

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

October 14, 2011

Fredericka Shaw  
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Office of the DC Auditor  
717 – 14<sup>th</sup> Street, N.W., Suite 900  
Washington, DC 20005

**Re: ANC 5C Grant to Living Story Book Organization**

Dear Ms. Shaw:

This letter responds to your September 22, 2011 e-mail, forwarding a request by the Treasurer of ANC 5C for legal advice on the propriety of a pending \$5,000 grant application submitted by the Living Story Book Organization (“LSBO”). LSBO seeks this funding for the creation of a children’s book that incorporates as characters in the story 15 children between ages 6 to 9 that will be selected from the Bloomingdale neighborhood of the District. As set forth below, while the beneficiaries of the project would therefore properly be members of the commission area, we conclude that the number of participants is unfortunately too low for the grant to be permissible as having the requisite public purpose.

According to LSBO’s application, the project would take place over 20 Saturday sessions between October 2011 and May 2012, beginning with the children learning the story, *The Tale of the Gold Medallion*, and choosing their favorite character.<sup>1</sup> Each child would then be fitted with a costume of that character and photographed. A graphic artist would subsequently convert the photographs to “photo illustrations” for insertion into the book alongside its text so as to have the children become “living” characters. Later sessions would have the children record a CD of the story at a studio, and ultimately perform a play version in full costume before an audience that will be recorded onto a DVD. The

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<sup>1</sup> The story involves a town with 12 main characters identified generically by their occupation (lawyer, physician, firefighter, etc.), including a Mayor. No money is needed in the town, as everyone “share[d] what they had for just what they needed.” However, the Mayor one day announces his intent to award a gold medallion to the most important citizen, setting off a conflict among all the characters who think they are deserving of the award. Each character then stops their services to prove their worth to the town, until the Mayor ultimately announces that the medallion would be shared, beginning with the Mayor giving the medallion to the physician after he is treated for a headache. Once the medallion is eventually passed along to every character, the story ends with the message that it is “more important to give than to receive[.]”

children will be given personalized color versions of the book, along with the CD and DVD. Roughly 3 to 4 sessions in the project will involve the children engaging in interactive exercises and games based on the story's vocabulary, as well as the creation of dolls of two "hero" characters in the book – a firefighter and police officer.<sup>2</sup>

LSBO describes the purpose of the project as "instill[ing] in [the children] a lifelong interest in and love of reading by having them become characters in a book. . . which teaches the value of sharing, compromise and conflict resolution." LSBO also expects to "foster[] [a]n appreciation for the performing arts" for the children.

The law governing use of ANC funds is found in sections 16(l) and (m) of the Advisory Neighborhood Commissions Act of 1975, effective March 6, 1991 (D.C. Law § 8-203; D.C. Official Code § 1-309.13(l) and (m) (2011 Supp.)) ("ANC Act"), which, in pertinent part, provides that:

(l) 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) 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. . .<sup>3</sup>

As we have consistently advised, for a project funded by an ANC grant to have a "public purpose," or to be "public in nature," it must, at a minimum, benefit or potentially benefit a significant number of persons who either reside or work within the commission area. (Letter to Sinclair Skinner, February 20, 2004); (Letter to Mary Treadwell, March 25, 1997). However, we have resisted application of any mathematical formula to determine how many persons constitute a "significant number," given the differing contexts involved in proposed grants, and, indeed, we have recognized the difficulty of this question given its subjective nature. Letter to Sinclair Skinner, *supra*; Letter to Mary Treadwell, *supra*.

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<sup>2</sup> The proposed budget indicates that \$2,250 of the \$5000 requested from the ANC would be used for the various professional services provided for the creation of the book and the dolls, with the remainder being used for supplies and materials. In the latter category, I note that more than \$1,000 is listed for such items as crayons, paper, index cards, paper clips and folders. While there would certainly be necessary expenditures associated with the other learning activities to be implemented by LSBO, it is not clear how this amount of supplies would be connected to the book's creation and presentation, which is the decided focus of this project. We do not have to explore this issue further in light of our legal findings concerning the project as a whole.

<sup>3</sup> Our review of the legislative history behind this provision has previously 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.)

Nevertheless, we have erected certain numerical guideposts over the course of our review of proposed projects that are instructive here. For example, our Office found a proposed ANC grant to the Edward C. Mazique Parent Child Development Center to fund a scholarship that would be awarded to only one child, as one that would fail the public purpose test. *Id.* Likewise, we could not say an ANC grant to the YMCA Summer Camp that would benefit two children in a commission area was legally permissible. *Id.* We also could not approve a proposal for one commission to have each of its seven commissioners assist a child with school supplies and the like under an “adopt-a-child” program. (Letter to Sandra Seegars, February 11, 2011.)

In contrast, we have previously approved a grant to a day care center for development of a playground where the number of enrolled children totaled 134, as long as a significant number of the enrollees were also commission residents. (Letter to Deborah K. Nichols, September 17, 1999.) We also approved a grant by one commission to sponsor the attendance of 121 residents at a Black History Month lecture, although we were clearly reticent in doing so given the small proportion the number of attendees had to the entire commission area, and therefore conditioned our approval on the fact that the event itself was open to the public. Letter to Sinclair Skinner, *supra*.

While we have found other grants to be legally permissible where the direct beneficiaries totaled numbers closer to that involved in the project at issue, this was because either the particular program would be replicated over time, or the actions of the beneficiaries would further benefit the commission area. Thus, we approved of a grant to a local church’s recreation department for purchase of sporting equipment pursuant to its sponsorship of a youth football team, provided the equipment was not given to players, but rather, returned to the church for future teams. (Letter to Otis H. Troupe, December 28, 1992.) Our office also previously found two ANC grants to be lawful that were used to provide stipends to five young adults participating in a landscaping employment/entrepreneurship program (LEEP) because the program involved the youth working 20 hours a week cleaning, picking up trash on sidewalks, and landscaping public areas, including shrub trimming and beautification of public land within each ANC. (Letter to Deborah Nichols, August 4, 2000.)

A project that benefits only 15 children out of a commission area containing over 20,000 residents simply could not be found to meet the public purpose test for ANC grants.<sup>4</sup> This is not to say the program does not contribute to the community. Indeed, the project proposed would appear to meet any qualitative component to the public purpose test, as it is designed to promote literacy and perhaps other creative development for the youth involved.<sup>5</sup> However, the proposed project’s success is clearly grounded on the active

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<sup>4</sup> I arrived at this estimate of ANC 5C’s population based on the requirement that Single-Member Districts (SMDs) within each ANC must include approximately 2,000 residents. D.C. Official Code § 1-309.03 (2006 Repl.). While ANC-SMD redistricting efforts are underway due to the 2010 decennial census numbers having been released, there are currently 12 SMDs in ANC 5C.

<sup>5</sup> I note that I am not an expert in childhood education and development. I therefore express no opinion on whether the content of the book, or the other activities proposed for this project, would meet the requisite

involvement of the children in the book's creation, and its various dramatic presentations. I have not been presented with information that indicates the project will benefit other children in the commission area who may passively read, listen to, or watch the story, let alone whether in fact such opportunity will exist for those not involved in the project, nor is there any evidence of replication for future children from this particular \$5,000 grant.

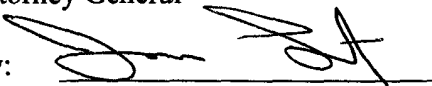
As we have said previously, we are loathe to find legal barriers to ANC efforts in assisting even one child's positive development. However, I read the Act's "public purpose" language as seeking to ensure the limited resources of ANCs will be used to have the broadest impact on the community it serves. For these reasons, I cannot say the grant is permitted under the ANC Act.

I hope this is helpful.

Sincerely,

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By:

  
Jason Lederstein  
Assistant Attorney General  
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(AL-11-455)

cc: Gottlieb Simon  
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standards in this field to achieve LSBO's stated goals. As my review is for legal sufficiency of the potential grant, I assume the project has the potential to provide the instructional benefits described in the application.