

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



Legal Counsel Division

March 8, 2012

Stephen A. Whatley
Commissioner, ANC 4A
7600 Georgia Avenue, Suite 404
Washington, DC 20012

Re: Potential ANC 4A Grant to Potomac Appalachian Trail Club

Dear Commissioner Whatley:

This letter responds to your February 13, 2012 letter to Attorney General Irvin B. Nathan, seeking legal advice as to whether your Commission may grant \$1,935.00 to the Potomac Appalachian Trail Club (PATC) to replace trail signs located in Rock Creek Park. Although the area involved is located within your Commission area, you express concern that the grant would fund activities to occur on federal property. We conclude the grant would be legally permissible.

According to PATC's grant application, the project would involve PATC acquiring and installing twenty signs along what it describes as the "Valley, Pine, Holly, Whittier and Theodore Roosevelt Trails" in Rock Creek Park. PATC states that "[m]ost existing signs are in poor condition, several have been stolen and there is a need for new signs at key intersections." PATC indicates that all trails are used by residents of the community, and the signs will indicate not only trail names, but also nearby intersecting trails and roadways, such as Military Road. PATC represents that it will have volunteers paint and install the signs according to National Park Service guidelines.

The law governing use of ANC funds is found in sections 16(l) and (m) of the Advisory Neighborhood Commissions Act of 1975, as amended, effective June 27, 2000 (D.C. Law § 13-135; D.C. Official Code §§ 1-309.13(l) and (m)(2010 Supp.)) ("Act"), which provides, in pertinent part, that:

(l) A Commission shall expend funds received through the annual allocation. . . or other donated funds, for public purposes within the Commission area. . . . Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section. . .

(m) (1) A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area.¹

While not expressly stated in the above statute, it is certainly implied within the term “public purpose” that ANC funds cannot be used for knowingly unlawful or tortious activity. Thus, an ANC could not grant money for a project that would involve conduct on federal lands not otherwise permitted by the relevant federal authority, such as the National Park Service (NPS).

However, the grant application by PATC indicates that it has an agreement with NPS to maintain trails in Rock Creek Park, and it has provided this service since the 1970s.² Indeed, the NPS website lists PATC as a “friend” of the Park, referencing PATC’s role in managing “more than 1,200 miles of hiking trails in the Mid-Atlantic region, along with cabins, shelters, and hundreds of acres of conserved land.” NPS further represents that “[t]he PATC conducts trail workshops in Rock Creek Park and helps to maintain our trail system.” You have also provided a Memorandum of Understanding (MOU) between PATC and NPS that states as its objective the commitment of PATC and NPS to “cooperate in the maintenance of a system of public hiking trails in Rock Creek Park, and its jurisdictional areas within Washington, D.C.” The MOU refers to the authority for the Department of Interior to recruit and accept volunteer services for NPS needs,³ and contains an agreement by PATC to, *inter alia*, “provide and mount trail signs with wording and design agreed upon by both [PATC and NPS].”

We are satisfied that PATC is authorized to undertake the project for which it seeks ANC funding, provided it follows all applicable NPS directives. Thus, while the grant should be expressly conditioned on PATC’s compliance with federal requirements, the fact that this project will occur on federal property is not, in and of itself, a legal barrier to the grant. Indeed, we have previously provided legal approval of a grant for playground equipment to be purchased and installed on federal property in the Glover Archbold Park

¹ Our prior review of the legislative history behind this provision has led us to interpret the phrase “that are public in nature and benefit persons who reside or work within the Commission area” as modifying the term “grant” in this provision, rather than an attempt to describe the nature of the organizations that may receive grants. *Letter to Douglas E. Smith, Sr.*, May 19, 2011. Though inartfully worded, it is reflective of the language in the immediately preceding section of the ANC Act that expressly states that ANC expenditures “may be in the form of grants by the Commission for public purposes within the Commission area.”

² I note that on its website, PATC indicates it was formed in 1927 to develop a 240-mile stretch of the Appalachian Trail, which extends from Maine to Georgia. In its grant application, PATC states that it now has responsibility for approximately 1,000 miles of trails, 1,000 acres of land, and nearly 60 shelters and cabins located within state and national parks or forests.

³ *See, e.g.* 16 U.S.C. § 1246(h) relating to maintenance of the national trail system, which also references the Volunteers in the Parks Act of 1969, approved July 29, 1970, Pub. L. 91-357, 16 U.S.C. § 18g.

by the McLean Gardens Playground Committee, which had secured a permit from NPS. *Letter to Trudy Reeves*, July 27, 2005.

The only other relevant legal requirement is that the grant be directed to a “public purpose,” and be expected to benefit those who reside or work in the Commission area. Improving directional guidance for trail users in a park open to everyone is unquestionably a public purpose, both from a qualitative view through its enhancement of recreational activity, and due to its potential benefit to a substantial number of people. See *Letter to Deborah Nichols*, November 9, 2006 (approving of grant for organization to prepare plans for possible park and trail system on Armed Forces Retirement Home land in ANC 4C area); *Letter to Fredericka Shaw*, October 14, 2011 (disapproving of grant designed to benefit only 15 participants).

In addition, both PATC and you have indicated that members of the ANC 4A community use the trails in Rock Creek Park that will be improved, as they are located in the Commission area, albeit owned by the federal government. I also note that the replacement signs are directional, with some references to streets that I understand to be within ANC 4A. Thus, while I suspect many non-residents of the area will benefit from the project, there is an expectation that a significant number of Commission residents will also benefit, as well as perhaps those who are employed in the area and visit the trails on breaks from work. This is buttressed by the fact that the park is otherwise accessible to the general public of ANC 4A.

We conclude that the grant is legally permissible based on the information provided.

I hope this letter is helpful.

Sincerely,

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Attorney General

By: 

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Legal Counsel Division

(AL-12-107)

cc: Gottlieb Simon, Office of Advisory Neighborhood Commissions