

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Corporation Counsel



Office of Government Operations  
Legal Counsel Division

August 27, 2003

Mr. Absalom Jordan  
Advisory Neighborhood Commission 8D  
86 Galvestin Street, S.W.  
Apartment A  
Washington, D.C. 20032

Dear Mr. Jordan:

We are in receipt of your letter and we respond to your questions as follows.

As you correctly quoted, the District of Columbia Administrative Procedure Act, D.C. Official Code 2-502(6) (2001) provides the definition of rule as "[t]he whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency."

Rulemaking authority is the legal power to adopt, amend, or repeal a rule. There are two aspects of rulemaking authority, both of which must be in effect in order for an official or entity to promulgate a rule. First, in order to adopt, amend, or repeal a rule, there must be statutory authority to act in the particular subject matter area covered by the rule. Second, the particular official or entity must have the authority to make, issue or adopt rules. Finally, there must be public notice issued through the District of Columbia Register in order for a rulemaking to be binding upon the general public or particular classes or groups of persons.

The Office of Corporation Counsel does not have the authority to prescribe rules or to engage in rulemaking. Rather, it is clear from the requirements of the law regarding the role of the Office of Corporation Counsel with Advisory Neighborhood Commission activities that the Office of Corporation Counsel merely provides advice in interpreting statutes. As section 1-309.12(d)(3) of the D.C. Official Code (2001) provides:

(3) The Mayor shall provide assistance to the Commissions in the following areas:

(A) Legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations are to be obtained from the Corporation Counsel and may be requested directly by any Commission. (Emphasis supplied.)

D.C. Official Code § 1-309.12(d)(3)(A) (2001). Should any Commission or individual ANC commissioner need advice as to the proper interpretation of any statutory provision, the Commission or the individual commissioner may request such advice from the Corporation Counsel. The Office of the Corporation Counsel is authorized solely to render advice concerning the legal interpretations of statutes affecting or concerning the Commissions or legal interpretations of issues or concerns affecting the Commissions.

It should be noted in addition to the above discussion that Advisory Neighborhood Commissions (ANCs) come within the jurisdiction of the City Council. Since the District of Columbia Administrative Procedure Act is not applicable to the City Council, it is also not applicable to ANCs.

Given the discussion above, the responses to your questions specifically are as follows:

(1) Is the Office of the Auditor exempt from following the APA requirements for the adoption of rules for implementation of the ANC law?

The Office of the Auditor does not have the authority to promulgate rules and engage in rulemaking on behalf of ANCs. The Office of the Auditor solely performs auditing functions with regard to ANCs as set forth in D.C. Official Code § 1-309.13 (2001). The District of Columbia Administrative Procedure Act is not relevant to the functions that the Office of the Auditor performs for the ANCs.

(2) Do opinions of the Corporation Counsel, regarding implementation of the ANC Law constitute rulemaking?

As stated above, the Office of the Corporation Counsel solely renders advice as set forth at D.C. Official Code § 1-309.12(d)(3)(A) (2001). Its opinions do not constitute rulemaking.

(3) Can opinions of the Corporation Counsel negate the need for rulemaking by an agency for administering the ANC Law?

As stated above, the Office of the Corporation Counsel solely renders advice as set forth at D.C. Official Code § 1-309.12(d)(3)(A) (2001). Its opinions do not constitute rulemaking nor may they substitute for rulemaking to be performed solely by the City Council.

(4) Why does the OCC's opinion regarding the prohibition on providing meals, which functions like a rule, is not a rule?

As stated above, the opinions of the OCC constitute solely advice to ANCs. These letters are based upon interpretations of law. With regard to the letter from the Office of the Corporation regarding limitations on providing food, this letter was based upon an interpretation of the standards for using public funds to provide entertainment to government and non-government personnel set forth in the General Accounting Office's Principles of Federal Appropriations Law, 2<sup>nd</sup> ed., July 1991. In Chapter 4, Part C, section 5(d) (at page 4-100), the following is stated in this regard:

Just as the entertainment of government personnel is generally unauthorized, the entertainment of non-government personnel is equally impermissible. The basic rule is the same regardless of who is being fed or entertained: Appropriated funds are not available for entertainment, including free food, except under specific statutory authority.

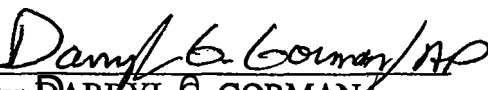
There is no statute that specifically authorizes the expenditure of ANC funds for food or entertainment. The Office of Corporation Counsel in a letter issued March 11, 1992 interpreted the federal appropriations law to prohibit use of ANC funds to purchase food except for "nominal refreshments for consumption at Commission meetings." The March 11, 1992 letter constitutes solely advice, not a rule, to avoid engaging in violations of federal appropriations law that carry criminal law sanctions for its violation.

Finally, with regard to your request for copies of Mayor's Orders regarding the establishment of the Office of Corporation Counsel, please contact the Mr. Clifton Posey, Office of Documents, 441 4<sup>th</sup> Street, N.W., Room 520 South, Washington, D.C.

If you have any further questions with regard to this matter, please contact Nancy Alper, Assistant Corporation Counsel, Legal Counsel Division at 724-5537.

Sincerely,

ROBERT J. SPAGNOLETTI  
Corporation Counsel

  
By: DARRYL G. GORMAN  
Senior Deputy Corporation Counsel  
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Legal Counsel Division

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