

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

July 27, 2005

Tim Stephens
Treasurer, ANC 1B
1415 Chapin St, NW #506
Washington, DC 20009

Re: Whether ANC grants are limited to 60 days in duration and whether an ANC has the authority to request the return of unspent grant funds?

Dear Mr. Stephens:

This letter responds to your e-mail of June 9, 2005 in which you inquire about the obligations placed on a grant recipient by the 60-day reporting requirement under ANC law and the ability of an ANC to request the return of unspent grant funds. This letter addresses both of these issues in turn.

You state that ANC 1B issued a grant to the Home Roots Foundation (Home Roots) in June 2004 for \$4,000 to help the foundation set up its organization and to promote affordable housing initiatives in the neighborhood. In November 2004, over 120 days after the grant was issued, Home Roots wrote a letter to ANC 1B accounting for its use of the grant funds up to that point. They reported that \$2,560.87 had been expended and \$1,439.13 remained from the grant.

In the intervening eleven months you, as treasurer of ANC 1B, have contacted Home Roots on several occasions in an attempt to have the foundation expend the remaining funds and account for them or, alternatively, to return the unspent funds to the ANC. Home Roots asserts that the remaining funds are allocated within its budget to pay, in part, a consultant the remaining \$2,000 of a \$3,500 contract and to pay the remaining \$1,800 of a \$2,000 contract for the design and construction of the Home Roots website. However, the foundation has not spent any additional funds since their initial accounting in November 2004.

In 2000 the District revised Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, effective Oct. 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(m) (2004 Supp.), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135 (Collectively the “ANC Act”), (ANC Reform Act) to add a reporting requirement to all ANC grant agreements. That requirement provides in relevant part:

Within 60 days following the issuance of a grant, the grant recipient shall forward to the Commission a statement as to the use of the funds consistent with the grant application, complete with receipts which support the expenditures.

This Office has not previously opined on the ramifications of this amendment. However, in determining the statute's meaning we turn to the basic principle of statutory construction that words of common use are to be given their common meaning. Norman J. Singer, Statutes and Statutory Construction, § 22:29 (6th ed. 2002). Only where the plain meaning is unclear or otherwise inconsistent need we go further.

A reading of the statute does not reveal any ambiguities or inconsistencies. On its face D.C. Official Code § 1-309.13(m) requires: (1) that a grant recipient provide the ANC with a written statement regarding the use of the grant funds; (2) that a grant recipient provide the ANC with copies of their receipts which support the expenditure statement; and (3) that the previous two requirements must be completed within 60 days of the grant being issued.

There is no express requirement in the 2000 amendment made by the ANC Reform Act that funds be spent within the 60-day period. Nor does the statute include phrases such as 'final accounting' or 'all funds must be used within' that might indicate an intent to limit all grants to 60 days. Though the statute does, in fact, require a report "complete with receipts," we do not read that to mean that all funds must be expended.

Further, the plain meaning interpretation of § 1-309.13(m) is supported by the principle that amendatory acts are presumed to not "change existing law further than is expressly declared or necessarily implied." Singer at § 22:30. For a term to be necessarily implied in a statute the probability that the legislator intended its existence must be so strong that the contrary "cannot reasonably be supposed." Singer at § 55:03, *quoting In re Stansbury Poplar Place, Inc.*, 13 F.3d 122 (4th Cir. 1993).

A determination that the 60-day reporting requirement placed an implied limit on the length of ANC grants would not meet this high standard. The common meaning of the statute may be consistently read without limiting the length of grants. Further, it is not unreasonable to presume that the legislature intended to pass an accounting requirement with limited effect considering that none existed prior to the ANC Reform Act.

Each of the principles of statutory construction discussed herein lead us to the same conclusion. The ANC Reform Act was not intended to place an absolute limit on the length of grants but only to require an accounting of grant funds within 60 days. Thus, where a grant lasts beyond 60 days, there is no statutory requirement that the recipient provide a final accounting. If you feel strongly that the statute should contain such a requirement, you may want to consider recommending an appropriate amendment to the Council.

Additionally you inquire about an ANC's authority to request the return of unspent grant funds, particularly as it relates to the present situation where funds remain unspent 11 months after the issuance of the grant. It should first be noted that an ANC can always vote to request the return of grant funds, the issue is whether the request is legally enforceable.

Unfortunately, we are unable to locate any statutory authority that might permit an ANC to enforce a request to return grant funds. Nonetheless, the grant agreement between an ANC and a grant recipient is analogous to a contract.¹ Thus, depending upon the terms of the grant agreement, an ANC may possess authority to make such a request and have it enforced under the principles of contract law.

Here, however, the grant agreement between ANC 1B and Home Roots does not attempt to limit the length of the grant. The restriction contained on the grant disbursement receipt, almost identical to D.C. Official Code § 1-309.13(m), simply requires an accounting within 60 days. Further, the expenditures both planned and completed do not violate the grant agreement, as they appear consistent with the stated purpose of the grant.

In the future, we strongly recommend that you clarify the terms within the grant agreement so that both the ANC and grant recipient have a common understanding of each party's expectations. Such terms may include an absolute time limit on the grant and/or require a periodic accounting of the grant funds. Where such terms are included, the grant agreement should also state the penalty for noncompliance with the terms of the grant agreement (*i.e.*, require the return of unaccounted grant funds). The lack of a statutory 'final accounting' requirement does not abrogate an ANC's responsibility to monitor the use of its grant funds.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

(AL-05-399)

¹ A grant is premised upon certain representations by the grant recipient. These grant terms include the proposed use of the funds along with any additional items that may appear in the grant application.