

Government at the District of Columbia

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



November 25, 1998

IN REPLY REFER TO:
Prepared by: AE
(AL-98-446)

Roscoe Grant, Jr.
Chairman, ANC 7B
3200 S Street, SE
Washington, DC 20020

Re: Whether the Department of Human Services violated D.C. Code § 1-261?

Dear Mr. Grant:

This responds to your letter dated October 9, 1998 wherein you requested advice on whether the Department of Human Services ("DHS") violated the provisions of D.C. Code § 1-261, and if so, what is the penalty for such action.¹

Your letter advises that DHS entered into a ten-year lease for space at the Penn-Branch Shopping Center in Southeast Washington, D.C., in the amount of \$7,791,496, and did not provide thirty days written notice to Advisory Neighborhood Commission ("ANC") 7B, of which you are the Chairman. You further state that the community is opposed to the move, and that if ANC 7B had been given notice, a lease would never have been signed based on concerns stated by residents. The Penn-Branch Shopping Center is located within the geographic boundaries of ANC 7B. DHS states that the lease in question was signed by the District based on the decision of DHS to open an Income Maintenance Administration Center ("IMA center") next year at that location. The proposed IMA center would consolidate operations from three existing offices in other neighborhoods, which would be shut down. As you and I have discussed in subsequent telephone conversations, the District Government has now

¹Your letter also inquires whether DHS has violated certain sections of the Advisory Neighborhood Commissioners Manual ("Manual"). As you are aware, the Manual is not an independent source of law, as it has neither been enacted into law nor promulgated as a rulemaking by any department or the Council. The Manual is merely a collection of laws and information which is prepared by the Office of the Secretary of the District of Columbia and the Office of Documents and Administrative Issuances as a service to Commissioners.

decided that the IMA center will not be opening in the Penn-Branch Shopping Center as previously announced.

In light of the District's decision not to open the IMA center in the Penn-Branch Shopping Center, your question is to some extent moot. It is moot to the extent that, assuming there was a violation of D.C. Code § 1-261, the only remedy for such violation is for DHS to reconsider the decision, giving great weight to the recommendations of the ANC as required by statute. See, Kopff v. District of Columbia ABC Bd., 381 A.2d 1372 (D.C. 1977). In this case, DHS has already reconsidered the decision and has decided not to locate the IMA center at the Penn-Branch Shopping Center. There is no other applicable "penalty" on an agency for failing to comply with the statute.

As to whether DHS in fact violated D.C. Code § 1-261, it is necessary to review the statutory language. D.C. Code § 1-261(c)(1) provides that thirty days written notice be given by mail to each ANC affected by certain District government actions or proposed actions. The types of actions or proposed actions for which notice must be given is specified in the statute as follows:

"In addition to those notices required in subsection (a) of this section [requiring notice of legislation and rulemaking] each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section."

(Emphasis added.) I have reviewed the case law and prior opinions of this office, as well as the legislative history and Mayor's Order 94-175, dated July 29, 1994, which you cited in telephone conversations about this matter. It is my opinion that DHS has not violated the notice provisions of D.C. Code § 1-261 by failing to give notice to ANC 78 in this case. Within the context of this factual situation, neither the signing of the lease nor the decision to open an IMA center can be said to involve a "policy decision or guideline" for which notice is required to be given to the ANC by the statute. DHS was not making a policy decision, but was performing an administrative act² to carry out

²An administrative act is defined in Black's Dictionary, 5th Edition as: "Those acts which are necessary to be done to carry ou[t] legislative policies and purposes
(continued...)"

its management duties under an existing legislative scheme. Therefore, DHS was not required to give notice to ANC 78 under D.C. Code § 1-261.

If you have any further questions on this matter, please do not hesitate to contact Annette Elseth, of my staff, or me at 727-3400.

Sincerely,



Wayne C. Witkowski
Deputy Corporation Counsel
Legal Counsel Division

cc: Jesse Goode
General Counsel
Department of Human Services

2(...continued)

already declared by the legislative body or such as are devolved upon it by the organic law of its existence."