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Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:

L&O:LNG:pmcK
(87-203)(LCD-272)

September 16, 1987

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Whether more than one Advisory Neighborhood Commission can be "affected" for purposes of the notice requirement of D.C. Code § 1-261(b) (1987).

Lutz Alexander Prager
Assistant Deputy Corporation Counsel
Appellate Division
450 5th Street, N.W.
Washington, D.C. 20001

Dear Mr. Prager:

This is in reply to your August 12, 1987 memorandum requesting an opinion regarding whether more than one Advisory Neighborhood Commission (ANC) can be "affected" as that term is used in § 13(b) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as added in § 2 of the Duties and Responsibilities of Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58, D.C. Code § 1-261(b) (1987).^{1/} In a related question you ask: If more than one ANC may be affected, "how can an ANC, other than the one in which the applicant [for governmental action] or property is located, demonstrate it is ... [also] 'affected?'"

^{1/} Section 13(b) provides:

Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

To your memorandum you have attached a memorandum, dated August 25, 1983, from Deputy Corporation Counsel Inez Smith Reid to Zoning Commission Executive Director Steven E. Sher. In response to a question from Mr. Sher regarding where 30-day notices should be sent after changes had been made in ANC boundaries, Ms. Reid responded:

In answer to the second question, notices being sent out now should go to the new ANC. However, D.C. Code 1981, § 1-261(b) requires 30-day notice by mail "to each commission affected" by a District government action or proposed action (emphasis added). Thus where the property involved in a variance or special exception application or a zoning change application abuts or is close to an ANC boundary line arguably two ANC[s] would be "affected". In such a situation, it appears that notice should be sent to both.

The possibility that a proposed District government action may affect more than one ANC was recognized in 1977. Responding to a question from Keith A. Vance, then an ANC Commissioner for ANC 6-A, regarding whether a District government action subject to the 30-day notice requirement may have city-wide impact, Principal Deputy Corporation Counsel Louis P. Robbins, in a letter dated May 26, 1977 (2 Op.C.C. D.C. 48-49 (1977)), stated:

Proposed District Government actions which have a city-wide impact do fall within the scope of section 13 of D.C. Law [1-21 as amended by D.C. Law] 1-58. Such proposed actions affect all Advisory Neighborhood Commissions and therefore, after careful study by the joint Executive-Council Task Force on Advisory Neighborhood Commissions, it was determined that the most effective means of notifying the Commissions of such proposed actions was through a notice in the D.C. Register which, pursuant to section 13(b) of D.C. Law [1-21 as amended by D.C. Law] 1-58, must be sent to each Commission without cost.

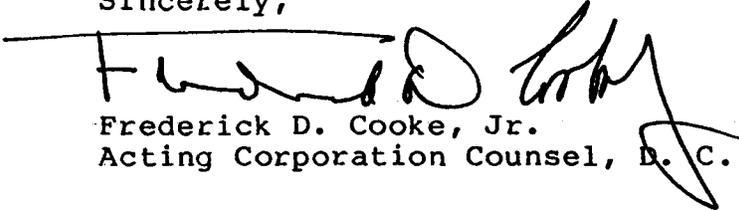
The use of the D.C. Register for notifying Advisory Neighborhood Commissions of proposed government action is consistent with section 13(b) of D.C. Law [1-21 as amended by D.C. Law] 1-58 and is especially appropriate when all Commissions must be notified.^{2/}

^{2/} Later that year in Kopff v. District of Columbia Alcoholic
(footnote continued)

Thus, if an agency, such as the Board of Zoning Adjustment or the Zoning Commission, uses the D.C. Register as its vehicle for giving notice, it is relieved of the burden of determining whether its proposed action, e.g., the granting of a variance, a special exception, or a planned unit development application, would affect more than one ANC.

As regards your second question, the statutory scheme contemplates that each affected ANC will have an opportunity to submit, on a timely basis, "written recommendations" on the proposed agency action, which recommendations shall be given "great weight" by the agency, and the issues raised by those recommendations "discussed in the written rationale for the governmental decision taken." D.C. Code § 1-261(d) (1987). See generally Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1383-1385 (D.C. 1977). Thus, any ANC that can demonstrate that it would be "affected" by a proposed agency action has standing to submit timely, written recommendations to which the statutory requirements of "great weight" and discussion in the agency's written decision would apply. To establish that it is an "affected" ANC, the ANC should come forward with a showing that the proposed agency action would have a substantial and predictable effect on persons residing or doing business within the boundaries of that ANC.

Sincerely,


Frederick D. Cooke, Jr.
Acting Corporation Counsel, D. C.

(footnote continued from previous page)
Beverage Control Board, 381 A.2d 1372, 1381-1382 (D.C. 1977), the D.C. Court of Appeals held that the ABC Board had erred in failing to give notice of an application for a Class C liquor license, at 3412 Connecticut Ave., N.W., to two ANCs, thus implicitly recognizing that the granting of a liquor license may affect more than one ANC.