

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

December 6, 2019

Commissioner Ed Hanlon
ANC 2B09
1523 Swann St, N.W.
Washington, D.C. 20009

**Re: Whether an ANC Chairperson May Bar an ANC Commissioner from
Recording a Public ANC Meeting Through a Third Party**

Commissioner Hanlon:

You have expressed interest in videorecording public meetings of your Advisory Neighborhood Commission (“ANC”). Specifically, you would like to arrange for a member of the public attending a public ANC meeting to record the meeting on your behalf, with the expectation that you would then disseminate that recording to the public (making sure to convey that you were not disseminating it on the ANC’s behalf). The recording would not be approved by vote of the ANC, would be paid for with your personal funds rather than ANC funds, and would not be placed under ANC control. Your question is whether the Chairperson of your ANC could prevent you from doing this.¹ The answer is no.

For the Chairperson to prevent you from doing this, he would have to either say that current law prohibits you from making this arrangement, or would have to impose a ban on his own authority. Based on the information you have provided,² neither line of reasoning is sound.

Current law does not preclude the kind of independent recording arrangement you describe. If the arrangement had not been independent – if, for instance, you had sought to use ANC funds, or to create or disseminate the videorecording on the ANC’s behalf – your actions could be subject to restrictions imposed by local and federal law. For example, a Commissioner generally may not speak or act on behalf of his or her ANC without the ANC’s authorization.³ Nor,

¹ This letter takes no position on whether the Chairperson actually seeks to impose any such prohibition.

² This analysis, like the analysis in our other letters to ANCs and their Commissioners, rests on the information we have been provided.

³ See, e.g., D.C. Official Code § 1-309.11(b)(1) (noting that ANC takes official action solely by vote of its members); Memorandum from Corporation Counsel John M. Ferren to All District Agencies, Boards, and Commissions, Feb. 22, 1999, at 2, available at <http://app.occ.dc.gov/documents/1999/feb/19990222.pdf> (distinguishing an ANC’s recommendation from a recommendation by “individual commissioners who are not

generally, may a Commissioner expend ANC funds without ANC approval,⁴ or donate in-kind services to the ANC without some form of Mayoral approval.⁵ Moreover, a Commissioner seeking to disseminate materials on the ANC's behalf might be required to abide by the same standards that the ANC itself would be required to follow, such as any applicable requirements of the Americans With Disabilities Act of 1990 ("ADA")⁶ and its implementing rules.

But restrictions like these do not apply to the situation you have presented: arranging for a private citizen to record a public ANC meeting, and disseminating that video to the public, with your own resources on your own behalf. You would not be donating services to the ANC, expending public funds, or purporting to speak or act on behalf of the ANC. Nor would your actions be subject to the same limits that apply to the ANC. You would not, for instance, be acting as a "public entity" that must abide by the ADA requirements applicable to the ANC as a body.⁷

The Chairperson also could not prohibit you, on his own authority, from pursuing this kind of arrangement, because any such prohibition would exceed the Chair's powers. Both the Advisory Neighborhood Commissions Act of 1975 ("ANC Act")⁸ and your ANC's Bylaws⁹ authorize the Chairperson to "serve[s] as convener of the Commission and . . . chair the Commission meetings,"¹⁰ and your Bylaws empower the Chairperson to "manage the business operations of the Commission."¹¹ Yet nothing in either source of authority, or in Robert's Rules of Order,¹² authorizes the Chairperson to independently regulate videorecording by individual Commissioners.¹³ Nor does any of these sources of authority grant the Chairperson free-standing

authorized to speak on behalf of the ANC"). Your ANC's Policy and Procedures Manual reflects this same principle, stating on page 43 that a Commissioner "should never represent to anyone that their opinion or position reflects the opinion or position of the Commission as a whole, except in accordance with a resolution already adopted by the Commission." http://www.dupontcircleanc.net/wordpress/wp-content/uploads/2019/01/ANC2BPolicyProceduresManual_Adopted_2018.12.12.pdf (all sites last visited Dec. 6, 2019).

⁴ With narrow exceptions not applicable here, ANC funds may not be expended "without the specific authorization of the Commission." D.C. Official Code § 1-309.13(f)(1).

⁵ See Letter to Commissioner Renee L. Bowser, Aug. 10, 2018, at 2, available at <https://oag.dc.gov/sites/default/files/2019-05/ANC-4D-August-10-18-Solicitations-and-Donations-for-ANC-Fun-Day.pdf>.

⁶ Approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12101 *et seq.*).

⁷ See 28 C.F.R. § 35.104 (definition of "public entity"); Letter to Commissioner Karen Wirt, Oct. 4, 2018, at 1-2, available at <https://oag.dc.gov/sites/default/files/2019-01/ANC-6C-Questions-RE-Reasonable-Accomodations-ANC-Commissioners.pdf> (applying the ADA to the ANC).

⁸ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

⁹ <http://www.dupontcircleanc.net/wordpress/documents/bylaws/>.

¹⁰ D.C. Official Code § 1-309.11(e)(1A)(A); Bylaws art. IV sec. 4.

¹¹ Bylaws art. IV sec. 4.

¹² See *id.* § 1-309.11(e)(3) ("Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order").

¹³ See Letter to Commissioner Kathy Henderson, Feb. 5, 2015, at 2 ("[i]f the ANC bylaws, or applicable resolutions adopted by the ANC, do not prohibit attendees from recording a meeting, those attendees have the right to record that meeting in a manner that complies with other lawful ANC bylaws and resolutions"); Letter to Commissioner Karen Lucas, June 9, 2017, at 2-3 available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-8-C-June-19->

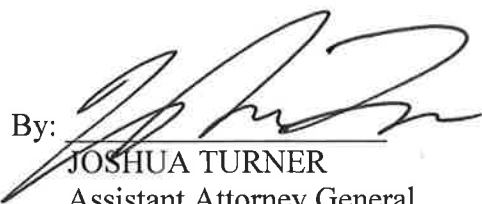
authority to govern the kinds of communications between a Commissioner and a member of the public before or after a public ANC meeting that would be involved in the type of videorecording arrangement you describe.¹⁴

Because prohibiting the type of arrangement you describe would exceed the Chairperson's authority, we do not resolve the more complex and difficult question of whether and to what extent other sources of law, such as the First Amendment and the open meetings requirements applicable to ANCs,¹⁵ may independently limit the Chairperson's authority in this context. Nor do we resolve what limits these sources of law may impose on an ANC's own authority to adopt, by vote, limits on videorecording by Commissioners.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Brian K. Flowers, 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-19-782)

[2017-Questions-Concerning-Meetings-and-Officers.pdf](#) (discussing limits on the Chair's authority, and attaching the February 5, 2015 letter to Commissioner Henderson).

¹⁴ It is also not clear how the kind of prohibition you describe would work in practice, particularly since your ANC permits members of the public to record public ANC meetings without regard to their reason for recording. *See* Policy and Procedures Manual at 15.

¹⁵ *See* D.C. Official Code §§ 1-207.42 and 1-309.11(g).