

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:
OLC:LNG:lng
(AL-97-207)

April 14, 1997

Dorothy Miller
Commissioner
Advisory Neighborhood Commission 2-A
2440 Virginia Avenue, N.W.
Washington, D.C. 20037

Re: May a current Advisory Neighborhood Commission approve and file with the D.C. Auditor quarterly financial reports for Fiscal Year 1996 that have not previously been filed with the Auditor?

Dear Commissioner Miller:

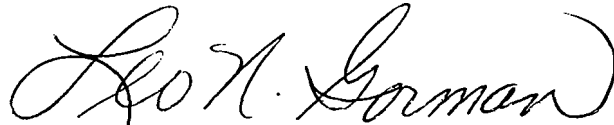
This is in reply to your April 5, 1997 letter in which you seek the advice of this Office concerning whether Advisory Neighborhood Commission (ANC) 2-A can now approve and submit to the D.C. Auditor quarterly financial reports for quarters that occurred during Fiscal Year 1996 (i.e., quarters beginning on October 1, 1995 and ending on September 30, 1996). You state that such quarterly financial reports have not previously been submitted to the D.C. Auditor by ANC 2-A.

Section 16(j) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(j) (1992), provides that the ANC's treasurer shall prepare the quarterly financial report and that such report "shall be presented to the Commission for its consideration at a public meeting of the Commission within 30 days of the end of the quarter." This section further provides that "[a] copy of the approved financial report, signed by the Chairman, the secretary, and the treasurer, shall be filed, along with a record of the vote adopting the report, with the District of Columbia Auditor within 7 days of approval." Thus, the statute contemplates that an ANC quarterly financial report will be submitted to the Auditor during the quarter that immediately follows the quarter to which the report relates. However, we have not interpreted the above-quoted time limits as mandatory. Even where, as here, the statute uses the word "shall" (normally a word of command), the general rule of statutory construction is that "[a] statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory unless the nature of

the act to be performed, or the phraseology of the statute, is such that the designation of time must be considered a limitation of the power of the officer." JBG Properties, Inc. v. District of Columbia Office of Human Rights, 364 A.2d 1183, 1185 (D.C. 1976), quoting 2A Sutherland, Statutory Construction § 57.19 at 443-444 (Rev. 3rd ed. 1973). Neither the nature of the acts in question nor the phraseology of the above-quoted provisions of section 16(j) is such that the time limits expressed therein must be considered to foreclose the filing with the Auditor of an ANC quarterly financial report later than the quarter following the quarter to which the report relates. To be sure, an ANC that fails to file with the Auditor its quarterly financial reports in a timely manner will suffer the temporary withholding of quarterly allotments otherwise due the ANC until such reports are filed with and reviewed by the Auditor, as section 16(j) requires. Nevertheless, the failure of an ANC to file its quarterly financial reports in a timely manner does not preclude it from ever filing such reports.

Accordingly, the answer to your question is that ANC 2-A may approve and submit to the Auditor quarterly financial reports covering quarters that occurred during previous fiscal years.

Sincerely,



Leo N. Gorman
Assistant Corporation Counsel
Office of Legal Counsel

cc: The Honorable Kathleen Patterson
Chairperson, committee on Government operations
Council of the District of Columbia

Willie Vazquez
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor