

# Government of the District of Columbia

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IN REPLY REFER TO:

## MEMORANDUM

To: Ali Abdul-Mani  
Office of Property Management

Prepared by: LCD:ABE:ae  
File Number: AL-99-288

From: Annette 8. Elseth *AJE*  
Assistant Corporation Counsel  
Legal Counsel Division

Date: May 27, 1999

Subject: Deletion of Insurance and Indemnification Clauses from Right of Entry Permit to Advisory Neighborhood Commission 58

This responds to your request for advice on May 26, 1999 about the applicability of certain clauses of a right of entry permit which has been **requested** by Advisory Neighborhood Commission ("ANC") 58. As we discussed on the phone, ANCs are a part of the District government and therefore ANCs currently cannot lawfully purchase liability insurance with appropriated funds. The self-insurance rule may be stated as follows:

[T]he government is essentially a self-insurer in certain important areas, primarily loss or damage to government property and the liability of government employees insofar as the government is legally responsible or would ultimately bear the loss. The rule ... may be stated thus: In the absence of express statutory authority to the contrary, appropriated funds are not available for the purchase of insurance to cover loss or damage to government property or the liability of government employees.

Principles of Federal Appropriations Law, Chapter 4, pp. 4-144 to 4-147 (2<sup>nd</sup> ed. 1991). There is no express statutory provision authorizing ANCs to purchase liability or damage insurance. Therefore, ANC 58 may not use its quarterly allotments of public funds to purchase public liability or damage insurance as required in the right of entry permit. You may delete clause 7. from the right of entry permit.

Likewise, the ANC is an entity of the District government bound by the federal Antideficiency Act, 31 U.S.C. §§ 1341-1351 and 1511-1519, which prohibits the making of any government monetary obligation that is indefinite or potentially unlimited.

Principles of Federal Appropriations Law, Chapter 6, pp. 6-9 to 6-12 (2<sup>nd</sup> ed. 1991). Therefore ANC 5B has no authority to indemnify the District for actions arising from use of the permit, as required in clause 8 of the permit. However, you may retain the language which provides for the ANC to require such indemnification from the private participants in the planned program.

If you have any further questions with regard to this issue, please do not hesitate to contact me at 724-5537.

ABE