

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001

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IN REPLY REFER TO:

August 15, 2000

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

Re: Grant by ANC IB

Dear Ms. Nichols:

This responds to your memorandum of August 2, 2000 to Annette Eiseth, Assistant Corporation Counsel, wherein you request advice as to the propriety of Advisory Neighborhood Commission (ANe) IB issuing a grant as described in your memorandum and attachments.

The grant application was submitted by the LeDroit Senior Resident Council (Council). Ms. Peggy Brooks-Ukpabi, of your office, reports that the LeDroit Senior Resident Council is a non-governmental, volunteer organization composed of residents of the LeDroit Senior Housing complex. The Council acts as a liaison between the residents and the D.C. Housing Authority, since the LeDroit Senior Housing complex is public housing. Since the Council is not a governmental body, it does not receive any appropriations. Their budget comes from operation of a laundry concession in the building. The grant application seeks funds for purchasing two items:¹ 1) a laser copier, with accompanying cartridge, warranty, and paper supply; and 2) a VCR with remote.

You seek advice with regard to the following:

1. Whether this grant complies with the public purpose requirement of ANC law, *i.e.*, whether the grant would provide a public benefit because the funds would be used for items located within a senior citizens apartment complex.
2. Whether the grant would violate any Corporation Counsel opinions.

¹ The application originally sought funds for three items, however, the third item (stacking chairs) is crossed out on the grant application, and the total grant requested recalculated by hand. Based on discussions with your office, I assume that the Council no longer seeks grant funds for the purchase of chairs.

The law governing grants by ANCs is found in section 16 of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135, D.C. Code § 1-264, and provides as follows:

(1)(1)...Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section.

* * *

(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 public benefits; and
- (C) The total cost of the proposed project, including other sources of funding, if any.

(3) Within 60 days following the issuance of a grant, the grant recipient shall forward to the Commission a statement as to the use of the funds consistent with the grant application, complete with receipts which support the expenditures.

After reviewing the grant application provided and the law, I conclude that the purchase of a copier meets the public purpose/public benefit requirement of the law. Ms. Brooks reports that the copier will not be restricted in use to the Council, but that it will be available for use by all residents at no cost, although there will be a limit on the number of pages that can be copied. The grant application also states that because the building is often used as a meeting place for the surrounding community, that "the proposed copier and related supplies...will definitely benefit the general ANC **IB** area". I take this to mean that persons who use the facility for meetings will also have access to the copier. This broad access to the copier by residents of ANC **IB** fulfills the public purpose requirement.

Regarding the grant request for a VCR, we have previously advised that an ANC may not expend funds or provide grant funds for purposes that may be considered entertainment under applicable appropriations law. See May 26, 1994 letter from Thomas Bastow, Deputy Corporation Counsel, Legal Counsel Division, to Westy McDermid, Chairman, ANC 2E (enclosed). Therefore, an expenditure for entertainment would not be considered a public purpose. Since a VCR is capable of both entertainment and non-entertainment purposes, the grant is suspect. The grant application states that the VCR would be available to persons conducting meetings, as well as for other programs such as showing exercise programs to area seniors. It is not clear what types of meetings are held in the building or if the use of the VCR by such groups would constitute entertainment. If the VCR is not used for entertainment purposes

and is made available to residents and other residents of ANC 1B, the grant could meet the public purpose test as long as the grant is conditioned on the non-entertainment use of the VCR. In this case, however, more information is needed about the use of the VCR before a conclusion about the public purpose can be reached. I would advise the ANC to obtain a more detailed statement from the grantee as to the specific use of the VCR by various groups, as well as information about other access to the VCR, prior to the consideration of this grant. The ANC should also be aware that any use of the VCR for entertainment purposes, in violation of the required grant condition, would jeopardize the ANC's future allotment. In addition, the ANC should consider that, as a practical matter, the ANC cannot police the continuing use of the VCR, and that what the Council (or a group holding a meeting) considers to be "entertainment" could differ from the requirements of law. After receiving more information, the ANC will be in a better position to make an informed decision as to whether this grant is for a public purpose.

If you have any further questions with regard to this letter, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division at 724-5537 or me at 724-5493.

Sincerely,



Darryl G. Gorman
Senior Deputy Corporation Counsel
Legal Counsel Division

DOG/abe
(AL-00-431)

Enclosure

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

RAS:LNG:lng
(Mise 94-19)
(RL-94-148)

May 26, 1994

westy McDermid
Chairman
Advisory Neighborhood Commission 2-E
3265 S street, N.W.
Washington, D.C. 20007

Re: Mayan Advisory Neighborhood Commission make a grant to a pUBLIC school or to a neighborhood citizens association for its annual picnic?

Dear Chairman McDermid:

This is in reply to your May 11, 1994 letter requesting the advice of this Office as to whether Advisory Neighborhood Commission (ANC) 2-E may make a grant directly to a pUBLIC school and may make a grant to a neighborhood citizens association to help that association pay for its annual picnic.

Hyde Elementary School in Georgetown has applied to ANC 2-E for a grant which would be used to help the school improve its library by purchasing books and electronic encyclopedia software for its library computer. As you have noted in your letter, in 1986 this Office advised ANC 6-B that it could not make a grant directly to a pUBLIC school "in order to support activities such as computer literacy programs, musical instruction or cultural field trips," but could fund such activities "by a grant to a PTA, if they do not duplicate existing pUBLIC school programs." See letter, dated January 10, 1986, from this Office to Mr. Caesar L. Marshall. The reason given in our 1986 advice for the prohibition on direct grants to pUBLIC schools is that "Congress appropriates separate amounts for expenditure by ANCs and by the public schools," and that certain statutory procedures must be followed before appropriated funds may be shifted from one government entity to another. See D.C. Code §§ 47-361 to 47-363 (1990) regarding reprogramming of appropriated funds. Since the statutory law has not changed in this regard, the advice given in 1986 to ANC 6-B is equally applicable here. Namely, ANC 2-E may not make a grant directly to Hyde Elementary School, but may make a grant to Hyde's parent-teacher association, or its equivalent, for the purposes

recited above. These purposes are "public purposes" within the meaning of that phrase as it appears in § 738(c) (2) of the Self-Government Act, D.C. Code § 1-251(C) (2) (1992), and in § 16(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(1) (1992).

As to your second question, the Burleith citizens Association has applied to ANC 2-E for a grant to help it pay for the expenses associated with its "Neighborhood Picnic and Festival" which is scheduled for June 11, 1994. The grant funds would be used by the Burleith Citizens Association to pay for food and entertainment. Since a grant from ANC 2-E would come from funds appropriated by Congress, the question of whether an ANC may make a grant for these purposes is governed by the standards set forth in the General Accounting Office's Principles of Federal Appropriations Law, 2nd ed., July 1991. In Chapter 4, Part C, section 5(d) (at page 4-100), the following is stated in this regard:

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.

With one very limited exception, there is no statute that specifically authorizes the expenditure of ANC funds for food or entertainment. The one limited statutory exception, which relates only to food, is set forth in section 16(1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(1) (1992). Under section 16(1), an ANC may use its funds to purchase "nominal refreshments" for consumption "at Commission meetings." On this subject, see our March 11, 1992 letter of advice (copy enclosed) to ANC 3-C.

In sum, food and entertainment are not permissible purposes for which an ANC may make a grant. Therefore, the Burleith citizens Association's request for a grant for its picnic and festival must be denied.

Sincerely,



Thomas F. Bastow
Deputy corporation Counsel
Legal Counsel Division

Enclosure

cc: The Honorable Harold Brazil
Chairman
Committee on Government operations
Council of the District of Columbia

Regena Thomas
Director
Office of Constituent Services

Russell A. Smith
D.C. Auditor