

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

November 29, 2017

Sherice A. Muhammad  
Chair, ANC 7D  
4409 Jay Street, NE  
Washington, DC 20019

**Re: ANC Authority to Expend Funds on Legal Representation**

Commissioner Muhammad:

You asked whether the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)<sup>1</sup> permits your ANC to pay for legal representation to oppose a District agency’s proposed action. The answer to your question depends on what the ANC proposes to do. The ANC could not pay a private party’s legal expenses, but it could hire a District-licensed attorney to represent the ANC itself before the agency.

The ANC Act establishes how ANCs may use the funds that they receive.<sup>2</sup> ANCs may spend funds “for public purposes in the Commission area,” which includes making “grants for public purposes within the Commission area.”<sup>3</sup> They may also spend funds “for the functioning of the Commission office,” including for “legal expenses for Commission representation by an attorney

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<sup>1</sup> Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2012 Repl. and 2017 Supp.)).

We note that some of the ANC Act language this letter cites is new – so new that it has not yet been incorporated into any print version of the D.C. Official Code, and might not yet appear in some online versions of the Code. That new language was added to the ANC Act by the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (“Omnibus Act”), effective April 7, 2017 (D.C. Law 21-269), which was published in the D.C. Register on February 24, 2017 (64 DCR 2162; see <https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=62584>). Whenever this letter quotes ANC Act language that is from the Omnibus Act, we will reference the Omnibus Act provision that the language came from, as well as the D.C. Register (DCR) page on which that language can be found.

<sup>2</sup> See ANC Act § 16(l)(2) (D.C. Official Code § 1-309.13(l)(2)) (“No Commission may expend funds except as authorized under this act”) (language added by section 2(h)(6)(B) of the Omnibus Act (64 DCR 2169)).

<sup>3</sup> *Id.* § 16(l)(1) (D.C. Official Code § 1-309.13(l)(1) (2012 Repl.)).

licensed in the District before an agency, board, or commission of the District government.”<sup>4</sup> Any other legal expenses, however, cannot be paid with ANC funds.<sup>5</sup>

These provisions mean that an ANC may pay a District-licensed attorney to present the ANC’s views before a District agency, board, or commission. For example, we explained in a 2002 letter that an ANC could hire an attorney to represent it in an Alcoholic Beverage Control (“ABC”) Board hearing on an application for renewal of a liquor license.<sup>6</sup> An ANC may not, however, pay for or reimburse a private party’s legal expenses. In 2001, for example, this office warned that an ANC could not “finance the legal representation costs of private persons or organizations in proceedings before District government agencies,” and therefore could not “reimburse a private individual for expenses the individual incurred as part of a proceeding before the ABC Board in which the Commission also participated.”<sup>7</sup> Similarly, a 2008 letter from this office advised that “ANCs may not use their funds to finance litigation on behalf of individual Commissioners or other person [sic] or organizations.”<sup>8</sup>

If you have questions about the contents of this letter, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE  
Attorney General for the District of Columbia

By:   
JOSHUA TURNER  
Assistant Attorney General  
Legal Counsel Division

<sup>4</sup> *Id.*

<sup>5</sup> See *id.* § 16(l)(2) (D.C. Official Code § 1-309.13(l)(2) (2012 Repl.)) (prohibiting “legal expenses other than for Commission representation before an agency, board, or commission of the District government”). Section 2(h)(6)(B) of the Omnibus Act, which modified other language in this paragraph, kept this prohibition.

<sup>6</sup> Letter to James H. Jones, Chair, ANC 4A, at 2, available at <http://app.occ.dc.gov/documents/2003/mar/20030307e.pdf> (last visited Nov. 29, 2017) (letter not dated, but the assignment number AL-02-592 indicates that the matter was from 2002). We note, of course, that an ANC may not “initiate a legal action in the courts of the District of Columbia or in the federal courts.” ANC Act § 13(g) (D.C. Official Code § 1-309.10(g) (2012 Repl.)); see *Kopff v. ABC Bd.*, 381 A.2d 1372 (D.C. 1977).

<sup>7</sup> Letter to Peter Pulsifer, Chair, ANC 2E, Oct. 23, 2001, at 1-2, available at <http://app.occ.dc.gov/documents/2001/oct/20011023.pdf> (last visited Nov. 29, 2017).

<sup>8</sup> Letter to Roger Moffatt, Chair, ANC 6D, Aug. 19, 2008, at 3, available at <http://app.occ.dc.gov/documents/2008/20080819.pdf> (last visited Nov. 29, 2017).