

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

August 22, 2011

Lynard Barnum, Financial Auditor
Office of the District Columbia Auditor
717- 14th Street, N.W., Suite 900
Washington, DC 20005

**Re: Propriety of Expenditures By The World Missions Inner City
Extension Center Under ANC 5C Grant**

Dear Mr. Barnum:

This letter responds to your August 2, 2011 e-mail requesting our advice on whether expenditures made by the World Missions Inner City Extension Center (“World Missions”) out of grant funds awarded to it by ANC 5C in November 2009, were consistent with the project description giving rise to the grant, and with the law governing use of ANC funds. You provided a copy of the World Missions grant application as an attachment.

As you note in your email, the grant at issue totaled \$15,000, which World Missions proposed to use for implementation of “a six-month community book club that includes a Skill Building Mentoring program that is designed to encourage children, youth and adults to read more while empowering them with an arsenal of skills to be productive citizens in schools and the community.” World Missions itemized their intended use of the grant funds somewhat inartfully as follows: “\$10,000 will pay funds needed to hire part-time consultants to teach Computer, GED, life and employment skills, Jr. Interns leaders, book clubs and other mentoring activities” (hereinafter “Skill Building Mentoring Program”), while “\$5,000 will help pay for the toys that we would like to give away at the December 19th Kick off celebration for the Skill Builders Mentoring program” (hereinafter “Kick off”).

Your email indicates that invoices and receipts subsequently submitted by World Missions as an accounting of its use of the grant funds, indicate spending on matters that are inconsistent with the purpose of the grant and the budget proposed by World Missions. These expenditures, such as payments for computer trouble shooting and website hosting, total more than \$5,000.

As you provided a helpful spreadsheet breaking all the expenditures down into six categories, I will evaluate each bloc separately for its consistency with the grant award and the ANC law.¹

Category A – Consultant and Mentoring Activities (Total: \$3,843.75)

This category includes various amounts provided to individuals for their work in the Skill Building Mentoring Program, as well as to an organization providing an easel and art supplies. As you indicated, the purpose for these expenditures seems to clearly be consistent with the purpose of the grant, most notably the hiring of part-time consultants.

I do share the concern you raised that \$2,500 in this category went to the Executive Director of World Missions (JoAnn Perkins) for her role as “Project Director for ANC-funded Skill Mentoring Program.” The grant by ANC 5C was ostensibly to be used to “hire” consultants, presumably from outside the staff of the World Missions organization. However, it is possible that, as Project Director, Ms. Perkins had particular skill and/or experience in mentoring youth that she provided in orchestrating or actually participating in the program services, functions that would not be part of her role as an officer of the organization. Without more information, it is not possible to determine if this expenditure was improper.

I note that, while grants to individuals from the ANC are prohibited under section 16(m) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective December 28, 1990 (D.C. Law § 8-203; D.C. Official Code § 1-309.13(m) (2010 Supp.)) (“ANC Act”), we have acknowledged that in order to carry out the public purpose of a grant, individuals or organizations may receive private benefits from ANC funds. (Letter to Douglas E. Smith, May 19, 2011.)² Mentoring youth, and otherwise providing

¹ As you stated, you found the items in categories A, B, and C on your spreadsheet to be consistent with the grant, as opposed to those in categories D, E, and F. In addition, you have requested that for those items that are inconsistent with the grant, we advise as to whether the ANC could have legally approved them had the items been listed in the grant application and budget.

² Section 16(m) of the ANC Act states, in part, that:

(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 organization must not be duplicative of any that are already performed by the District government;

(2) An applicant for a grant must submit an application in writing to the Commission.

The application shall contain:

- (A) A description of the proposed project for which the grant is requested;
- (B) A statement of expected benefits; and
- (C) The total cost of the proposed project, including other sources of funding, if any.

D.C. Official Code § 1-309.13(m) (2010 Supp.).

literacy, computer, and GED skill-building to community members, would clearly be a public purpose and a permissible use of ANC funds.

Category B – Toys and Activities at Give-Away Event (Total: \$5,675.19)

Under this category, your spreadsheet states that \$4,795.82 was spent on “various toys, games, mp3 players, [and] sports items.” After we discussed this entry, you provided a supplemental email attaching a letter from World Missions to Commissioner Ransom of ANC 5C elaborating on the purchase of these items. The letter explained that parents, teachers and students in the community suggested that using toys as educational teaching and learning tools would benefit children in skill areas that were challenging, and various toys were identified by these stakeholders that were popular and could be appropriate in this regard. This endeavor was not linked, however, to the Skill Building Mentoring Program.

The letter suggests that World Missions used the above ideas in making purchases with the grant funds for the toy give-away. The letter did not itemize the purchases, but gave several examples, citing Nintendo Wii consoles, bicycles, skateboards, basketballs, dolls, play dough, and board games, such as “Disney Learn Puzzle, Scrapple [sic], Candy land, and Chutes and Ladders.” The letter suggests that other electronic items were purchased for youths at the New Beginnings facility which were used as “time out behavior modification devices” and to “motivate residents to complete assignments.” Other unidentified toys were described as having been used to teach math and reading concepts, as well as for stimulating sensory perception for special needs children.

These expenditures, though clearly intended to improve the lives of the population World Missions serves, present legal challenges.³ First, this Office, in evaluating ANC spending, has continuously adhered to the prohibition in federal appropriations law against use of government funds for entertainment unless specifically authorized by statute, as ANC funds are in fact appropriated by Congress. (Letter to Westy McDermid, May 26, 1994); (Letter to Philip C. Spalding, July 13, 2005). In one of our more extended comments on this issue, we noted that the United States General Accounting Office (now known as the Government Accountability Office) (“GAO”) has suggested that the term “entertainment” for purposes of the prohibition is very broad, including sports, recreation, performances, or other sources of amusement. (Letter to Philip C. Spalding, July 13, 2005) (citing GAO, Principles of Federal Appropriations Law, 4-101-102 (3rd Ed. January 2004)).⁴ The restriction on government funding of entertainment does not mean such activity can have no value. In explaining the prohibition, the GAO states:

³ Because the grant application by World Missions expressly indicated that it would spend \$5,000 for these purchases, the expenditures are consistent with the grant.

⁴ The act of entertaining has been defined as “pleasingly diverting.” Webster’s II, New Riverside University Dictionary (1984); Principles of Federal Appropriations Law, *supra* at 4-101.

The theory is not so much that these items can never be [government]-related, because sometimes they clearly are. Rather, what the [GAO] decisions are really saying is that, because public confidence in the integrity of those who spend the taxpayers' money is essential, certain items which may appear frivolous or wasteful – however legitimate they may in fact be in a specific context – should, if they are to be charged to public funds, be authorized specifically by the Congress.

Id. at 100.

However, while we have found that Congress did not specifically authorize ANC spending on entertainment, Congress did empower ANCs to “conduct programs for the welfare of the people in a neighborhood commission area” using public funds.⁵ Thus, we have declined a literal interpretation of the entertainment prohibition so as to allow for ANC funding of recreational or other activities that foster community participation and which could be said to enrich the public, rather than those events that invite only passive observance. (Letter to Philip C. Spalding, *supra*.) Accordingly, our Office approved a grant to the A.P. Shaw United Methodist Church Recreation Department to purchase sporting equipment pursuant to its sponsorship of a local youth football team. (Letter to Otis H. Troupe, December 28, 1992); *see also* (Letter to Alice W. Gilmore, October 20, 1994 (approving grant to athletic association for purchase of basketballs, footballs and uniforms). We have also approved of funds being used by an ANC to implement a “Gospel Skate Night” (Letter to Sandra “S.S.” Seegars, June 25, 2004), as well as a grant to the Blackout Arts Collective and Sankofa Books & Video for purchase of sound equipment to be used for a weekly “Arts Under the Stars” program that featured an “open mike” for community members to “sing, rap, read poetry, and discuss issues relevant to themselves or the community.” (Letter to Phillip C. Spalding, *supra*.)

In contrast, we have disapproved of a grant from ANC 6C to allow 400 children from a low-income housing complex in the District to visit the Six Flags of America theme park despite the outing’s family-centered purpose, given that the park was solely for amusement. (Letter to Deborah Nichols, August 9, 2006.) Moreover, although we approved of the grant for a “Gospel Skate Night,” we cautioned against use of ANC funds for a generator that would power equipment to pipe in music for the event. *See also* (Letter to Alice Gilmore, *supra*) (disapproving grant for presentation of jazz concerts for youth).

In addition, while approving of grants for sporting equipment, we emphasized that the items must be returned to the grantee organization rather than given away. This requirement, separate from the issue of entertainment spending, was to ensure that the equipment would have several users over time so as to constitute a benefit to a significant enough number of participants in the community. Only if a significant number of persons benefit from a grant may it be considered as having a public purpose, as required

⁵ *See* D.C. Official Code § 1-207.38 (e) (2006 Repl.).

in the ANC Act. (Letter to Sandra Seegars, February 11, 2011); (Letter to Stephen A. Whatley, May 6, 2011.)⁶

Under these principles, the gifts provided by World Mission at the “Kick off” celebration for the program, as identified in their letter, could not be funded by the ANC grant. First, Wii consoles and other electronic games are primarily for amusement or diversion, absent some very specialized purpose for their use, even if there may be ancillary benefits that can promote positive development in youth. Mp3 players are similar, and are equivalent to the concerts or music that we previously indicated could not be funded by ANC grants.

Second, while we clearly have approved ANC grants to purchase sporting or recreational equipment of the kind referenced in the letter, this was only for use in organized community activity, not as gifts for individual *ad hoc* use.

Finally, all the items mentioned in the letter were given away rather than provided temporarily to ensure their use would be repeated, or that they were in fact used. Thus, while we are receptive to the idea that certain games or toys may be considered as having predominantly instructional or therapeutic value whose use by children could be facilitated by ANC funds, there is insufficient information as to whether enough recipients benefitted to ensure that limited ANC resources are being used for public purposes. We are constrained to find the toy give-away as an improper use of ANC funds.⁷

The other remaining items in this category appear directed at supporting the “Kick off” celebration, which itself appears to be promotional for the program to attract participants. I agree these expenditures are consistent with the grant and only enhance the public purpose of the Skill Building Mentoring program.

Category C – Office Supplies (\$443.33)

The items funded in this category include an automatic numbering device, toner for a printer or copier, and other unidentified supplies. If these items were purchased solely to support the implementation of the program, I believe they would be implicitly included in the anticipated budget. Thus, they would be consistent with the grant and would be

⁶ It is important also to note that by simply giving away items, there is also no way to track whether any items that may be capable of both entertainment and non-entertainment uses are restricted to the permitted functions, or even used at all. See (Letter to Deborah K. Nichols, August 15, 2000) (questioning grant to LeDroit Senior Council for VCR purchase in light of its potential use for entertainment).

⁷ Please note that despite our conversation, we did not find the letter to be indicating that the “toys” purchased for the “Kick-off” were actually instructional materials to be used in conjunction with the Skill Building Mentoring Program. At most, the letter states rather ambiguously that “many of the games listed on our Toys R [Us] List were hand picked by our team of parents, teachers and mentors as being the best manipulative [sic] for teaching math and reading concepts that were challenging to kids.” As stated above, the letter, which described many activities of World Missions, did not link these or any of the above mentioned items as specifically a part of the Skill Building Mentoring program, let alone identify all the items that were purchased.

supporting the public purpose furthered by the program. If these items instead were only for support of World Mission's office, they not only would be inconsistent with the grant, but would be in violation of the ANC Act as not having been approved by the Commission in a public meeting, and not otherwise for a public purpose benefitting the community. I am unable to determine from the bare description of these items which of these scenarios is the case.⁸

Category D – Operational Costs (\$3,569.27)

The items in this list and their corresponding costs are: computer trouble shooting (\$300.00); website hosting (\$300.00); ceiling fan, exit emergency LED fixture, vacuum cleaner (\$366.94); February rent (\$500.00), and software installation/service for computer system (\$2,102.33).

As it respects the computer troubleshooting, ceiling fan, emergency exit sign, vacuum cleaner and February rent, we agree these items are not consistent with the grant even taking a liberal view that some supportive costs are implied. If World Missions expected to use grant funds to rent out space to house the program, this is a discrete and costly item that would have had to be included in their description and anticipated budget. The same applies to any purchase of computers, whereby troubleshooting or servicing of the items might be implied. In addition, wherever the program was to take place, the ANC could rightly expect it would already be compliant with health and fire codes, and that World Missions would use its own cleaning supplies, unless otherwise stated.

The website expense and software installation are less clear. Certainly, the grant did not entail World Missions using the funds to upgrade its own computer system with new software, or to maintain a presence on the Internet. However, as with the Kick off event, some promotion of the program would be expected, and the small amount of funds used for the website suggest it may have been devoted to the program. In addition, because the program included education to participants in computers, GED, and job related skills, it would not be surprising that computer software would be used in that effort. If the expenditure is really for the purchase of instructional software, we would be inclined to find it permissible to the extent it is directed solely at the skill building described in the grant application. However, installation of such program software is typically user-friendly. It is unclear why consultants would be needed to the level implied by the total funds used for that expenditure, although the total amount does purport to include computer servicing. While we are skeptical as to the cost for installation of software, there is insufficient information to be definitive as to this expenditure's consistency with the grant, as with the website hosting.

To the extent the above items are inconsistent with the grant as proposed, we cannot say in the abstract whether such purchases would be improper if they were in fact made a part of the grant application. As stated above, ANC funds can only be granted for public purposes that benefit persons in the commission area, but it is also expected that to accomplish these goals, some benefit to private persons would occur. If rental of office

⁸ Please also see the discussion for Category D, *infra*.

space, or even the purchase of a vacuum cleaner to ensure sanitary conditions for the program, are explained by a grantee as reasonably necessary to make a proposed project happen that meets the requirements of the ANC Act, it would be within the discretion of the ANC on whether its resources should be used to fund them. If instead these items were only to benefit World Missions generally for any and all of their programs, then using ANC funds for them violates the ANC Act's mandate that such funds be directed at specifically proposed projects that have the requisite public purpose.

Category E – Preparation of Grant Proposals (\$1,537.50)

We agree that the expenditures in this category, which appear to have been made solely for assistance in World Missions preparing grant proposals for other programs, are clearly inconsistent with the grant. Moreover, even if World Missions had stated that it intended to use grant funds from ANC 5C to, in turn, help it with obtaining funds from other sources for other broadly defined programs, it would violate the ANC Act. As stated above, ANC grants are to be given for specifically proposed projects which have a public purpose. Assistance with a grantee's own fundraising only benefits the grantee. While those funds may then be used for worthwhile projects, such projects would not have gone through the public application process with the ANC at a specific enough level for the ANC to determine if it should be assisted by the commission.

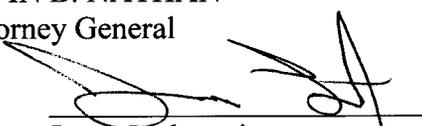
Category F – No Invoice or Description of Service (\$160.00)

This category contains two canceled checks with no indication why the payments were made. One of the checks went to Ms. Perkins. Without more information, we cannot evaluate these expenditures.

I hope this is helpful to you.

Sincerely,

IRVIN B. NATHAN
Attorney General

By: 

Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-11-383)

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