

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

September 30, 2011

Fredericka Shaw
Office of the District Columbia Auditor
717- 14th Street, N.W., Suite 900
Washington, DC 20005

Re: Use of ANC Funds for Vermin Control Activity on Embassy Property

Dear Ms. Shaw:

As you requested in our recent phone conversation, I have considered the issues presented in the e-mails from Commissioner Lamar of ANC 2D regarding using ANC funds to engage in vermin control activities on embassy properties that appear to have been abandoned.¹ While I only have information from the two brief e-mail exchanges between Commissioner Lamar and your Office, it appears that what is proposed is the ANC using its funds to control the growth of vegetation on neighboring but unidentified embassy property, as well as to attempt control of any potential infestation of vermin from that property, without first obtaining any consent from whichever particular foreign mission is involved. As described, this cannot be accomplished by the ANC.

While the fact that embassy property is involved in this proposal adds complexity to ultimate resolution of the problems outlined by Commissioner Lamar, which I will address below, the ANC cannot engage in the described effort for the basic reason that the ANC proposes to enter and manipulate property that is not otherwise public space. Unlike the Council of the District of Columbia and the Executive Branch of the District government, ANCs possess no "police powers" to protect the health, safety or welfare of residents within a commission area. While such police powers do not allow even Executive agencies to enter private property at will for any perceived beneficial reason, these agencies are statutorily empowered at times to undertake action to abate conditions on private property that may be harmful to the public. The ANCs, in contrast, are primarily advisory bodies, albeit also a part of District government. While ANCs also have funds allocated to them by the Council for spending on public purposes within their

¹ This inquiry originally came to our Office from Lynard Barnum in an August 19, 2011 email asking for comment on emails from Commissioner Lamar on the subject. I understand Mr. Barnum subsequently retired, and you have renewed his inquiry.