

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



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August 26, 1986

The Honorable William R. Spaulding
Chairman
Committee on Government Operations
Council of the District of Columbia
District Building
Washington, D.C. 20004

In Re: Auditor's and Mayor's Oversight Roles
with Respect to ANC Expenditures.

Dear Chairman Spaulding:

This is in response to your June 10, 1986 letter asking a number of questions concerning expenditures by Advisory Neighborhood Commissions.

1. Your first question is about "[t]he current status of the Mayor's Memorandum 76-108 (i.e. effective date, expiration date and/or amendments)."

Mayor's Memorandum 76-108, a copy of which is attached, bears the date of July 23, 1976, and became effective on that date. This memorandum bears no expiration date, and, so far as we are able to determine, has been neither rescinded nor amended.

2. Your second question is "[w]hether the Mayor's Memorandum 76-108 address[es] the issues raised by the City Auditor in his April 29, 1986 letter, and if so, the specific sections thereof."

The Auditor's letter of April 29, 1986 to Acting Corporation Counsel John H. Suda raised four questions: (1) which government

entities have responsibility for oversight of ANC expenditures; (2) the meaning of the phrase "public purposes" in section 738(c)(2) of the Self-Government Act; (3) whether the Auditor has authority to recommend that funds be withheld from an ANC which has spent public money in violation of District of Columbia law; and (4) whether certain specific expenditures by ANC IE violated District of Columbia law.

The last two paragraphs of Mayor's Memorandum 76-108 relate to the first three questions enumerated above. The last full paragraph on page 2 of Mayor's Memorandum 76-108 provides general guidance with respect to the purposes for which ANC funds may be spent. And the last paragraph asserts the authority of the Mayor, through the Office of Budget and Management Systems (now the Office of the Budget), and the authority of the District of Columbia Auditor to review the financial operations of ANCs. Finally, the last sentence of the last paragraph of Mayor's Memorandum 76-108¹ constitutes an assertion of authority to impose fiscal sanctions for financial irregularities, e.g., to withhold funds from ANCs that expend public funds in violation of District of Columbia law.

3. Your third question is "[w]hether the recommendation made by the City Auditor with respect to alleged disallowable expenditures by A.N.C. [IE] were proper. If not, why?".

In our May 22, 1986 response to the Auditor's letter of April 29, 1986, we stated that the Auditor had the authority to make the recommendation he made concerning the propriety of two contributions made by ANC IE to an organization with the name CARACEN. However, we declined to render an opinion on the correctness of that recommendation.

4. Your fourth question relates to whether a contribution to CARACEN by an ANC meets the "public purposes" requirement of section 738(c)(2) of the Self-Government Act.

We cannot provide an answer in the absence of facts concerning CARACEN's activities, the number of persons benefited by its activities in the Ward where it operates, and the purposes for which the ANC contributions were used.

5. Your fifth question concerns the "sections of the 'Self-Government Act' which would provide remedies to the City for ANC expenditures that are found to be questionable or disallowable pursuant to the Mayor's Memorandum 76-108."

! / This sentence reads:

"Any findings of financial irregularities after proper notice and hearing may result in the imposition of such other fiscal controls as may be deemed appropriate."

The Council has legislative authority to regulate "the handling of funds and accounts by each advisory neighborhood commission..... See section 738(f) of the Self-Government Act, D.C. Code § 1-251(f) (1981). Moreover, section 448 of the Self-Government Act, D.C. Code § 47-310 (1986 Supp.), provides in pertinent part that the

Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall:

* * *

(2) Maintain systems of accounting and internal control designed to provide:

* * *

(C) Effective control over and accountability for all funds, property, and other assets....

And section 449(d) of the Self-Government Act, D.C. Code § 47-312(4) (1981), provides that the Mayor shall:

perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness / of accounting systems, internal control, and related administrative practices of the respective agencies.

It is our view that in exercising his authority under these provisions the Mayor may, for example (acting through the Office of the BUDget), reduce an ANC's quarterly allotment by an amount equal to that ANC's unauthorized expenditures.

6. Your sixth question relates to "whether these same remedies (if any) are available through Mayor's Memorandum 76-108." At the outset it should be stated that we believe that sections 448 and 449 of the Self-Government Act are self-executing and therefore do not need implementing regulations in order for the authority granted by them to be exercised. Nevertheless, Mayor's Memorandum 76-108 does constitute a written exercise of the authority conferred upon the Mayor by sections 448 and 449 of the Self-Government Act. It asserts the authority of the Mayor to review the financial operations of the ANCs and the authority to impose appropriate fiscal controls where financial irregularities are found.

7. Your seventh question concerns whether Mayor's Memorandum 76-108 contains any enforcement provisions relating to improper or disallowable ANC expenditures, and if not, asks whether there are proposed amendments to establish enforcement provisions.

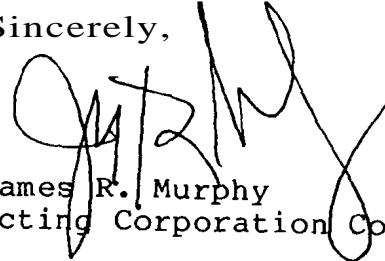
Mayor's Memorandum 76-108 does not spell out specific enforcement measures, but merely refers to the authority of the Mayor to impose appropriate fiscal controls to deal with financial irregularities by ANCs.

In 1985 an "ANC Manual" was prepared. This manual contains a variety of material, including the laws applicable to ANCs, opinions by the Auditor concerning what are and what are not proper ANC expenditures, and rules governing ANC financial operations issued by the Auditor in 1976. This Office recently opined that the Auditor lacked authority to issue these rules and that, in any event, these rules lapsed on July 1, 1984 because prior to that date they were not published in the D.C. Municipal Regulations.^{2/} In short, it has been recognized that the 1985 ANC Manual and Mayor's Memorandum 76-108 (which is not included in the Manual) do not adequately address the concerns of either the ANCs or the Executive Branch with respect to problems relating to ANC financial operations. Accordingly, representatives of this Office, the Mayor's Office of Community Services, and the Office of the Budget are working on a new set of rules governing the financial operations of ANCs. These rules will, inter alia, provide better guidelines concerning proper and improper ANC

^{2/} See letter, dated May 19, 1986, from Margaret L. Hines to ANC IE Chairman Stanley Allen, at p. 4. Our records show that a copy of this letter was sent to you. However, since you did not mention receiving a copy of it in your June 10, 1986 letter, I have attached a copy.

expenditures, and will spell out the possible sanctions that may be imposed on persons or ANCs that expend ANC funds in violation of District of Columbia law. The target date for the publication of these new rules is January 1987.

Sincerely,



James R. Murphy
Acting Corporation Counsel, D.C.

Attachments

cc: Richard Siegel
Acting BUDget Director

Sybil Hammond, Director
Office of Community Services

Otis H. Troupe
D.C. AUditor