

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

January 14, 2010

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Washington, D.C. 20005

Re: Guidelines for Use of ANC Funds to Purchase
School Supplies and Support School Activities

Dear Ms. Nichols:

This letter is in response to an e-mail from Lynard Barnum of your office requesting clarification on whether an ANC may use its funds, either directly or through a grant, to purchase school supplies for children in its Commission area.¹ In the past, the Office of the Attorney General (OAG) has advised that an ANC could not give funds directly, either by grant or other expenditure, to any school in the District of Columbia Public School System (DCPS) for any school-related purpose. Based on changes in the law, we now clarify our advice on this issue to state that while a direct grant to a DCPS school to cover the purchase of school supplies is not permissible under section 16(m) of the ANC Act (D.C. Official Code § 1-309.13(m) (2009 Supp.))², an ANC, provided that the expenditure is for a public purpose and does not duplicate services that the District is already providing,³ may use its allocated funds under section 16(l) of the Act (D.C. Official Code § 1-309.13(l) (2009 Supp.)) to 1) purchase school supplies for distribution to school children in the Commission area, 2) make a monetary donation to the school to purchase the supplies, or 3) purchase the supplies and donate them to the school for distribution to the students. Please note that in order to accept such a donation from an ANC, the recipient school must comply with the requirements of section 115 of the

¹ Although your question concerns the purchase of school supplies, this opinion letter would apply also to ANC support of any activities benefiting school children in its Commission area.

² Advisory Neighborhood Commissions Act of 1975, effective June 27, 2000, D.C. Law 13-135.

³ As discussed below, any expenditure by an ANC must bestow a benefit on a significant number of children in the Commission area and not be duplicative of any already made by the District government. See sections 16(l) & (m) of the ANC Act; and section 738 (c)(2) of the District of Columbia Home Rule Act (Home Rule Act), approved December 24, 1973, 87 Stat. 824, D.C. Official Code § 1-207.38(c)(2) (2006 Repl.).

District of Columbia Appropriations Act, 2002 (Gift Act), approved December 21, 2001, 115 Stat. 949, D.C. Official Code § 1-329.01 (2009 Supp.).⁴

As background, in an opinion letter dated October 31, 1986 to Caesar Marshall, the Office Manager of ANC 6-B (1986 letter)⁵, who asked whether it was permissible for an ANC to make a grant to a Parent Teacher Association (PTA) or to a public school to support enrichment programs, OAG advised that these school-related activities could be funded by a grant to the PTA, provided that the expenditures comply with section 16 of the ANC Act, but that the ANC could not make a direct grant from its appropriated monies to a public school to fund these same school activities because it would be considered a reprogramming of appropriations and “[t]here are statutory restrictions on shifting appropriated funds.” See D.C. Official Code §§ 47-361 *et seq.* (2005 Repl. & 2009 Supp.) (sets forth requirements for reprogramming appropriated funds between agencies). The same advice contained in the 1986 letter was provided in comparable situations.⁶

Subsequent to the issuance of these opinion letters, there have been changes to appropriation law and to the ANC’s grant-making authority as well as interpretations of the ANC Act, which have affected an ANC’s authority to provide funds directly to public schools.

1. In the District’s Appropriations Act for fiscal 2002, Congress authorized District entities to accept gifts and donations that are approved by the Mayor. This authority allows a District agency to augment its appropriated budget through monetary and non-monetary gifts. The Gift Act is codified in D.C. Official Code § 1-329.01 which provides in relevant part:

- (a) (1) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2003 and any subsequent fiscal year if--
 - (A) the Mayor approves the acceptance and use of the gift or donation
 -; and
 - (B) the entity uses the gift or donation to carry out its authorized functions or duties.

By Mayor’s Order 2002 (Rev.), dated January 11, 2002, which was rescinded and re-issued in Mayor’s Order 2008-33, dated February 26, 2008, the Mayor delegated his approval authority under this provision to the Director of what is now denominated as the

⁴ Similar language is included in section 4602 of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172.

⁵ The 1986 letter and the other letters referenced in this opinion letter may be accessed in the ANC legal advice data base.

⁶ See *e.g.* *Letter to Otis Troupe, Auditor*, September 14, 1987; *Letter to Westy McDermid, Chairman, ANC 2-E*, May 26, 1994; *Letter to Deborah Nichols*, September 17, 1999.

Office of Partnership and Grants Services (OPGS), and has set forth the procedures by which OPGS shall review. These procedures cover donations to District entities, including DCPS.⁷

The ANC has unique authority under section 16(l) of the ANC Act (D.C. Official Code § 1-309.13(l)) to use the funds received through its annual allocation to make expenditures “for public purposes within the Commission area”, *see also* section 738(c)(2) of Home Rule Act (D.C. Official Code § 1-207.38(c)(2)) (“[m]ay .. expend [public funds], for public purposes within its neighborhood commission area”) and is not prohibited from donating its appropriated funds to another District agency for public purposes, provided that the money is not being spent for anything that is duplicative of that which is already being provided by the city.⁸ In our view, there is no restriction on the ANC using a part of its allocated funds for a donation to a public school to cover the cost of school supplies (or to support activities) for school children in its Commission area, provided that the donation meets the requirements of the both the ANC and the Gift Acts. While the Gift Act historically has been applied only to gifts from private sources rather than from other District agencies, nothing in the language of this legislation restricts it to private donations.

2. While the Gift Act allows an ANC to give funds to a DCPS school to allow it to purchase school supplies and fund other activities, an ANC’s grant-making authority does not allow it to make a grant directly to the school. In order to award a grant, a District entity must have a statutory basis to do so. Section 16(m) of the ANC Act (D.C. Official Code § 1-309.13(m)), which was amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135, sets forth an ANC’s grant-making authority and the conditions on that authority as follows:

A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.

⁷ The exclusion in the Gift Act for the “Board of Education” applied when that Board was an independent agency. Section 102 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007, D.C. Law 17-9, established DCPS as a subordinate agency to the Mayor. Accordingly, the Gift Act requirements and Mayor’s Order 2008-33 apply to DCPS public schools, which as other District subordinate agencies, operate under the Mayor’s authority.

⁸ *See Letter to Councilmember David Catania*, March 23, 2004, in which this Office opined that the ANC Act prohibits the use of ANC funds to duplicate services already provided by the District whether by direct expenditure or by grant.

(Emphasis added.) In a letter to you, dated August 4, 2000, OAG opined based on the language of this provision and the legislative history that the phrase “that are public in nature and benefits persons who reside or work with the Commission area”, modifies the word “grant”, not the word “organizations”. We concluded that this provision should be interpreted to prohibit an ANC from awarding a grant to an individual, but to allow it to make an award to any organization which could include unincorporated associations and more formal organizations. However, there is no basis in the language of section 16(m) or in the legislative history to include a District public school in the definition of “organizations”.⁹ Accordingly, there is no statutory authority that would allow an ANC to make a grant directly to a school for any purpose.¹⁰

While an ANC does not have authority to make a direct grant to a school for the purchase of school supplies, it may award such a grant to a PTA or similar entity, provided that the requirements of D.C. Official Code § 1-309.13(m) are satisfied.

3. Finally, we caution that in meeting the “public purpose” element required in the ANC Act, if the money given by the ANC to the school to cover school supplies or by a grant to an organization for this purpose, benefits only a small number of children, the expenditure would not likely satisfy the public purpose test. As this Office has opined, a public purpose is one which benefits or potentially benefits a significant number of persons who either reside or work within the Commission area, and while we have not established a mathematical definition of what constitutes a “significant” number of beneficiaries, we have consistently advised that it must be more than a few. In a March 25, 1997 letter to the Commissioners of ANC 1-B, OAG explained that

an ANC grant that benefits only one or two or a few persons is not one that serves a public purpose and is not “public in nature.” Thus, the ANC 1-B \$1,000 grant to the Edward C. Mazique Parent Child Development Center to provide scholarship funds for “one child” residing in SMD 1B11 failed the public purpose test because it provided a benefit to only one person. Likewise, the ANC 1-B \$1,000 grant to the YMCA (W Street) Summer Camp for the benefit of “two children” residing in SMD 1B11 also failed the public purpose test because it benefited only two persons.

⁹ The term “organization is not defined in the ANC Act. *But see* BLACK’S LAW DICTIONARY at 1126 (7TH Ed. 1999) defines “organization” as a “body of persons (such as a union or corporation) formed for a common purpose.”

¹⁰ We note that the limitation on the ANC’s grant-making authority to organizations was not included in the ANC Act until it was amended in 2000 with the enactment of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135. Accordingly, the 1986 letter relied on other grounds for prohibiting direct grants to public schools.

If you have any further questions with regard to the issues discussed in this letter, please contact me at 724-5386.

Sincerely,

PETER J. NICKLES
Attorney General

By: _____
SHEILA KAPLAN
Senior Assistant Attorney General
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(AL-09-619)