

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

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October 23, 2001

Peter Pulsifer
Chair
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

Re: Whether the Commission is permitted to reimburse a private individual for expenses incurred as part of a proceeding before the ABC Board in which the Commission also participated.

Dear Commissioner Pulsifer:

By letter dated August 26, 2001, to Assistant Corporation Counsel Annette Elseth, you have asked whether the Commission is permitted to reimburse a private individual for expenses the individual incurred as part of a proceeding before the ABC Board in which the Commission also participated.

The Commission has indicated that both ANC 2E and several neighbors had individually protested an ABC license renewal. One of the protestants obtained transcripts of ABC Board hearings and shared the transcripts with other protestants, including the ANC. The ANC and the other protestants collaborated at the hearing, but the ANC had not taken any official action to authorize the cost of the transcripts incurred by the protestant. Now the ANC would like to reimburse the individual for the cost of the transcripts. However, the ANC expressed concerns about such action in light of the opinion expressed by Garland Pinkston, then Corporation Counsel, to Westy McDermid, then Chair of ANC 2E, in a letter dated November 29, 1993. In this letter the Corporation Counsel had stated, that "[i]t 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". However, the Corporation Counsel's letter to the ANC also stated that there was a limited exception that allows for expenditure of ANC funds for the Commission's representations before an agency, board or commission for the District government.

In light of the Corporation Counsel's letter, the ANC seeks guidance as to whether the cost of the transcripts could be considered "legal expenses" and, if so, whether the participation of the Commission as part of the ABC license protest, which participation included collaborative use of

the transcripts, is sufficient to allow ANC reimbursement of these expenses. For the following reasons, we conclude that while the transcripts could be considered legal expenses, they do not appear to be legal expenses of the ANC. As such, ANC 2E may not legally reimburse the protestants for the cost of the transcripts, even if the ANC used the transcripts.

The first issue presented is whether the cost of obtaining transcripts can be considered a legal expense. In general attorneys fees and the related costs, such as transcripts, can be considered legal expenses. See, 20 Am. Jur. 2d § 46-77. Little information was provided regarding the actual need for the transcripts, the exact content of the transcripts, and the manner in which the transcripts were used by the protestants. However, assuming that the transcripts were relevant to, and necessary for the hearing, it would appear that the cost of the transcripts could be considered a valid legal expense.

The second issue presented is whether the ANC can properly reimburse these legal expenses which were paid by the other protestant for their use at the hearing. Section 3(d) of the Advisory Neighborhood Commissions Act of 1975, as amended by the Advisory Neighborhood Commissions Refonn Act of 2000, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-1309.13 sets forth the statutory restrictions governing the use of ANC funds. It is clear from the statute, that an ANC may not finance the legal representation costs of private persons or organizations in proceedings before District government administrative agencies. It is also clear from the statute that an ANC may pay for its own legal expenses for representation before an agency, board or commission. Indeed, D.C. Official Code § 1-309.13(1)(2) specifically states as follows:

Funds allocated to the Commission may not be used for a purpose that involves partisan political activity, personal subsistence expenses, Commissioner compensation, meals, legal expenses other than for Commission representation before an agency, board or commission of the District government, or travel outside of the Washington metropolitan area."(emphasis added).

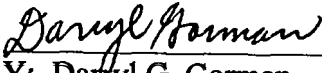
Therefore, the issue of whether the cost of the transcripts paid by the protestants can be reimbursed by the ANC, depends upon whether the cost was the legal expense of the ANC or the legal expense of the protestant. If the cost was the legal expense of private persons or organizations proceeding before the Board, then it would clearly not be legally proper for ANC 2E to use its public funds to pay that legal expense. D.C. Official Code § 309.13(1)(2) specifically prohibits such expenditures by the ANC. If, on the other hand, the cost of the transcripts was actually the legal expense of the ANC, then payment of the cost would be legally permissible. Given the information provided by the ANC, which indicates that the ANC neither officially authorized the individual to purchase the transcripts for the ANC, nor officially requested copies of the transcripts be provided to the ANC, it would appear that this is not the ANC's legal expense. No information was provided regarding any arrangement by which the individual was authorized to incur legal expenses on behalf of the ANC. No information was provided to indicate that the ANC needed but was unable to purchase transcripts or that the ANC had committed to pay the cost of the transcripts if the individual provided them to the ANC. Rather, it appears that the other protestant gratuitously shared the transcripts with the ANC, and others, and the ANe now wishes to remunerate that individual. Thus, given the limited

information provided to us, the reimbursement of this expense does not appear legally permissible under the relevant statute.

If you have any questions or comments, please feel free to call Carol Paskin Epstein, Assistant Corporation Counsel, Legal Counsel Division at 724-5533, or me at 724-5493.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel



~~BY: Darryl G. Gorman~~
Senior Deputy Corporation Counsel
For Government Operations

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