

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
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IN REPLY REFER TO:
OLC:LNG:lng
(AC-97-268)

May 7, 1997

Jonathan Heller
1727 Corcoran street, N.W.
Washington, D.C. 20009

Re: Advisory Neighborhood Commission 2-B grant in support of a project to renovate the Dupont Circle comfort station at 20th and P streets, N.W.

Dear Mr. Heller:

This is in reply to your April 30, 1997 letter to this Office in which you inquire as to the legality of a grant made by Advisory Neighborhood Commission (ANC) 2-B.

You state in your letter that at its February 13, 1997 public meeting, ANC 2-B voted to make a \$3000 grant to support a project to renovate the Dupont Circle comfort station which is located at 20th and P streets, N.W. You further state that this renovation project is being sponsored by the Dupont Circle citizens Association (OCCA), and that several of the commissioners of ANC 2-B are members of the OCCA. You ask whether "it is a conflict of interest for those ANC [2-B] commissioners who are OCCA members to vote to give a grant to that organization. If it is[,] should they have recused themselves from voting? Is the vote proper?"

Section 602 (i) (2) of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, D.C. Code § 1-1462(i) (2) (1992), makes the conflict of interest provisions of section 601 of that Act, D.C. Code § 1-1461 (1992), applicable to members of ANCs. In relevant part, section 601 (copy enclosed) prohibits a public official from accepting anything of value that is intended to influence his or her official actions, judgment, or vote, and prohibits a public official from voting on a matter in which he or she has a significant financial interest. It does not appear from the facts stated in your letter that the grant in question involved a violation of either of these conflict of interest standards.

It is also our view that an ANC commissioner is an "officer" of the District of Columbia government within the meaning of that

term as it is used in Chapter 11 of Title 18 of the United States Code, 18 U.S.C. §§ 201-216. Chapter 11 of Title 18 of the United States Code, inter alia, prohibits District government officers and employees, under pain of both civil and criminal penalties (including imprisonment), from taking bribes (18 U.S.C. § 201), and from acting in a matter in which the government officer or employee, his spouse, minor child, general partner, or organization in which he is serving as an officer, director, trustee, general partner or employee, has a financial interest (18 U.S.C. § 208). Based on the facts stated in your letter, it does not appear that the awarding of the grant in question raises a question under Chapter 11 of Title 18 of the United States Code.

Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(m) (1992), addresses the subject of ANC grants and provides in pertinent part:

A grant approved by a Commission shall provide a benefit that is public in nature and that benefits persons who reside or work within the Commission area. A Commission shall adopt guidelines for the consideration and award of grants that shall include a provision that requires the proposed grantee to present the request for a grant at a public meeting of the Commission. A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting. The award of a grant by a Commission shall not be conditioned on support for a position taken by the Commission.

Thus, to be legally proper, an ANC grant must provide a benefit that is public in nature and that benefits persons residing or working within the commission's boundaries. In addition, the grant must be awarded in accordance with the procedures set forth in section 16(m), as quoted above.

The restoration of the Dupont Circle comfort station would be a benefit that is public in nature and would potentially benefit persons who reside or work within the boundaries of ANC 2-B. Thus, if the grant procedures set forth in section 16(m) were followed by ANC 2-B in making the grant, then the grant comported with the relevant statutory requirements governing ANC grants.

You indicate that the grant was made to the DCCA, as sponsor of the renovation project. It is permissible for an ANC to make a grant to a private neighborhood citizens association, such as the DCCA, so long as the money is used by the grant recipient in accordance with the above-quoted statutory requirements. In this regard, it is not unusual for an ANC to work with its private citizens association counterpart on a project that benefits the neighborhood community that both organizations serve. As was apparently the case here, the DCCA proposed the project and sought a grant from ANC 2-B to help finance the project. The fact that

some commissioners of ANC 2-B are also members of the DCCA does not, standing alone, create a "conflict of interest" for them in regard to voting as ANC 2-B commissioners on a matter in which the DCCA has an interest. If DCCA's "interest" in the matter can properly be described as the renovation of the Dupont Circle comfort station, then such renovation may also properly be described as an interest of ANC 2-B. And, as noted above, ANC 2-B may use the DCCA as a grantee for the purpose of administering an ANC 2-B grant for the accomplishment of a public purpose that benefits persons residing or working within ANC 2-B's boundaries.

In any event, for a "conflict of interest" on the part of an ANC commissioner to possibly affect the legal validity of that commissioner's vote on a matter, such conflict of interest must be a conflict of interest that is prescribed by statute, regulation, or rule. As noted above, the only statutory conflict of interest standards applicable to ANC commissioners are those set forth in section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act and in Chapter 11 of Title 18 of the United States Code. The only other possible source of conflict of interest standards that would be applicable to the commissioners of ANC 2-B would be conflict of interest standards adopted by ANC 2-B itself.¹ If ANC 2-B has adopted conflict of interest standards, they would likely be contained in ANC 2-B's bylaws. By statute, the document containing the bylaws of an ANC is a "public document." See section 14 (d) (1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(d) (1) (1992). Accordingly, you have the right to examine the bylaws of ANC 2-B, an up-to-date copy of which is required to be on file with the Council of the District of Columbia. See section 14(d) (2) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262 (d) (2) (1992).

There are conflict of interest standards in Title 18 of the District of Columbia Government Comprehensive Merit Personnel Act ("Merit Personnel Act"), D.C. Code § 1-619.1 *et seq.* (1992), and in the regulations promulgated pursuant to that title, which are set forth in Chapter 18 ("Employee Conduct") of the D.C. Personnel Regulations. However, these statutory and regulatory provisions are not applicable to ANC commissioners because ANC commissioners are not "employees" of the District government for purposes of the Merit Personnel Act. In this regard, section 301(7) of the Merit Personnel Act, D.C. Code § 1-603.1(7) (1992), defines the term "employee" to mean an "individual who performs a function of the District government and who receives compensation for the performance of such services." (Emphasis added.) Since ANC commissioners are not compensated for their services, they are not considered to be employees of the District government for purposes of the Merit Personnel Act.

If you have any questions about this advice, you may call me at 727-3400.

Sincerely,

Jo Anne Robinson
Interim Corporation Counsel

By:



Leo N. Gorman
Assistant corporation Counsel
Office of Legal Counsel

Enclosure

cc: The Honorable Kathleen Patterson
Chairperson, Committee on Government Operations
Council of the District of Columbia

Willie Vazquez, Director
Office of the Ombudsman

Ayo Bryant, Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor

Kyle Pitsor, Chairman
Advisory Neighborhood Commission 2-B