

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
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WASHINGTON, D. C. 20001



IN REPLY REFER TO:
OLC:LNG:lng
(AG-96-592)

November 21, 1996

Marshall Williams
Chairman
Advisory Neighborhood Commission 6-A
652 9th street, N.E.
Washington, D.C. 20002-5312

Re: Conflict of Interest

Dear Chairman Williams:

This is in reply to your faxed November 20, 1996 letter requesting the advice of this Office concerning the November 18, 1996 letter to you from Daniel M. Pernell, III, a commissioner of Advisory Neighborhood Commission ("ANC") 6-A.

In' his November 18, 1996 letter, Commissioner Pernell (who signed the letter as "Acting Chairman, 6A") states: Ilt has come to my attention that you are clearly in violation of the DCMR Title 3, section 320[3].1 through 5 that addresses the issue of Conflict of Interest laws as they relate to elected officials." The letter then quotes sections 3203.1 through 3203.5 of Title 3 DCMR¹ and then goes on to state:

In my letter to you dated October 7, 1996, you were implicated in the investigation regarding the "Urban Risk Project." At our November 7, 1996[] meeting[,] you refused to excuse yourself from voting or deliberating in this matter. Your actions are clearly in violation of

section 3203 of Title 3 DCMR (June 1994) has one more subsection, namely § 3203.6, which provides as follows:

Where the Board of Elections and Ethics after a pUBLIC hearing, makes a finding of an apparent violation of the conflict of interest provisions of this chapter, it shall refer such matter to the united states Attorney for the District of Columbia for prosecution and shall initiate, maintain, defend, or appeal any civil action relating to the enforcement of this chapter.

the Conflict of Interest Laws herein delineated. Therefore, you are compelled to excuse yourself from any further duties and responsibilities as the Chairman of ANC 6A.

Should you have any questions concerning these laws, please consult with the D.C. Board of Elections and Ethics, Corporation Counselor the Office of Campaign Finance.

There will be a special Meeting on Thursday, November 21, 1996, to conclude the 6A Commission internal investigation of the Urban Risk Project...please attend.

section 602(i) (2) of the District of Columbia campaign Finance Reform and Conflict of Interest Act ("Act"), D.C. Code § 1-1462(i) (2) (1992), makes the conflict of interest provisions of section 601 of the Act, D.C. Code § 1-1461 (1992), applicable to "Members of Advisory Neighborhood Commissions." Subsection (a) of section 601 of the Act, D.C. Code § 1-1461(a) (1992), states that "elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust." Generally, section 601 of the Act prohibits ANC commissioners from: (1) accepting anything of value which is intended or could reasonably be understood as intended to influence an official action of a commissioner, (2) using or disclosing confidential government information for personal financial gain or for the financial gain of another person, and (3) taking official action in a matter that would affect directly or indirectly the financial interests of the commissioner or of a member of his or her household or of a business with which the commissioner is associated.

section 601 of the Act also contains procedural provisions for resolving the conflicts of interest covered by that section. These procedural provisions are supplemented by the regulations promulgated by the Board of Elections and Ethics as set forth in Chapter 32 of Title 3 DCMR. It is our view that § 3203 of Title 3 DCMR, which is entitled "Statement of Conflict of Interest by Chairpersons," is applicable to chairpersons of ANCs.² section 3203

² The introductory language of Title 3 DCMR § 3203.1 indicates that it applies to the Chairman of the council, the President of the Board of Education, "or the chairman of any board or commission covered by D.C. Code § 1-1462...•" (Emphasis added.) As noted above, a provision of section 602 of the Act, namely Subsection (i) (2), D.C. Code § 1-1462(i) (2) (1992), makes applicable to ANC commissioners the conflict of interest standards set forth in section 601 of the Act, D.C. Code § 1-1461 (1992). However, ANC commissioners are exempt from the financial disclosure requirements of section 602 of the Act, D.C. Code § 1-1462 (1992). See section 602(i) (1) of the Act, D.C. Code § 1-1462(i) (1) (1992). Thus, it

sets forth the steps that the chairperson of an ANC is required to take if the chairperson "has a conflict of interest or a potential conflict of interest...." Title 3 DCMR § 3203.1. The phrase "conflict of interest" in this section means a conflict of interest as defined in section 601 of the Act, D.C. Code § 1-1461 (1992). The determination of whether the chairperson of an ANC, or any other commissioner of an ANC, has a conflict of interest or a potential conflict of interest, and therefore must take one or more of the steps set forth in section 3202 or section 3203, is a determination that is initially made by the chairperson or commissioner himself or herself. If the chairperson or other commissioner initially determines that he or she does not have a conflict of interest or a potential conflict on interest under section 601 of the Act, the chairperson or other commissioner is not at that time required to take any action under section 3202 or section 3203. If another commissioner of the ANC or a member of the public disagrees with the initial determination by the chairperson or other commissioner that he or she does not have a conflict of interest or a potential conflict of interest, then the other commissioner or member of the public may file a complaint with the Director of the Office of Campaign Finance, which office is part of the Board of Elections and Ethics. The question of whether there was in fact a conflict of interest or a potential conflict of interest and whether the chairperson of the ANC or other ANC commissioner violated section 601 of the Act, D.C. Code § 1-1461 (1992), by taking official action in regard to a matter in which the chairperson or other commissioner had a conflict of interest or a potential conflict of interest would be resolved by the Director of the Office of Campaign Finance whose decision in the matter could be appealed to the Board of Elections and Ethics.

Finally, there is no basis in law for the statement in Commissioner Pernel's November 18, 1996 letter that "you are compelled to excuse yourself from any further duties and responsibilities as

could be argued that Title 3 DCMR § 3203 does not apply to chairpersons of ANCs because ANCs are not "covered by D.C. Code § 1-1462." Nevertheless, it appears that it was the intent of the Board of Elections and Ethics to make Title 3 DCMR § 3203 applicable to ANC chairpersons. This intent is inferred from the language of the preceding section, namely section 3202, entitled "statements of Conflict of Interest by Public Officials Other Than Chairpersons." (Emphasis added.) section 3202.1(c) states that "[t]he provisions of this section shall apply to (c) Advisory Neighborhood Commission...except the Chairperson" (Emphasis added.) Since the chairperson of an ANC could be faced with a conflict of interest as defined in section 601 of the Act just as any other member of an ANC could be so faced, it must be presumed that the Board of Elections and Ethics did not intend to exclude chairpersons of ANCs from the coverage of section 3203 which expressly applies to chairpersons.

the Chairman of ANC 6A." Any ANC commissioner is required to excuse himself or herself from voting on or otherwise attempting to influence the outcome of an official matter before an ANC with respect to which the commissioner has a conflict of interest or a potential conflict of interest as defined in section 601 of the Act, D.C. Code § 1-1461 (1992). However, even if a commissioner violates section 601 of the Act, such violation does not have the result that the commissioner automatically forfeits his or her right to hold an office within the commission. An ANC may remove an officer from office, but such removal must be accomplished in accordance with removal procedures set forth in the ANC's bylaws or, in the absence thereof, in accordance with the procedures set forth in Robert's Rules of Order for the removal of officers.

For your information and guidance, I have enclosed copies of the statutory and regulatory provisions cited in this letter.

sincerely,



Leo N. Gorman
Assistant corporation Counsel
Office of Legal Counsel

Enclosures

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

Betty King
Director, Office of the Ombudsman

Ayo Bryant
Director, Office of Diversity and Special Services

Alice P. Miller, Esquire
General Counsel, Board of Elections and Ethics

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

Deborah Nichols
Interim D.C. Auditor

Angela Avant
D.C. Inspector General

Daniel M. Pernell, III
ANC 6-A