GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

Legal Counsel Division

November 16, 2010

Lynard Barnum
Financial Auditor/ANC Program Manager
Office of the District Columbia Auditor
Washington, DC 20005

Re: Grant for Costs to Show Movie Promoting Positive Understanding of Islam

Dear Mr. Barnum:

This letter responds to your request for an opinion on whether the above proposed grant by ANC 1B would be impermissible in light of the project's potentially religious nature, and/or its potential character as entertainment.

In the documents forwarded to us, an organization called "Perspectives of Interfaith Television Brothers and Sisters International, Inc." has applied for a grant totaling $5,000 from ANC 1B to cover costs associated with a showing of *Moozlum, The Movie* at the Howard University's (HU) Cramton Auditorium. According to the organizers, the film is intended to "redirect[] the misrepresentation and misinformation to a positive understanding of Islam and Muslims locally, nationally and internationally," and to "encourage young African-American males to gain better appreciation for higher education beyond high school." The organizers expect to hold a question and answer session after the screening of the film, and they intend to invite a select group of high school students from ANC 1B, as well as from other areas of the city. The organizers additionally suggest in their application that the event may be used as a fundraiser to assist the organization in its efforts on cable public access television in the District and surrounding jurisdictions.[1] While the organizers have yet to submit an itemized budget, the application indicates that the grant money is to be used for venue fees, a projectionist, an audio person, and security personnel (using police from HU), as well as "travel, accommodations for cast, promotion and PR fees."

[1] The organizers explain that they present a program twice a week on DCTV and Arlington Independent Media in Arlington, VA, which focuses on "dispelling the myths and stereotypes of various faith traditions." They pay their own costs for studio time and tapes.

CONCLUSIONS

In short, we do not feel the grant is an impermissible award of government funds for entertainment given the educational purpose of the film. In addition, without more information on the movie's precise content, we conclude that providing public funding for its screening would likely not violate the Establishment Clause of the First Amendment to the U.S. Constitution, again given its purportedly educational purpose, as well as the secular nature of the group receiving the funds. However, the grant funds, if awarded, cannot be used for travel and accommodations for the cast.

DISCUSSION

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .." U.S. Constitution, 1st Amendment.[2] While the drafters of the Amendment were clearly concerned with prohibiting the creation of a government church or government sponsored religion, a law may be "respecting the forbidden objective while falling short of its total realization." *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). However, "a system of government that makes itself felt as pervasively as ours could hardly be expected never to cross paths with [religion]," and the Supreme Court has never required a "hermetic separation" of the two. *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 745-46 (1976). A guiding principle for the Court in evaluating governmental action that intersects with religion is that the First Amendment mandates governmental neutrality between one religion and another, and between religion and non-religion. *McCreary County v. American Civil Liberties Union*, 545 U.S. 844, 860 (2005). Thus, for example, in *McCreary*, the Court found the display of the Ten Commandments in two county courthouses in Kentucky to be unconstitutional, although the display depicted them as a historical foundation for American and Kentucky law. However, in *Roemer*, the Court upheld a law that provided financial grants to all Maryland post-secondary institutions, including recipients that were religiously themed, provided they were not used for "sectarian" purposes.

While the Court has struggled with defining the contours of prohibited relationships between government and religion, during the last forty years it has used a three-part test to evaluate a state law or action in this area, which, as applied to the issue here, would require that: 1) the grant have a secular purpose; 2) the principal or primary effect of the grant be one that neither advances nor inhibits religion; and 3) the grant must not foster an excessive government entanglement with religion. *Lemon v. Kurtzman*, *supra* at 613. This is also the test this Office has used to evaluate questionable ANC grants to religious organizations for various activities. (Letter to Otis Troupe, December 28, 1992.) We find the grant at issue to be a close call under this test, but likely one that passes.

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[2] The Amendment's quoted restrictions on Congress, known as the Establishment Clause and the Free Exercise Clause, apply to the District of Columbia as an instrumentality of Congress, and to the states via the 14th Amendment. *Everson v. Board of Education of Ewing*, 330 U.S. 1, 9 (1947).

Based on the description of the film by the applicants, it would appear to have a secular purpose. There is certainly a sense in the aftermath of the 9/11 attacks in New York City, that Muslims may be subject to prejudicial hostility by those that associate the attacks, or terrorism in general, with the Islamic faith. The organizers state the purpose of showing the movie is to "redirect[] misrepresentation and misinformation to a positive understanding of Islam and Muslims." To the extent that the organizers seek, through the screening of the film, to dispel myths that Islam calls for terrorist violence or some other harm, it has an educational character rather than a religious one, particularly as the organizers of the project appear to be promoting positive interfaith relationships, rather than seeking to convert non-believers. There is also nothing in the materials to suggest the organization is a religious one. Were the applicants to be Muslim clerics seeking to show the film in a mosque, this might cut a different way. Of course, we have not seen the film. There remains a concern that if the film were to be an in-depth portrayal of Islamic religious tenets, it could create tension among Muslims and non-Muslims, or, among various sects of the Islamic faith. That would be a dynamic the Establishment Clause in part seeks to separate from the political arena. Nonetheless, education about religion necessarily invites a review of basic religious doctrine, which, we note is a part of the 9th Grade social studies curriculum of the District of Columbia Public Schools.[3] Although by definition that curriculum and its forum are solely for education, the description of the film's intent, and its involvement of high school students in the session following the film, suggest the educational purpose of the project.

For the same reasons, the screening of the movie would not appear to have a "principal or primary effect" to advance Islam, to the extent it seeks to promote only a better understanding by audience members of alternative faiths, though again, the movie content is key. Finally, in light of this being a one-time grant for one movie, it would not promote an ongoing relationship between governmental officials and religious persons concerning the content of government-funded materials. Thus, the award of the grant would not rise to the level of "excessive entanglement" between the District and Islamic doctrine.

Also for the reasons set forth above regarding the apparent educational purpose of the project, we do not feel the showing of a movie in this context can be classed as "entertainment." We have continually used the guidance provided by the General Accounting Office (GAO) to find that federally appropriated monies may not be used for entertainment purposes absent specific authorization. (Letter to Westy McDermid, May 26, 1994); (Letter to Philip C. Spalding, July 13, 2005). However, we have previously determined that activities with the potential to enrich the community and invite its active participation at an event, are consistent with the ANC's authority to award monies for the benefit of the public. Thus, we have approved of a grant by the ANC to the Blackout Arts Collective and Sankofa Books & Video for purchase or rental of sound equipment to be used for a weekly "Arts Under the Stars" program that featured an "open mike" for

[3] District of Columbia, Social Studies, Pre-K through Grade 12 Standards, Grade 9, Era IV: Middle Ages, § 9.4 ("Explain the significance of the Qur'an and the Sunnah as the primary sources of Islamic beliefs, practice, and law, and their influence in Muslim's daily life.").

community members to "sing, rap, read poetry, and discuss issues relevant to themselves or the community." (Letter to Philip C. Spalding, *supra.*) We have also approved of ANC grant monies being used to purchase roller skates that would be temporarily used by youth at a "Gospel Skate Night" sponsored by the A.P. Shaw Church, but we did not approve of the monies being used for purchase of a generator to pipe in music for the event, particularly as the generator could be used outside the event once purchased. (Letter to Sandra "S.S." Seegars, June 25, 2004.)[4] Thus, the fact that the grant at issue here is for presentation of a film, does not in our view convert the project into merely one to passively entertain or amuse an audience, particularly as the screening will be followed by a group discussion.

However, the ANC grant monies cannot be used by the organizers to pay for travel and accommodations for the film's cast. Section 16 of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, as amended, (D.C. Law 1-21; D.C. Official Code § 1-309.13(l)(2) (2006 Repl.)) ("the Act"), prohibits use of funds allocated to the ANCs for "travel outside the Washington metropolitan area" and for "personal subsistence expenses." When payment for costs of travel is addressed in the Act, it states that "[f]unds may be used to pay the local transportation expenses of a Commissioner if the Commissioner is officially representing the Commission. . .at public hearings or meetings or is engaged in official Commission business." D.C. Official Code § 1-309.13(l)(1) (2006 Repl.). Thus, we have in the past advised that an ANC deny a grant application from the Hung Tao Choy Mei Kung Fu Academy for funds to sponsor students attending a tournament in Germany. (Letter to Abdul Mohammad, February 10, 2003.) Moreover, the Act also requires that ANC grants only be to organizations, not individuals, and that they be for matters that are "public in nature" and which "benefit persons who reside or work within the Commission area." D.C. Official Code § 1-309.13(m) (2006 Repl.); (Letter to Deborah K. Nichols, August 2000, n. 1).

Payment for travel and lodging for the film's cast is directly prohibited by the Act, unless perhaps the cast were to reside in the metropolitan area, but given the application's recitation of cast names that include Danny Glover and Nia Long, it is unlikely that these are local actors. In addition, while this Office has recognized that grant monies to organizations may result in an ancillary private benefit to an individual or business, such as the painting of a community mural on a building that could raise that building's property value, (Letter to Deborah K. Nichols, August 10, 2006), the grant is permissible if its principal benefit is to the Commission area. Reimbursing the actors or actresses for travel and lodging only directly benefits individuals. In contrast, the organizers' apparent plans to use the screening as a vehicle for fundraising to support their efforts on public

[4] You will note that in that letter, which I attach for your reference, the three-part test used by the Supreme Court for evaluating the reach of the Establishment Clause was cited as a concern given the title of the event, and its stated purpose to "meet more than the spiritual needs of the people in our community." Consequently, this Office advised the ANC to ensure all youth in the community were allowed to participate, not just those with a particular religious affiliation, and that the event would not be religiously-oriented.

television, strikes us as an ancillary benefit from the community nature of the project.[5] Thus, if the ANC is to award this grant, it should restrict the usage of funds accordingly.

I hope the above is helpful to you in communicating with the ANC. If you have additional questions, please feel to free to contact our Office.

Sincerely,

PETER J. NICKLES
Attorney General

By: _____
Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-10-497)

cc: Gottlieb Simon, Executive Director
Office of Advisory Neighborhood Commissions

Attachment

[5] We should note that the materials forwarded to us do not refer to any specific problem in ANC 1B of anti-Islamic activity that would suggest any higher incidence of misunderstanding about the religion in the commission area. However, one can reasonably assume that the potential for misunderstanding exists in the entire nation even without outward manifestations, including the area of ANC 1B.

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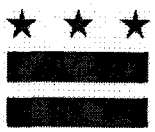

Legal Counsel Division

June 25, 2004

Sandra "S.S." Seegars
Chairperson ANC 8E
1107 Savannah Street, S.E.
Washington, DC 20032

Re: Use of grant money for church-sponsored recreational youth event

Dear Commissioner Seegars:

This letter responds to your letter of June 21, 2004, wherein you seek the advice of this Office concerning whether your Advisory Neighborhood Commission (ANC) may grant public funds to a church for a community event involving roller skating.

According to your letter and its supporting materials, "Gospel Skate Night" is a recreational event for youth that will take place on the grounds of Johnson Jr. High School on Friday, June 25, 2004. You state that ANC 8E proposes to donate $597.00 for roller skates, and $450.00 for a generator that will provide music, totaling $1,047.00.[1]

First, the event's title, "Gospel Skate Night," sponsorship by the A.P. Shaw Church, and its stated purpose, "to meet more than the spiritual needs of the people in our community," raises issues of which you need to be aware before you proceed with the grant.

Section 16(m) of the Advisory Neighborhood Commission Act, as amended, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.13(m)(1) (2003 Supp.), provides in pertinent part:

> (m) (1) A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee

[1] In a follow-up telephone conversation with our Office on June 22, 2004, you advised that the grantee would purchase these items as opposed to renting them.

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> organization must not be duplicative of any that are already performed by the District government.

Additionally, the Establishment Clause of the First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion." Therefore, your ANC may provide this grant only if: (1) the grant has a secular purpose; (2) the principal or primary effect of the grant is one that neither advances nor inhibits religion; and (3) the grant does not foster an excessive ANC entanglement with religion. *See Letter to Otis H. Troupe, District of Columbia Auditor, December 28, 1992* (attached hereto) quoting *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 747-748 (1976). In the letter to Mr. Troupe, this Office opined that ANC 8-B could grant the A.P. Shaw Church funds to purchase football equipment for a church sponsored youth team as long as it met the three conditions listed above.

You state that the grant, in part, would fund the purchase of roller skates for the event. This would not likely be a violation of the law, as this Office has found that a Commission can provide funds for athletic equipment for youth in its area, so long as the youth do not keep the equipment. *See Letter to Alice W. Gilmore, Advisory Neighborhood Commission 4-B, October 20, 1994* (attached hereto). *Webster's Dictionary* defines skating as "the act, art, or *sport* of gliding on skates." As such, we view roller skating to be like any another recreational sport and not mere entertainment for the purpose of ANC grants (see discussion below on prohibition of ANC expenditures for entertainment). Skating, therefore, is a permissible form of youth activity for which a grant can be given.

Accordingly, with regard to the purchase of roller skates, the grant must serve a significant number of your ANC's residents, as well as follow the guidelines of the Establishment Clause. This means that the following conditions must be strictly followed: (1) participation of youth in the skating event must not be limited on the basis of religious affiliation; rather, it must be open to all of the youth in your ANC's community; (2) the event must not be religiously-oriented or promote, or inhibit, religion; and (3) the roller skates must not be given to the participants or restricted solely to this one event, but instead must be returned to the grantee for use in future secular, youth-oriented, community events.

Second, you state that the remainder of the funds would be used to buy a generator that would power the music for the event. This funding differs from that of roller skates, as the generator's purpose is to provide entertainment for the event, rather than to foster athletic recreation. Since ANC 8E's grant would come from funds appropriated by Congress, the question of whether your ANC may make a grant for these purposes is governed by the standards set forth in the General Accounting Office's Principle of Federal Appropriations Law, 2nd ed., Vol. 1, July 1991. Chapter 4, Part C, section 5(d) (at page 4-100), states, in part:

> Just as the entertainment of government personnel is generally unauthorized, the entertainment of non-government personnel is equally impermissible. The basic rule is the same regardless of who is being fed or entertained. Appropriated funds are

not available for entertainment, including free food, except under specific statutory authority.[2]

There is no specific authority that authorizes the type of expenditure for entertainment that you seek (purchasing a generator to power music for a community event). *See Letter to Westy McDermid, ANC 2-E, May 26, 1994* (attached hereto).

Additionally, the inability to track how the generator will be used after the skating event presents another problem. In a previous opinion, this Office stated that a proposed Commission grant for a VCR was suspect because of the difficulty of policing whether the VCR would be used for entertainment purposes. *See Letter to Deborah K. Nichols, District of Columbia Auditor, August 15, 2000.*

Furthermore, as stated previously, the Establishment Clause prohibits the proposed expenditure from being used for non-secular purposes. Practically, it would be impossible to ensure that the Church would not use the generator for purposes that might promote religious principles. *See Letter to James D. Berry, ANC 5C, May 4, 2004* (attached hereto). Therefore, a grant for the purpose of purchasing a generator for the skating event is impermissible.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

Attachments (5)

AL-O4-386

[2] Under the General Accounting Office's "necessary expense" doctrine, however, an argument might be made that use of the generator is necessary to the roller skating activity. Given our conclusion that its purchase would be prohibited for other reasons, we do not find it necessary to form an opinion on this particular issue.