

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

November 10, 2008

Commissioner Jack McKay
Secretary
Commission ANC 1D
3200 19th Street, N.W.
Washington, D.C. 20010

Re: Request for Legal Advice Regarding whether a
Private Contractor has Obligations to Provide
Notice and Give Great Weight Consideration to
ANC's Views

Dear Commissioner McKay:

This is in response to your request, made on behalf of Advisory Neighborhood Commission ("ANC") 1D, that this Office provide advice as to whether the legal requirements of giving notice to ANCs and according "great weight" to their views, which apply to the District pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975 ("ANC Act" or "Act"), effective March 26, 1976, 1975, D.C. Law 1-58, D.C. Official Code § 1-309.12(d)(3)(A) (2006 Repl.) are applicable to contractors engaged by District agencies.¹

With your request, you provided a resolution passed by ANC 1D that states as follows:

Resolved, ANC 1D advises the Department of Transportation, Public Works, Small Business Development, and all other relevant agencies to hold their contractors, delegees, and other groups responsible to accord ANC 1D the same legal requirements of notice, acknowledgement, and great weight that would apply to the actions of the agency itself.

Why: Delegation or contracting out of the development or implementation of plans or policy change – such as library redesign, transportation, and street scape changes – should not be allowed to escape

¹ You also made reference in your request to a legal opinion on this issue provided to the Department of Transportation ("DDOT"). It does not appear that such an opinion was issued.

the requirements on the agencies of the ANC law, charter requirements, or executive orders.

The background for your request is that a private contractor hired by DDOT is conducting a traffic study of the Mount Pleasant area, which is located in ANC 1D. ANC 1D seeks to have direct input regarding the contractor's work, to have an opportunity to provide its views to the contractor, and to require that the contractor give great weight to the ANC's views before making its recommendations to DDOT. Accordingly, the Commission is requesting advice on whether the notice and great weight requirements of the ANC Act flow to the contractor, or remain solely with DDOT.

The ANC notice requirements apply to proposed District government actions that are covered under the Act. Section 13 (a), (c) and (d)(3)(A) of the ANC Act² (D.C. Official Code § 1-309.10(a),(c) and (d)(3)(A)) concern the District's obligation to provide notice and to accord great weight to the ANC's views. The first, § 1-309.10(a), states in relevant part:

(a) Each ANC may advise each executive agency and all independent agencies, Boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget and sanitation which affect that Commission area.

(Emphasis added.)

The second notice provision, D.C. Official Code § 1-309(c)(1), states in relevant part:

(b) Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section, 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. Each District of Columbia government entity shall maintain a record of

² Section § 738(d) of the District of Columbia Home Rule Act of 1973 ("Home Rule Act"), approved April 17, 1995, 109 Stat. 97, D.C. Official Code § 1-207.38 (2006 Repl.) provides that notice shall be given to ANCs [i]n the manner provided by act of Council". The ANC Act provides the notice requirements.

the notices sent to each Commission pursuant to subsection (b) of this section.

(Emphasis added.)

The obligation of a District agency to give great weight consideration to the views of an ANC is contained in D.C. Official Code § 1-309.10(d)(3)(A), which provides in relevant part:

(d)(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity.

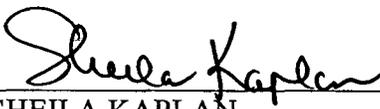
(Emphasis added.)

All of these provisions clearly state that it is a District agency or entity that is obligated to meet the notice and great weight requirements, if its proposed action is covered under the Act. *See Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1373 (D.C. 1977) (Held that the notice requirement contained in section 13 of the ANC Act as construed with the ANC notice requirement in section 738(d) of the Home Rule Act, applies only to proposed District government actions that are “of significance to neighborhood planning and development.”) The Act does not provide that the District government’s obligation to provide notice and consider the ANC views flows to a contractor hired by a District agency.

In short, the private contractor completing the traffic study for DDOT is under no legal obligation to provide notice to your ANC or accord great weight consideration to the ANC’s views. Any such notice and consideration requirements lie with DDOT if in the future, based on the contractor’s study or other factors, DDOT proposes an action that is covered under the Act.

Sincerely,

PETER J. NICKLES
Acting Attorney General

By: 
SHEILA KAPLAN
Assistant Attorney General
Legal Counsel Division

(AL-08-770)