

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

September 23, 2021

Commissioner Zachary Israel
ANC 4D
717 Gallatin Street, N.W.
Washington, D.C. 20011

Re: Expenditure of Funds for Stage and Sound Systems

Dear Commissioner Israel:

You asked whether your Advisory Neighborhood Commission (“ANC”) may directly expend funds in support of an event that is open to the whole neighborhood and is designed to introduce the public to your ANC and to encourage (and facilitate) vaccination. Specifically, you have asked whether the ANC may expend funds to obtain a permit for this event, and to rent a stage (with a sound system) for bands to perform from. The event as a whole serves a public purpose, and thus the ANC may expend funds for this permit. But the ANC may not expend funds to rent a sound system and stage for the purpose of band performances because that would impermissibly fund entertainment.

Under the Home Rule Act, an ANC may “expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it,” including to “conduct programs for the welfare of the people in a neighborhood commission area.”¹ The Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)² echoes this authority,³ and elaborates that, to serve a public purpose, an expenditure must “benefit[] the community as a whole and [not be] done for the primary purpose of benefiting a private entity.”⁴

Your view is that this expenditure serves a public purpose, and we agree. Based on the description you have provided, this event, which is open to the whole neighborhood, serves at least two distinct public purposes: introducing the neighborhood to the ANC that conveys neighborhood issues and concerns to other District government bodies,⁵ and facilitating

¹ D.C. Official Code § 1-207.38(c)(2) and (e).

² Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

³ D.C. Official Code § 1-309.13(1)(1) (authorizing each ANC to expend its allocated funds “for public purposes within the Commission area”).

⁴ *Id.*

⁵ *See id.* § 1-309.10.

vaccination. But an ANC expenditure must also abide by federal appropriations law.⁶ Under federal appropriations law, read against the backdrop of the Home Rule Act, an ANC cannot directly expend its funds to passively entertain Commissioners or the public.⁷

A live performance by a band is quintessential entertainment, so an ANC cannot expend funds for it. Indeed, this expenditure bears a close resemblance to ones we have previously found impermissible. In a 1994 letter, we considered whether an ANC could expend grant funds to, among other things, pay for “‘Jazz and Gospel’ concerts every Saturday evening in July.”⁸ Funds would be used “to rent stage equipment and purchase food that would be sold as ‘refreshments’ to persons attending the concerts.”⁹ We explained that this expenditure would “fall into the category of food and entertainment” and was thus impermissible.¹⁰ Similarly, in a 2004 letter, we explained that expending ANC funds to pay for a generator that would supply music for a roller skating event would impermissibly fund entertainment.¹¹ This expenditure, like those, is for entertainment, and thus is impermissible.

We note that this letter addresses only the expenditure proposal you have presented to us. Our analysis might well be different, and the question closer, if the ANC intended to rent a stage and sound system for the public purposes described for the event (such as for inviting Commissioners to introduce themselves), and then merely allowed the band to use the stage the ANC had already chosen to rent. In that context, there might be a more significant question whether the ANC was truly expending funds for entertainment purposes. But the expenditure contemplated here, as you have described it, is unambiguously for entertainment and thus is impermissible.

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.

⁶ Federal appropriations law applies here because ANC funds are appropriated by Congress. *See, e.g.*, District of Columbia Appropriations Act, 2021, approved Dec. 27, 2020 (134 Stat. 1182; Pub. L. No. 116-260).

⁷ *See* Letter to ANC 2B Comm’r Mike Silverstein, May 1, 2019, <https://oag.dc.gov/sites/default/files/2019-05/ANC-2B-Use-of-Car-and-Throws-in-Capital-Pride-Parade.pdf> (explaining the prohibition on entertainment); Letter to Deborah Nichols, Dist. of Columbia Auditor, Aug. 9, 2006, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-August-9-2006-Grant-to-Purchase-Amusement-Park-Tickets.pdf> (ANC cannot purchase amusement park tickets) (all websites last visited Sept. 22, 2021).

Since this letter draws from past letters involving grants, we note one important distinction we have recently recognized between direct ANC expenditures (like the one here) and ANC grants. Federal appropriations law prohibits an ANC from directly funding entertainment. But as we explained in a recent letter, it does not categorically prohibit a recipient of an ANC grant from expending grant funds on entertainment. *See* Letter to Gottlieb Simon, Dir., Office of ANCs, July 7, 2017, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-July-7-2017-Expending-Grant-Funds-for-Food-and-Entertainment-at-Block-Parties.pdf>.

⁸ Letter to ANC 4B Treasurer Alice Gilmore, Oct. 20, 1994, at 1, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-4-B-October-20-1994-Grant-For-Laymond-Riggs-Athletic-Association.pdf>.

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ Letter to ANC 8E Chairperson Sandra Seegars, June 25, 2004, at 2, *available at* <https://oag.dc.gov/sites/default/files/2018-02/ANC-8-E-June-25-2004-Grant-Money-for-Church-Sponsored-Recreation-Youth-Event.pdf>.

Sincerely,

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