

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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IN REPLY REFER TO:

**Prepared by:LED:WCW:pw
(AL-98-228)**

May 27, 1998

Mr. Jeff Norman
Commissioner
Advisory Neighborhood Commission 3-G
Apartment # 717
5410 Connecticut Avenue, N.W.
Washington, D.C. 20015

Re: Procedures to be followed when making grants

Dear Commissioner Norman:

This is in reply to your May 11, 1998 letter to me requesting the advice of this Office concerning the procedures to be followed by an Advisory Neighborhood Commission (ANC) when making a grant.

Your first two questions relate to the third sentence of section 16(m) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code section 1-264(m) (1992), which provides: "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." You state that ANC 3-G's grant policy "allows the commission, on a case-by-case basis, to waive the requirement...which requires that the proposed grantee present the grant request at a Commission meeting..... You then ask whether it is "legal for ANC 3G to grant a waiver of that section in any particular case." The answer is no, i.e., it is not legal for ANC 3-G to grant a waiver of these statutory requirements in any case whatsoever. The relevant statutory language uses the word "shall," which is a word of command, and moreover does not indicate any exceptions. A grant made in violation of these statutory requirements is an illegal grant.

Your second question is whether it is legal "for one of the ANC 3G Commissioners to serve as the representative of the proposed grantee for the purpose of presenting the grant request at a public meeting." As the statutory language indicates, a representative of the proposed grantee must present the request for the grant to the commissioners at a public meeting. Thus, in the usual course, the person who presents the grant proposal to an ANC is a person who has an official connection to the proposed grantee. In the vast majority of cases, a commissioner would not have an official connection to the proposed grantee, and therefore would not be a person who could properly present the grant proposal to the commission within the contemplation of the statutory language. If a commissioner has an official connection with the proposed grantee, and wishes to present the grant proposal to the other commissioners, then I recommend that the commissioner recuse himself or herself from voting on the matter in order to avoid any possible appearance of a conflict of interest. (Of course, a commissioner may not personally benefit in any direct financial manner from the making of a grant by an ANC.)

Your third question concerns the first sentence of section 16(m), which provides that "[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." Without providing any specifics, you ask whether this requirement is satisfied if, under the grant, residents of the neighborhood do volunteer work for the proposed grantee organization or persons helped by the proposed grantee may have occasionally walked through or shopped in the neighborhood." It is certainly permissible for residents of the neighborhood to do volunteer work for the proposed grantee. However, a volunteer is normally viewed as giving rather than receiving a benefit. Thus, absent more specific information, I conclude that, where a grant's only purported benefit to a Commission area is to provide an opportunity for volunteerism by persons residing within the area, the grant ordinarily would not satisfy the requirements in the first sentence of section 16(m).

Likewise, a grant by a Commission ordinarily would not satisfy those requirements if it only benefited persons who live or work outside the Commission area, even though these persons occasionally walk through or shop in that area. This is not to say, however, that others, such as persons passing through or shopping in a neighborhood, may not also derive a benefit from

the use of ANC grant funds spent primarily on behalf of residents or workers in an ANC area. An example of such a permissible third-party benefit would be a neighborhood beautification project.

Sincerely,

A handwritten signature in black ink, reading "Wayne C. Witkowski". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Wayne C. Witkowski
Deputy Corporation Counsel
Legal Counsel Division

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

William Vazquez
-Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and Special Services

Deborah K. Nichols
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