

# 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:

L&O:LNG:lng  
(93-446-L)

November 29, 1993

westy McDermid  
Chairman  
Advisory Neighborhood Commission 2-E  
3426 Reservoir Road, N.W.  
Washington, D.C. 20007

Re: Mayan Advisory Neighborhood Commission make  
a grant to pay the expenses of a private organi-  
zation involving a matter before the Board of  
Board of Zoning Adjustment?

Dear Commissioner McDermid:

By letter dated November 12, 1993, to Assistant Corporation Leo Gorman, you have asked whether it is legally permissible for Advisory Neighborhood Commission 2-E to expend public funds by making a grant to the citizens Coalition, a group of individuals and private citizens associations. The citizens Coalition has asked ANC 2-E for the grant and has stated that grant would be used to help pay an attorney for the preparation of a "zoning report" that the citizens Coalition used in connection with a matter before the Board of Zoning Adjustment. For the following reasons, I conclude that ANC 2-E may not legally make the requested grant.

At the outset, it is pertinent to set forth the relatively new statutory language governing the awarding of grants by ANCs. Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, as amended by the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203, D.C. Code § 1-264(m) 1992, provides as follows:

A grant approved by a Commission shall provide a benefit that is public in nature and that benefits persons who reside or work within the Commission area. A grant to an individual shall be prohibited as a non-public purpose expenditure. A Commission shall adopt guidelines for the consideration and award of grants that shall include a provision that requires the proposed grantee to present the request for a grant at a public

meeting of the Commission. A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting. The award of a grant by a Commission shall not be conditioned on support for a position taken by the Commission.

Thus, before an ANC may make a grant, it must have in place written guidelines governing the "consideration and award of grants." Further, "[g]rants may not be awarded unless the proposed recipient of the grant has presented a request at a public meeting of the Commission prior to consideration." Report of Committee on Government Operations on Bill 8-626, the Advisory Neighborhood Commission Act of 1990, October 25, 1990, p. 7.

By the enclosed letter, dated October 21, 1986, Acting Corporation Counsel James R. Murphy opined that an ANC could not pay the legal expenses of a private organization before the Board of Zoning Adjustment, stating:

Permitting ANCs to finance the legal representation costs incurred by private persons or organizations in connection with quasi-judicial proceedings before District Government administrative agencies is not substantially different from permitting ANCs to finance the legal representation costs incurred by private persons or organizations in court litigation. And to permit ANCs to finance legal costs in either situation is, in effect, to permit ANCs to assume "an enforcement responsibility - or authority" which "they do not have•••." Kopff [v. District of Columbia Alcoholic Beverage Control Board], supra, 381 A.2d at 1376•. The authority of an ANC is to offer advice, not to exert legal compulsion on agencies or officers of the District Government.

In sum, it is not proper for an ANC to make a grant to a private person or organization to defray legal expenses incurred by that person or organization in a proceeding before an agency of the District of Columbia Government.

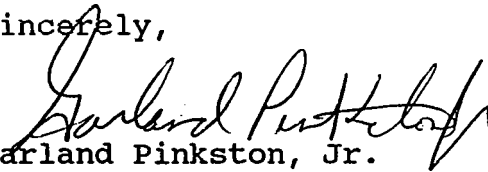
This Office reached similar conclusions in the enclosed April 19, 1977 letter from Corporation Counsel John R. Risher to ANC 3-A Chairman Donald H. Shannon, and the enclosed December 1, 1986 letter from Deputy Corporation Counsel Margaret L. Hines to ANC 5-A Chairman Paul M. Washington.

The fee charged for the preparation of the "zoning report" in question was an expense incurred by the citizens Coalition, a private organization, in connection with the citizens Coalition's participation in a quasi-judicial proceeding before the Board of Zoning Adjustment. Therefore, based on the rationale stated in the Corporation Counsel's October 21, 1986 letter, quoted supra, it

would be legally improper for ANC 2-E to use its public funds to defray that expense via a grant to the citizens Coalition.

In 1990, the Council created a limited exception to the general prohibition on ANCs' paying the expenses of judicial and quasi-judicial litigation as set forth in the Corporation Counsel opinions cited above. section 16(1) of the Advisory Neighborhood Commissions Act of 1975, as amended by the Advisory Neighborhood Commission Amendment Act of 1990, D.C. Code § 1-264(1) (1992), provides in pertinent part that ANC funds "may not be used for... legal expenses other than for Commission representation before an agency, board, or commission of the District government." Since the grant requested would be used by the citizens Coalition to pay legal expenses incurred in connection with the Coalition's appearance before the Board of Zoning Adjustment, § 16(1) also prohibits the grant.

Sincerely,



Garland Pinkston, Jr.  
Deputy Corporation Counsel  
Legal Counsel Division

Enclosures

cc: The Honorable Harold Brazil  
Chairman, Committee on Government operations

The Honorable Jack Evans  
Councilmember, Ward 2

Regena Thomas  
Director, Office of Constituent Services

Otis H. Troupe  
D.C. Auditor

Theodore J. Jacobs  
Commissioner, ANC 2-E