

Memorandum

Government of the District of Columbia

TO: Virgil Thompson Office: Corporation Counsel
Director of Constituent Prepared by: L&O:LNG:ing
Services (91-091-L)(LCD-5443)
Office of the City Administrator

FROM: Margaret L. Hines *MH*
Deputy Corporation Counsel. D.C. Date: March 13, 1991
Legal Counsel Division

SUBJECT: May ANC funds be used to pay for a two-day
communications training program for ANC
Commissioners?

This is in response to your February 28, 1991 request, as amplified by subsequent conversations, for advice concerning (1) whether an Advisory Neighborhood Commission (ANC) may lawfully expend ANC funds to pay for a two-day communications training program for its Commissioners, and (2) whether an ANC Commissioner or a District government employee may lawfully receive such funds for providing the training.

Section 738 of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code § 1-251 (1987), provides that an ANC may expend "public funds and other funds donated to it" for "public purposes within its neighborhood commission area"; funds are to be allotted to ANCs in order for them to employ necessary staff, "and to conduct programs for the welfare of the people in a neighborhood commission area..... This provision of the Self-Government Act is implemented by the Advisory Neighborhood Councils Act of 1975. Section 16(1) of that act, as amended, D.C. Code § 1-264(1) (1991 Supp.), provides in pertinent part that "[a] Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office, including staff salaries and nominal refreshments at Commission meetings..." Further, § 15(d) of that act, as amended, D.C. Code § 1-263(d) (Supp. 1991), provides that the Council and the Mayor shall provide appropriate assistance to ANC commissioners to enable them to perform their statutory duties.

Thus, the implementing statute authorizes the expenditure of ANC funds for "public purposes" and for a limited number of administrative purposes, none of which includes training. If ANC Commissioners need other administrative services, they are to look to the Council or to the Mayor.

This language was added by § 3(f) of the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991. D.C. Law 8-204.

An expenditure on communications training for Commissioners cannot be said to be an expenditure for public purposes authorized by § 738 of the Self-Government Act and its implementing legislation. The phrase "public purpose" or "public purposes" is common in state laws dealing with the expenditure of public funds. Thus, the phrase has been construed by state courts in many different factual contexts. See 15 McQuillin, Municipal Corporations, §§ 39.19 and 39.21 (1985). One frequently enunciated test is "whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." Opinion of the Justices, 384 So.2d 1051, 1053 (Ala. 1980), citing Opinion of the Justices, 347 Mass. 797, 197 N.E.2d 691 (1964).

The use of ANC funds to pay for a two-day communications program "for ANC Commissioners would not confer a direct public benefit upon the residents of the ANC. but, at best, would confer only a remote or theoretical benefit. Accordingly, an expenditure of ANC funds for a two-day communications program for ANC Commissioners would violate the "public purposes" requirement of the above-cited statutory provisions. See 36 Compo Gen. 621 (1957): in the absence of express statutory authority, expenses of training Government personnel at nonfederal facilities may not be paid from appropriated funds unless it can be shown that the training course is (1) essential to the purpose for which the appropriation is made, (2) for a period of brief duration, and (3) special in nature to meet the need of an authorized program.

Since ANC funds cannot lawfully be used to pay for a communications training program for ANC Commissioners, the question of whether an ANC Commissioner or a District government employee may lawfully receive such funds for conducting the training program need not be addressed.

MLH

cc: Councilmember Nathanson
Otis Troupe