

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

December 9, 2016

Chairperson James Turner
Advisory Neighborhood Commission 1B
1236 Girard Street, NW
Washington, DC 20009

Re: Questions Concerning Notice, Benefits, and Office Space

Chairperson Turner:

This letter responds to several questions that your Advisory Neighborhood Commission (“ANC”) asked us about notice, benefits for ANC Commissioners, and office space.

(1) Would electronic notice, such as email to an official ANC account, meet the 30-day mail notice requirement of the ANC statute (D.C. Official Code § 1-309.10)?

Generally no. To satisfy the 30-day notice requirement in the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),¹ an agency ordinarily must send notice by first-class mail.² However, the ANC Act allows electronic notice (specifically, by email) in two circumstances:

(1) “notice of applications, public hearings, proposed actions, and actions on all zoning cases” from the Office of Zoning;³ and

(2) bimonthly notice of “applications for construction, demolition, raze, and public space permits” from the Department of Consumer and Regulatory Affairs.⁴

We note, however, that email notice to the ANC itself is only permissible if the ANC has agreed in writing to receive electronic notice.⁵ We also note that an electronic system that does not

¹ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2012 Repl. and 2015 Supp.)).

² D.C. Official Code § 1-309.10(b) (2012 Repl.).

³ *Id.* § 1-309.10(c)(4).

⁴ *Id.* § 1-309.10(c)(3).

⁵ *Id.* § 1-309.10(c)(3) and (4).

actually send emails to any ANC account would not satisfy the Act's notice requirements because email notice is the only type of electronic notice the Act permits.

(2) Is there a way to simplify the differing time periods for notifying ANCs, and if so, how?

The only way to simplify the different amounts of advance notice required by statute for different types of agency decisions would be for the Council to amend the existing notice requirements directly by amending the ANC Act.⁶

(3) Is there a way to simplify agency notification to ANCs so that an agency with electronic systems can forego postal notification and save taxpayer dollars?

Not under current law, because electronic mail would not satisfy most of the ANC Act's notice requirements. The Council is, however, considering legislation—the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016⁷—that would significantly expand agencies' ability to offer electronic notice to ANCs.⁸

(4) Are Commissioners considered uncompensated employees of the District government?

No. Under the District's merit personnel statute,⁹ Commissioners are not considered employees because they are uncompensated.¹⁰

(5) May Commissioners participate in District employee programs?

Commissioners may not participate in District government life and health insurance programs because those programs are only available to employees,¹¹ although employees of the Commission are eligible for these programs.¹² If you have questions about any other benefit

⁶ See *id.* § 1-309.10(b) (30 days for most decisions) and (c)(3) (DCRA must provide permit lists at least twice a month).

⁷ See Legis. Info. Mgmt. Sys., "B21-0697 - Advisory Neighborhood Commissions Omnibus Amendment Act of 2016," <http://lims.dccouncil.us/Legislation/B21-0697?FromSearchResults=true> (last visited Oct. 27, 2016).

⁸ See, e.g., Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (Bill 21-697), § 2(e)(3) (calling for electronic notice "unless the party to be noticed requests in writing [to] receive first-class mail notifications").

⁹ Comprehensive Merit Personnel Act of 1978 ("CMPA"), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.* (2012 Repl. and 2016 Supp.)).

¹⁰ See CMPA § 301(7) (D.C. Official Code § 1-603.01(7) (2012 Repl. and 2016 Supp.)) ("The term "employee" means, except when specifically modified in this act, an individual who performs a function of the District government and who *receives compensation* for the performance of such services") (emphasis added). No provision of the CMPA designates ANC Commissioners as employees.

¹¹ See, e.g., CMPA § 2102 (D.C. Official Code § 1-621.02 (2012 Repl.)) (health benefits are available only to employees); CMPA § 2203 (D.C. Official Code § 1-622.03 (life insurance benefits are available only to employees)).

¹² D.C. Official Code § 1-309.13(o) (2012 Repl.) ("An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of subchapters XXI, XXII, and XXIII of [the CMPA]").

programs that Commissioners or Commission employees may be eligible for, you should contact the Benefits and Retirement Administration, in the Department of Human Resources.¹³

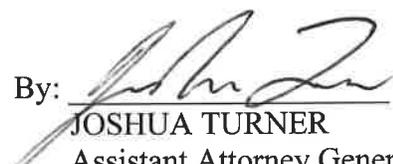
(6) Can the Department of General Services (“DGS”) charge an ANC for office space?

Yes, but only for certain expenses related to that space. When the Mayor supplies an ANC with office space, the ANC must pay for “[f]urnishings, equipment, telephone services, and supplies.”¹⁴ In addition, the “written lease between the Mayor or District agency and the [ANC]” may require the ANC to pay certain “operating costs, such as utilities, janitorial services, and security.”¹⁵ Nothing in the ANC Act authorizes DGS to impose any additional charges.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
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By: 
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(AL-16-596)

¹³ See Dep’t of Human Resources, “Employee Benefits,” <http://dchr.dc.gov/page/employee-benefits> (last visited Oct. 6, 2016) (includes contact information for the Benefits and Retirement Administration).

¹⁴ D.C. Official Code § 1-309.13(q) (2012 Repl.).

¹⁵ *Id.*