the official approval of ANC 6-A before she submitted to DCRA the grant proposal in question. And the documents you sent with your letter do not even suggest, much less demonstrate, that, in her dealings with DCRA, Ms. Mergler either represented herself to be a commissioner of ANC 6-A, or represented herself to be acting on behalf of ANC 6-A.

sincerely,

Charles F.C. Ruff
Corporation Counsel

By:



Leo N. Gorman
Assistant corporation Counsel
Office of Legal Counsel

Enclosure

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

Betty King
Director
Office of the Ombudsman

² Immediately after you made this statement, Interim D.C. Auditor Deborah Nichols, who attended the September 26, 1996 special meeting, concurred: "My point is, it's not your [*i. e.*, ANC 6-A's] money. It's 6A10 money or Jane Mergler's money or Urban Risk Money." Transcript, at p. 71.

Ayo Bryant
Director
Office of Diversity and Special Services

Cecily E. Collier-Montgomery, Esquire
Director
Office of Campaign Finance

Deborah Nichols
Interim D.C. Auditor

Marshall Williams
Chairman
Advisory Neighborhood Commission 6-A

Hans Moennig
Treasurer
Advisory Neighborhood Commission 6-A