

FILE

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL  
DISTRICT BUILDING  
WASHINGTON, D. C. 20004



IN REPLY REFER TO:  
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(92-047-L) (LCD-6074)

March 5, 1992

stephen P. Belcher  
Chairman  
Advisory Neighborhood Commission "3-F  
4401 Connecticut Avenue, N.W. suite 205  
Washington, D.C. 20008

Re: Mayan ANC make a \$400 grant to a nonprofit organization which would use the money to plant trees on public space?

Dear Mr. Belcher:

This is in reply to your January 15, 1992 letter in which you seek the advice of this Office as to whether it would be legally proper for ANC 3-F to make a grant of \$400 to an organization in return for which the organization would plant trees' within ANC 3-F's boundaries.

By letter, dated May 15, 1991, your ANC was asked to make a \$400 donation to "Trees for the City," a city-wide, tree planting project of the L'Enfant Trust which is a nonprofit corporation. The letter describes the tree planting proposal as follows:

•••For each of the 37 ANCs in the city, Trees for the City will donate \$400 for fall tree planting provided the ANC contributes \$400 and a local community organization that makes a tree planting proposal to an ANC also supplies \$400 when possible. The street trees cost about \$150 each, so this project can provide about 8 trees per ANC.

The letter further states that Trees for the city will contact the "city tree division" to determine the city-designated tree species to be planted in the empty tree boxes proposed for planting" and will obtain "the necessary permits so that planting can take place."

Section 13(k) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-261(k) (1987), provides:

other than neighborhood or community enhancement campaigns, Commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the Commissions do not duplicate already available programs or services and further provided that the Commissions' programs are not conducted on a contractual basis with existing governmental agencies.

At the outset, it is relevant to note that this Office has taken the position that an ANC may not do indirectly (by funding another organization) what it is prohibited from doing directly. Thus, if ANC 3-F were prohibited from directly operating a tree-planting program with its funds, it would also be prohibited from granting funds to another organization to operate such a program. However, the planting of trees on public space would be a "neighborhood or community enhancement," as that phrase is used in section 13(k). Moreover, the fact that the District government itself operates a tree-planting program does not necessarily mean that a donation of ANC funds to a private entity to plant trees on public space would violate the remaining restrictions in section 13(k).

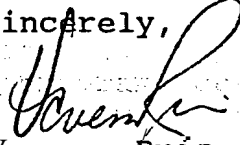
The D.C. Department of Public Works through its Public Space Maintenance Administration, Bureau of Maintenance Services, operates a Tree Maintenance Division. The Tree Maintenance Division is responsible, inter alia, for the planting, care, and removal of trees on public space. The fact that the District's Department of Public Works has a tree maintenance program, part of which involves the planting of new trees on public space, does not however, in and of itself, establish that the Trees for the City tree planting proposal would "duplicate" an "already available" governmental program or service. If the Department of Public Works is not, for any reason, in a position to accomplish the tree planting work offered in the Trees for the City proposal, then it cannot be said that the Trees for the city tree planting proposal would duplicate an "already available" government program. Thus; if the tree planting offered in the Trees for the City proposal would not otherwise be accomplished in the near future by the Department of Public Works, then it would not be a violation of the limitations set forth in § 13(k) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-261(k) (1987), for ANC 3-F to make a grant to fund the Trees for the City tree planting proposal.

Finally, in the making of a grant, ANC 3-F must follow the substantive and procedural requirements of § 16(m) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-264(m) (1990 Supp.). This section provides:

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-pUblc 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 pUblc 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.

Generally speaking, the planting of trees on public space would be a "benefit that is pUblc in nature," as that phrase is used in section 16(m).

Sincerely,  


Vanessa Ruiz  
Deputy corporation Counsel, D.C.  
Legal Counsel Division

OPERATED BY  
SHEARSON

MANAGEMENT

cc:--The Honorable- James Nathanson  
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