

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:

LCD:L&O:KLC:TFB:mbb
(86-009)

February 24, 1986

OPINION OF THE CORPORATION COUNSEL**SUBJECT:** Mayor's Order on How Employees
Must Handle District Funds is not
Rulemaking.

Mr. Alphonse G. Hill
Deputy Mayor for Financial Management
District Building
Room 423
Washington, D.C. 20004

Dear Mr. Hill:

This is in response to your request that this Office review a memorandum, dated January 8, 1986, to you from the Secretary of the District of Columbia. That memorandum states that the Office of Documents refuses to publish Mayor's Order 85-127, on the ground that the order attempts "to do what must be done by rulemaking." Therefore, the memorandum concludes, "Mayor's Order 85-127...must be rescinded." Mayor's Order 85-127 establishes procedures which all officers and employees of the District must follow in soliciting and accepting monetary donations to the District for governmental purposes. I have reexamined Mayor's Order 85-127 (which was drafted by you and the Corporation Counsel) in light of the Secretary's memorandum, and I am of the opinion that: (1) Mayor's Order 85-127 is not subject to the rulemaking requirements of the D.C. Administrative Procedure Act; (2) Mayor's Order 85-127 is in all other respects legally valid; and (3) there is no legal requirement that Mayor's Order 85-127 be rescinded.

Section 6 of the District of Columbia Administrative Procedure Act (DCAPA) D.C. Code § 1-1506 (1981) establishes requirements for "the adoption of any rule." Section 3(6) of the DCAPA D.C. Code § 1-1502(6), defines a "rule" as "the whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, interpret,

or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency."

The District of Columbia Court of Appeals has stated that "The DCAPA envisioned rulemaking as a quasi-legislative process...." District of Columbia v. North Washington Neighbors, Inc., 367 A.2d 143, 147, cert. denied 434 U.S. 823 (1976). As the chief executive officer of the District, the Mayor has the Charter duty "to supervise and be responsible for all financial transactions to insure adequate control of revenues and resources." Sec. 448(a)(1) of the Self-Government Act, D.C. Code § 47-310(1). Simple directives of the Mayor's to his subordinates in the discharge of this duty are not quasi-legislative: they do not apply directly to the public or any segment of the public; they affect only subordinates of the Mayor; they neither bestow nor deny rights, benefits, services, or licenses on the public; they do not impose any sanctions. The D.C. Office of Documents Rulemaking Handbook § 1.5 (1983) is consistent with this analysis.

It states:

DECIDING WHETHER A STATEMENT IS A RULE

....

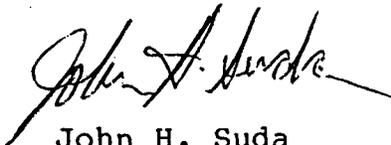
If there is...some doubt whether a particular "statement" (or any part or parts of a statement) is a rule, ask these questions:

- Does it affect the general public?
- Does it affect a particular group or segment of the public?
- Does it affect employees of the District government outside your own agency?
- Does the public or a part of the public have to follow it in order to receive a right, benefit, service, payment, or license?
- Will a person be subject to a penalty, fine, loss of service or benefit, or some other sanction or disadvantage if it is not followed or if it is violated?

The Corporation Counsel has repeatedly opined that requirements that are wholly internal to the District government are not subject to rulemaking. See, e.g., 3 Op. C.C. 181 (June 29, 1978); and 3 Op. C.C. 95 (May 26, 1978), citing unpublished opinion dated November 24, 1970. Accord: Wolston v. District of Columbia, 291 A.2d 85 (D.C. 1972). It should not be necessary to state that the opinions of the Corporation Counsel are guiding statements of law to be followed by all District officers and employees in the performance of their official duties. See Reorg. Ord. No. 50 (June 26, 1953), D.C. Code, Title I App. (1973).

Mayor's Order 85-127 is within the Mayor's authority (cited above), and is valid in all other respects. Consequently, it need not be rescinded.

Sincerely,



John H. Suda
Acting Corporation Counsel, D.C.

cc: Avis Hawkins
Clifton Smith