

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

July 7, 2017

Gottlieb Simon
Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Avenue, N.W., Rm. 8
Washington, DC 20004

Re: Expending ANC Grant Funds for Food and Entertainment at Block Parties

Mr. Simon:

This office has opined that an Advisory Neighborhood Commission (“ANC”) may not make grants for the purpose of food and entertainment,¹ which would include food and entertainment at a block party. You asked whether that is still our view. Our view is still that ANC grant funds cannot be used for food at a block party, but we conclude that no law prohibits ANC grantees from using their grant funds for entertainment at a block party if such a use serves a public purpose, and if it is otherwise consistent with the ANC statute, the granting ANC’s bylaws, and any governing grant agreement.

Using ANC grant funds to pay for food at a block party would be prohibited by section 16(1)(2) of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),² which forbids the use of ANC funds for “meals” or for “personal subsistence expenses.”³ Food is a “personal subsistence expense” because it is a necessary living expense,⁴ and food at a block party will often involve meals.

¹ See, e.g., Letter to Alice Gilmore, Treasurer, ANC 4B, Oct. 20, 1994, available at <http://app.occ.dc.gov/documents/1994/oct/19941020.pdf> (last visited June 5, 2017); Letter to Westy McDermid, Chairman, ANC 2E, May 26, 1994, available at <http://app.occ.dc.gov/documents/1994/may/19940526.pdf> (last visited June 5, 2017).

² Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13(1)(2) (2012 Repl.)).

³ We note that section 2(h)(6) of the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-269; 62 DCR 2168), will remove both of these prohibitions once the relevant provisions of this omnibus act become applicable.

⁴ See Letter to Lynard Barnum, District of Columbia Auditor, July 29, 2010, at 2 (on file) (“the ordinary meaning of the phrase [personal subsistence expenses] suggests that it includes necessary living expenses”).

We previously advised that federal appropriations law forbade ANC's or their grantees from spending grant funds on entertainment or food, at a block party or elsewhere. We noted that the funds ANC's receive are appropriated by Congress, and that funds appropriated by Congress may not be used for food or entertainment without explicit statutory authorization.⁵ Thus, we advised that funds granted by ANC's cannot be used for food or entertainment because Congress has never explicitly authorized them to be used for these purposes.⁶

It remains our view that these appropriations restrictions forbid ANC's themselves from spending their funds for food or entertainment. It is no longer our view, however, that these restrictions forbid ANC grantees from using their grant funds for these purposes. That is because ANC grant funds, like other funds that were appropriated by Congress but have been granted to a third party, are not subject to the same restrictions that other federally appropriated funds are. As the Comptroller General of the United States explained in a 1964 opinion:

It consistently has been held with reference to Federal grant funds that, when such funds are granted to and accepted by the grantee, the expenditure of such funds by the grantee for the purposes and objects for which made are not subject to the various restrictions and limitations imposed by Federal statute or our decisions with respect to the expenditure, by Federal departments and establishments, of appropriated moneys in the absence of a condition of the grant specifically providing to the contrary.⁷

The question in that opinion was whether recipients of National Science Foundation grant funds (which are federal grant funds) could use those funds to buy, operate, or maintain aircraft, since federal law forbids using appropriated funds for those purposes without explicit statutory authority.⁸ The opinion concluded that grant recipients did not need to obey this restriction.⁹ The National Science Foundation, it reasoned, had the authority to issue grants to support basic scientific research, and acquiring or using aircraft could be necessary to accomplish the purpose of those grants.¹⁰ The same reasoning applies here. Just as the National Science Foundation had the authority to issue research grants, ANC's have the power to issue grants for "public purposes

⁵ See, e.g., 1 GOV'T ACCOUNTABILITY OFFICE ("GAO"), PRINCIPLES OF FED. APPROPRIATIONS LAW ("PRINCIPLES") 4-100 (3d ed. 2004). This volume, as well as the other two volumes in this set, can be found at <https://www.gao.gov/legal/red-book/overview> (last visited June 6, 2017).

⁶ For example, we stated in a July 13, 2005 letter to ANC 1B Commissioner Philip Spalding that:

Although the two sources of ANC grant authority provide broad authorization to spend for a public purpose, the language does not plainly authorize expenditures for entertainment purposes. Thus, following the presumption against such expenditures, there is no authority for an ANC to provide a grant for the purpose of entertaining its -- citizens even if the entertainment may be enjoyable.

This letter is available at <http://app.occ.dc.gov/documents/2005/20050713.pdf> (last visited June 6, 2017).

⁷ 1964 Comp. Gen. Lexis 164, *5-6 (quoted in 2 GAO, PRINCIPLES 10-69 (3d ed. 2003)). This Comptroller General opinion is available (without pagination) at <http://www.gao.gov/products/412634#mt=e-report> (last visited June 5, 2017).

⁸ 1964 Comp. Gen. Lexis 164, *2-3.

⁹ *Id.* at *6.

¹⁰ See *id.* at *3.

within the Commission area.”¹¹ Accordingly, recipients of an ANC grant may expend those grant funds for entertainment, to the extent that doing so is consistent with the purposes of the grant.

An ANC grantee’s authority to spend grant funds for entertainment is limited, however. Just as those funds must be used consistent with the purposes of the grant, they must also be used “consistent with any statutory or other conditions attached to the use of the grant funds.”¹² For example, ANC grant funds cannot be used for entertainment if such use is forbidden by a grant agreement between the grantee and the ANC.¹³ Likewise, grantees, as well as any ANC considering a proposed grant, must follow District law, which requires that grant funds be used for a public purpose.¹⁴

We acknowledge that allowing ANCs to issue grants for entertainment may prompt valid questions about whether using publicly granted funds for that purpose is a prudent use of those funds. As the Comptroller General observed in a 1988 opinion, “public confidence in the integrity of those who spend the taxpayer’s money is essential,” and expending funds for entertainment may “appear” – or be – “frivolous or wasteful.”¹⁵ It is our expectation that such grants will be limited in scope and frequency, in keeping with the obligation to use District funds in a responsible manner. Commissioners must also face the voters every two years,¹⁶ and must be prepared to defend how they have used Commission funds. Moreover, if the Council determines that this safeguard is insufficient, it may establish additional limits or requirements through legislation.¹⁷

If you have any questions, 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

¹¹ See D.C. Official Code § 1-309.13(l)(1) and (m) (2012 Repl. and 2016 Supp.).

¹² 2 GAO, PRINCIPLES 10-71 (3d ed. 2003).

¹³ See, e.g., Advisory Neighborhood Commission 2F (ANC 2F) Amended and Restated Bylaws, art. X, 2(b)(v) (forbidding the use of grant funds for “food or entertainment”), available at <http://www.anc2f.org/wp-content/uploads/2010/10/ANC-2F-Bylaws-2014.pdf> (last visited June 6, 2017).

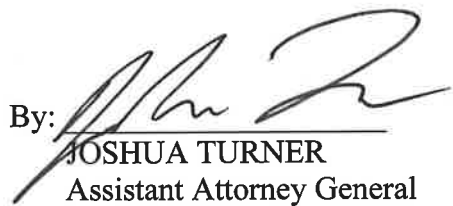
¹⁴ See D.C. Official Code §§ 1-207.38(c)(2) (2012 Repl.) and 1-309.13(l)(1) (2012 Repl. and 2016 Supp.). Determining whether any particular grant is for a public purpose may sometimes be difficult. We would be happy to provide advice on whether a proposed grant satisfies the public purpose requirement and any other applicable District-law requirements.

¹⁵ See United States Trade Rep. – Use of Reception and Rep. Funds, B-223678, at 3 (Comp. Gen. June 5, 1989), available at <http://www.gao.gov/assets/500/495187.pdf> (last visited June 6, 2017).

¹⁶ See D.C. Official Code § 1-309.06(a) (2012 Repl.).

¹⁷ See *id.* § 1-207.38(g) (empowering the Council to “legislate with respect to the [ANCs]”).

By:

A handwritten signature in black ink, appearing to read "Joshua Turner", written over a horizontal line.

JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division