

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel



Office of Government Operations
Legal Counsel Division

January 17, 2003

Paul E. Montague
222 Aspen Street, N.W.
Washington, D.C. 20012

Re: Grant of \$3,000 Awarded to Takoma Theatre for the Arts

Dear Mr. Montague:

This letter is our second written response to your question regarding whether the grant to Takoma Theatre was lawful. Specifically, you posed two questions to Ms. Pollie Goffin your unscheduled meeting with her on January 7, 2003. They are as follows:

- Whether the grant to the Takoma Theatre is lawful;
- If an answer to question number one can not be given, explain why we can not give a definitive response.

Before we give you answers to your questions, you should be aware that the Office of the Corporation Counsel is authorized solely to render legal interpretations of statutes affecting or concerning the Advisory Neighborhood Commissions ("Commissions") or legal interpretations of issues or concerns affecting the Commissions. The Office of Corporation Counsel does not conduct investigations of fact or ferret out the facts.

With regard to question number one, we can not state at the present time whether the grant to Takoma Theatre is lawful. However, we can state based upon the facts that you provided us, that there was a lawful vote taken on whether to award the grant to Takoma Theatre. Specifically, as we stated in our December 18, 2002 letter to you and based upon the facts that you presented, we concluded that Advisory Neighborhood Commission 4B held a lawful public meeting on June 27, 2002 at 7:18 p.m. at the 4th District Police Station, 6001 Georgia Avenue, N.W., Washington, D.C. Out of a total of ten commissioners, seven were present for the meeting. Accordingly, we concluded that there was a lawful convening of a public meeting of ANC 4B. We also concluded, based upon the facts that you provided us, that there was a lawful vote taken on whether to

award a grant to the Takoma Theatre since six out of the seven commissioners voted in favor of the grant.

Once it is determined that the voting on the Takoma Theatre was lawful, we must look at whether the grant was lawful. To be lawful, a grant must meet a public purpose. As stated above, we do not have information sufficient to provide you with an answer.

The answer to your second question, which asks us to explain why you can not give a definitive response, is as follows. First, you have not provided any information on whether the grant to Takoma Theatre meets a public purpose or not. We gave you a letter dated October 21, 2002 to Mr. Louis Lieb, Commissioner of ANC 4B, on two separate occasions. In that letter, we did not advise whether awarding a grant to Takoma Theatre met a public purpose and was therefore lawful since we did not have any facts upon which to make such a determination. Instead, we set forth guidelines that the Commissioners of ANC 4B should follow in determining whether making a grant to Takoma Theatre would meet the requirements of a public purpose. The Commissioners of ANC 4B were required to look at the guidelines and make a determination at their meeting as to whether the grant met the public purpose requirement and then vote accordingly. Thus, to date this office has never issued an opinion as to whether a grant to Takoma Theatre would be lawful or not since it has no factual basis upon which to make such a determination.

As you know, the Office of Corporation Counsel does not conduct investigations to determine whether those ANC grant guidelines were met. If we were presented with factual information showing how those guidelines may have been followed or were not followed, we could then review the grant with the facts needed to make a determination. As noted in the letter dated May 22, 1986 from the Office of Corporation Counsel that you provided to us, "it is within the Auditor's authority to examine ANC expenditures for the purpose of determining whether such expenditures comply with applicable provisions of law, including the 'public purposes' requirement of D.C. Official Code § 1-309.13(m). Accordingly, the D.C. Office of the Auditor would have to undertake an investigation of this issue to determine what the factual underpinnings are. Then the office of Corporation Counsel can look at the facts and render a legal opinion.

Very truly yours,



Darryl G. Gorman
Senior Deputy Corporation Counsel
For Government Operations
Legal Counsel Division