

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

August 10, 2018

Renee L. Bowser  
Commissioner  
ANC 4D  
5322 2nd Street, N.W.  
Washington, D.C. 20011

**Re: Questions re Solicitations and Donations for ANC Fun Day**

Commissioner Bowser:

In preparation for a Community Fun Day that your ANC is planning for mid-September, you asked our office for expedited guidance on your ANC's authority to solicit and receive monetary and in-kind donations.

The Home Rule Act authorizes ANCs to expend "funds donated to it,"<sup>1</sup> but section 13(l) of the Advisory Neighborhood Commissions Act of 1975 ("ANC Act")<sup>2</sup> imposes strict limits on an ANC's authority to solicit or receive those funds:

No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$1,000 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$1,000 per calendar year. Each Commission shall file with its quarterly reports to the OANC required pursuant to § 1-309.13(j) details of all contributions received during the relevant period of time.

This language means that your ANC cannot solicit funds for events like this one unless the Council has specifically authorized you to do so. Your ANC can, however, receive *unsolicited* monetary contributions up to \$1,000 from an individual or a business. Section 13(l) allows any

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<sup>1</sup> District of Columbia Home Rule Act, § 738(c)(2), approved December 27, 1973 (87 Stat. 824; D.C. Official Code § 1-207.38(c)(2) (2012 Repl.)).

<sup>2</sup> Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13 (2012 Repl. and 2017 Supp.)).

“person” – *i.e.*, any individual or business<sup>3</sup> – to give, and the ANC to accept, contributions of up to \$1,000 in any calendar year. The ANC must identify these contributions in its quarterly reports to the Office of Advisory Neighborhood Commissions.<sup>4</sup>

Because the Home Rule Act and the ANC Act only authorize an ANC to solicit and receive “funds,” *i.e.*, money,<sup>5</sup> they do not address in-kind donations, like donations of food or decorations.<sup>6</sup> The only authority an ANC has to receive and use in-kind donations<sup>7</sup> comes from section 115 of the District of Columbia Appropriations Act, 2003,<sup>8</sup> which requires that the Mayor “approv[e] the acceptance and use of the gift or donation.”<sup>9</sup> Accordingly, your ANC cannot actually accept in-kind donations for an event like the Community Fun Day unless the Mayor authorizes the ANC to do so. Our understanding is that your ANC can meet this requirement by seeking approval from the Office of Partnerships and Grant Services.<sup>10</sup>

In the absence of Mayoral approval, it is still possible for individuals and businesses to donate food and other items to the Community Fun Day, or a similar event, for the community’s use. Under those circumstances, the ANC must be careful to minimize the control it exerts over the donation. For example, if a local business wants to donate hot dogs to the event, the business should bring and offer the hot dogs itself rather than handing them over to the ANC to prepare or offer at the event. The more control an ANC exerts over a donation, the more likely that the

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<sup>3</sup> See *Person*, BLACK’S LAW DICTIONARY (7th ed. 1999) (the term “person” refers to a human being and can also refer to “[a]n entity (such as a corporation) that is recognized by law as having the rights and duties of a human being”); D.C. Official Code § 45-604 (2012 Repl.) (the term “person” in District law “shall be held to apply to partnerships and corporations, unless such construction would be unreasonable”). In this context, we read section 13(1)’s separate reference to “individual” contributions to mean “distinct contributions” rather than “contributions from an individual.”

We caution, however, that the ANC should not permit any individual to evade the \$1,000 annual contribution limit by donating both individually and through a corporation the individual owns or controls.

<sup>4</sup> See D.C. Official Code § 1-309.13(j) (2012 Repl. and 2017 Supp.) (discussing quarterly reports).

<sup>5</sup> See *Fund*, BLACK’S LAW DICTIONARY (7th ed. 1999) (defining “funds” as “[m]oney or other assets, such as stocks, bonds, or working capital, available to pay debts, expenses, and the like”); *Fund*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003) (similar). The ANC Act likewise uses the word “funds” to refer to money, not in-kind donations. See, e.g., D.C. Official Code § 1-309.13(b)(1) (each ANC must designate a bank as “a depository of all funds received by the Commission”) and (l)(1) (identifying permissible uses of Commission “funds”).

<sup>6</sup> A February 26, 2001 letter to Deborah Nichols (available at <http://app.occ.dc.gov/documents/2001/feb/20010226.pdf>) could be, but should not be, read to suggest the opposite. That letter observed that ANCs have some authority to accept donated goods, but it did not opine on the source of that authority or on what steps the ANC must follow to do so. Indeed, the letter treated donations of funds as distinct from donations of goods or services, just as this letter does.

<sup>7</sup> An ANC cannot accept a donation without statutory authority. See U.S. Gov’t Accountability Office, *Principles of Federal Appropriations Law* 6-222 – 6-223 (3d ed. 2006) (“a government agency may not accept for its own use (*i.e.*, for retention by the agency or credit to its own appropriations) gifts of money or other property in the absence of specific statutory authority”).

<sup>8</sup> Approved February 20, 2003 (117 Stat. 124; D.C. Official Code § 1-329.01 (2012 Repl. and 2017 Supp.)).

<sup>9</sup> D.C. Official Code § 1-329.01(a)(1)(A) (2012 Repl. and 2017 Supp.).

<sup>10</sup> See <https://opgs.dc.gov/> (last visited Aug. 6, 2018).

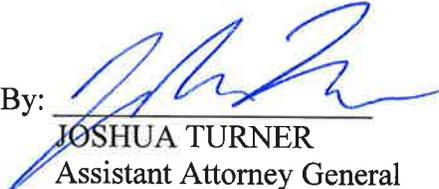
Office of ANCs and the Office of the Chief Financial Officer will consider that donation a donation to the ANC.<sup>11</sup>

In addition to the donation principles articulated above, normal rules governing ANC conduct and expenditures apply. The ANC should not, for example, accept monetary or in-kind donations from any individual or company with business before the ANC. Likewise, it will be important to ensure that ANC spending for any event for which donations are sought does not run afoul of the limits governing ANC expenditures, such as the prohibition on spending ANC funds on entertainment.<sup>12</sup>

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

By:   
JOSHUA TURNER  
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(AL-18-406)

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<sup>11</sup> In a phone call earlier today, you asked whether a Commissioner would be accepting a donation to the ANC if he or she, on the ANC's behalf, simply picks up supplies from someone and delivers those supplies to the event. (Naturally, if the Commissioner is acting as a private individual, this would not be a donation to the ANC). If the Commissioner is delivering them to the ANC on the ANC's behalf, the Commissioner would be accepting a donation to the ANC. A scenario where the Commissioner is simply relaying supplies to another private party on the ANC's behalf, however, presents a more difficult question. If you have further questions about scenarios like this, we would be happy to consider them, taking careful account of the facts involved.

<sup>12</sup> See Letter to Philip C. Spalding, July 13, 2005, <http://app.occ.dc.gov/documents/2005/20050713.pdf> (last visited Aug. 6, 2018).