

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL**



Office of Government Operations
Legal Counsel Division

February 19, 2004

Alan Roth
Chairperson
Advisory Neighborhood Commission 1C
P.O. Box 21652, N.W.
Washington, D.C. 20009

Re: Use of ANC Funds to Hire Traffic Safety Engineer

Dear Chairperson Roth:

This responds to your letter of February 17, 2004 wherein you request advice regarding the legality of an Advisory Neighborhood Commission (ANC) 1C proposed expenditure of up to \$1000 to hire a traffic engineer to advise the ANC on bicycle safety design options for the intersection of 18th Street and Columbia Road, N.W.

You state that the subject intersection lies at the heart of your ANC area and is used on a regular basis by thousands of ANC residents and businesses each day. You further state that for the last eleven (11) months ANC 1C has been advocating (along with others) to the District Department of Transportation (DOT) a proposed redesign of the intersection because of its purported danger to drivers, pedestrians and bicyclists, but that DOT has, to date, failed to present plans that address the ANC's safety concerns. Recently, the Washington Area Bicyclists Association applied to the ANC for a \$1000 grant to enable it to retain a traffic engineer to redesign the intersection. The ANC, however, decided that the community's interests would be better represented if it retained the engineer directly rather than through a particular advocacy group such as the bicyclists association.

You advise that you contacted this Office by telephone on February 2, 2004 to check on the legality of this proposed course, and were informed that the proposed expenditure would be improper. On February 4, 2004, the ANC nonetheless met and passed a resolution authorizing the expenditure, contingent upon "appropriate legal guidance from D.C. agencies." You attach a copy of the resolution to your submission. *See Resolution Authorizing Up To \$1000 For A Traffic/Pedestrian Study And Drawings Of The Intersection Of 18th Street And Columbia Road NW* (Resolution) (attached hereto). You now seek what would amount to reconsideration of our earlier informal opinion. After careful review of the facts and the law, we must abide by our previous advice that the requested expenditure would be improper under current ANC law.

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. Official Code § 1-1309.13 (2003 Supp.), and provides as follows:

(l)(1) A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, **for public purposes within the Commission area** or for the functioning of the Commission office . . . 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.**

Thus, the initial query is whether the proposed expenditure meets the “public purpose” element of the statute. As we have previously opined, a public purpose is one which benefits or potentially benefits a significant number of persons who either reside or work within the commission area. *See* Letter to Tom Coumaris, ANC 1B, March 12, 1997 (attached hereto). The Resolution you provide states the following:

WHEREAS, ANC 1C is in need of a professional, independent assessment of the pedestrian and bike design options for this intersection which will maximize safety enhancements, and

WHEREAS, ANC 1C would use such expert services to study the appropriate number of travel lanes through the intersection; providing bike lanes through the intersection to connect Calvert Street to Columbia Road; increasing the parking availability through the intersection; moving curb lines to decrease pedestrian crossing distances; removing the turn lane from westbound Columbia Road onto northbound 18th Street; and providing for WMATA bus traffic through the intersection.

Coupled with your statement that the intersection “is used on a regular basis by literally thousands of ANC area residents and businesses,” we conclude that the proposed expenditure would meet the public purpose element of the statute insofar as the expenditure would benefit a significant number of ANC residents.

The analysis, however, does not end with satisfaction of the public purpose test. There is also the issue of duplicative services, as set forth in D.C. Official Code § 1-1309.13(m)(1) (2003 Supp.). In other words, the contemplated service must not be

duplicative of any other service already performed by the District Government. In the instant case, it appears that the contemplated services of a traffic engineer to design and draw plans for the subject intersection would be duplicative of an existing service of the District. The DOT is expressly charged with the following duties (relevant to this issue):

The office of the DOT shall **plan**, program, operate, manage, control, and maintain systems, processes, and programs to meet transportation needs as follows:

- (1) Infrastructure Project Management Administration shall:
 - (A) Manage and implement transportation improvement **plans and projects**;
 - (B) Manage capital projects related to the **design and construction of streets, alleys, curbs, gutters, bicycle lanes, sidewalks, and medians**.

D.C. Official Code § 50-921.04 (2003 Supp.) Obviously, there would be some overlap with regard to the kinds of tasks with which an ANC traffic engineer would be charged. *See* Letter to Angela Christophe, ANC 4C, October 30, 2003 (duplication of services where ANC sought to expend funds to hire an urban planner would be improper) (attached hereto).

Notwithstanding, you state in your letter: “Despite repeated requests, and for reasons that remain unclear to us, DOT to date has failed to present plans that address our pedestrian and bicycle safety concerns.” Moreover, the first paragraph of the Resolution acknowledges that the DOT has “drafted plans to redesign the intersection . . . but has not responded to community concerns in a reasonable timeframe.” You imply that because DOT has not responded to the ANC, the ANC should be able to proceed on its own. Though we have in the past permitted a public purpose expenditure for a service provided by the city, it was under very narrow circumstances. *See* Letter to Deborah K. Nichols, D.C. Auditor, September 17, 1999 (attached hereto). There the ANC wished to expend funds for the care and maintenance of trees in an ANC area. We concluded that because the Department of Public Works had no funds in its budget to care for the subject trees, the services would not be duplicative. *Id.* You have provided us no information that would permit us to make a similar conclusion in this case. In fact, it appears that DOT has provided services with regard to the intersection, but that the ANC has grown either impatient with the DOT’s progress or simply does not agree with the DOT’s plans – neither of which is a basis to overcome the duplicative services provision.

Finally, you state that the provision upon which you are relying is not subject to the duplicative services limitation. You seek to distinguish a public expenditure made pursuant to D.C. Official Code § 1-309.13(l)(1) (2003 Supp.) - which you assert would not be subject to the duplicative services limitation -- and a grant made pursuant to subsection (m)(1) – which would be so subject. You state that the duplicative services provision appears only in the subsection dealing with grants and therefore does not apply to direct expenditures of the ANC, which is what has been proposed here. We respectfully disagree with your interpretation of the statute.

Although you correctly point out that the duplicative services provision appears only in the “grant” subsection of D.C. Official Code § 1-309.13(m)(1) (2003 Supp.), this does not necessarily mean that direct expenditures by the ANC are exempt from this requirement. A basic tenet of statutory construction is that even where the words of a statute are unambiguous, effect should not be given to the plain language interpretation if it is plainly at variance with the policy of the legislation as a whole. (Citations omitted.) Moreover, interpretations should be in accordance with legislative intent and common understandings to prevent absurdities. (Citations omitted.) The interpretation you suggest would, on its face, lead to an incongruous application of the statute. Under your interpretation, an ANC could circumvent the duplicative services provision for expenditures simply by making the expenditure direct rather than to an organization through a grant. We do not believe this to be the result the Council intended. By enacting the duplicative services provision at all, the Council clearly believed it to be important that city funds not be twice paid for the same service. It would make little sense to permit the ANC to do directly, that which it could not do through a grant.

Accordingly, we conclude that expending funds for the ANC to hire a traffic engineer to redesign a traffic intersection in the ANC area, while probably serving a public purpose, would be improper because such services are already provided by the DOT.

Sincerely,

ROBERT J. SPAGNOLETTI
Corporation Counsel

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DGG/dps

Attachments (4)

(AL-04-110)

cc: Hon. David Catania (with attachments)
Hon. Jim Graham (with attachments)