

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

December 22, 2006

Commissioner Mfon Ibangha
Vice-Chair ANC 6A
Single Member District 6A08
P.O. Box 26261
Washington, D.C. 20001

Re: Whether there are laws banning “nepotism” in the District, applicable to
Advisory Neighborhood Commissions?

Dear Commissioner Ibangha:

This letter responds to your e-mail message dated November 23, 2006 in which you query whether the District of Columbia has laws banning “nepotism” and, if so whether such laws apply to Advisory Neighborhood Commissions (ANCs). Ultimately, you wish to know whether it would be improper for an ANC to elect a husband as treasurer of the ANC and also to appoint the treasurer’s spouse to “a position that disburses grant monies,” and, if so, what remedial action is available to the ANC.

On December 20, 2006, you responded to a request from our Office for additional information concerning the role and position of the treasurer’s spouse, and whether it was a paid position. You state that the spouse is the chairman of the Community Outreach Committee of the ANC and that this committee is responsible for recommending approval of grant applications to the ANC. You also confirm that this is an unpaid position and advisory only.

As an initial matter, it is important to note that section 14(f) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.11(f) (2006 Supp.) (ANC Act) expressly permits the formation of “committee(s)” or “task force(s)” within the ANCs and permits the chairmanship of any such committee or task force to be “open to *any resident* of the Commission area.” (Emphasis added). Thus, there is no provision within the ANC Act itself that would prevent a spouse of a commissioner from holding the chairmanship of an ANC committee, as long as the spouse is a resident of the Commission area. That is not to say that separate statutes barring nepotism, are not applicable to the ANCs.

The term “nepotism” is generally defined as the “Bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to

[the] appointing authority.” Black’s Law Dictionary, Fifth Ed., 1979. Under federal law, applicable to the District of Columbia and its ANCs,¹ a public official may not “appoint, employ, promote, [or] advance,” a relative, or advocate for such on behalf of a relative, to a position in an agency in which the public official is serving. 5 U.S.C.A. § 3110(b). The term “relative” includes a spouse. 5 U.S.C.A. § 3110(a)(3).

However, we do not believe the federal anti-nepotism law would apply in this instance, given the circumstances you describe. The treasurer’s spouse, who is not an ANC Commissioner, was appointed by the ANC to one of its committees, to serve an advisory role to the ANC as a member of the public and was not paid for any services rendered. Under the statute, the spouse’s unpaid status appears to be an important distinction insofar as the law affects only paid employees. Although the statute does not *expressly* exempt unpaid advisors, we have uncovered persuasive authority suggesting that, in fact, it does apply only to paid employees.

First, there is the statute itself which creates, as its remedy for a violation, a provision prohibiting payment to such individuals for their services. 5 U.S.C.A. § 3110(c).² By implied operation of law, this suggests that the statute pertains only to those who are paid. Indeed, this seems to have been the reasoning of the D.C. Circuit in a case involving the President of the United States and his appointment of the First Lady to an advisory task force on health-care reform when it cited subsection (c) and stated in *dictum* that “the anti-nepotism statute, moreover, may well bar appointment **only to paid positions in government.**” *Association of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 905 (D.C. Cir. 1993)³, *accord*, 63C Am.Jur.2d, *Public Officers and Employees* § 95 (2006). On the legislative side, more persuasive authority is found in the Ethics Manual for the House of Representatives, which expressly states that “[T]he anti-nepotism restrictions apply only to employees on the Member’s official payroll.” *United States House of Representatives, Ethics Manual, Chapter 5, Staff Rights and Duties, Nepotism* (2006). Finally, it is noteworthy that we have been unable to uncover a single advisory opinion either from the Comptroller General of the United States, or the federal Office of Government Ethics, that addresses nepotism for unpaid advisors.⁴

To be sure, the anti-nepotism law would almost certainly apply if the ANC hired a Commissioner’s spouse as a paid administrative staff employee. But that is not the situation you have described. The spouse’s status as an unpaid advisor on a committee of the ANC removes her from the restrictions of the federal anti-nepotism statute.

¹ The anti-nepotism statute is made expressly applicable to the “government of the District of Columbia,” of which the ANCs are a part. 5 U.S.C.A. § 3110(a)(1)(D).

² See e.g., *Cutts v. Fowler*, 692 F.2d 138 (D.C. Cir. 1982) (holding that a federal employee allegedly transferred in violation of the anti-nepotism law had no private right of action).

³ Though informative for this analysis, the case was actually decided on grounds not analogous to these facts. The issue there involved not whether the President could appoint the First Lady to the task force, but whether the task force meetings were required to be open to the public in compliance with the Federal Advisory Committee Act, Pub.L. No. 92-463, 86 Stat. 770 (1972), 5 U.S.C.App. 1.

⁴ Although several opinions address spousal nepotism, it is only in the context of paid employees.

Accordingly, we conclude that the anti-nepotism laws do, in fact, apply to the District's ANCs, but that they do not apply to persons holding unpaid advisory positions of the type you assert here.

Sincerely,

EUGENE A. ADAMS
Interim Attorney General for the District of Columbia

/s/

EAA/dps

(AL-06-678)