

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



**ATTORNEY GENERAL
BRIAN L. SCHWALB**

Legal Counsel Division

January 3, 2023

Kent C. Boese
Executive Director
Office of Advisory Neighborhood Commissions

Amy Bellanca
General Counsel
Office of the District of Columbia Auditor

Re: Question re ANC Cell Phone Reimbursement

Director Boese and Ms. Bellanca:

We have previously advised that an Advisory Neighborhood Commission (“ANC”) may expend funds to purchase equipment, such as laptops, for Commissioners to use for the conduct of official business.¹ You asked whether, alternatively, an ANC could reimburse Commissioners who use their personal cell phones partially for ANC business. They may, but only for itemized expenditures for official use.

As previous letters from this Office have explained, expenditures by an ANC are governed by the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),² which governs how ANCs may expend their funds. ANC expenditures must also conform to federal appropriations law since funds expended by ANCs are appropriated by Congress.³

The ANC Act permits an ANC to expend its funds “for the functioning of the Commission office,”⁴ and as the two letters cited in footnote 1 of this letter illustrate, we have consistently recognized

¹ See Letter to Comm’r Miscuk, Aug. 9, 2001, at 1 (cited in Letter to Comm’r Patel, Nov. 14, 2022, at 1). These letters, and others cited in this letter, are available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (all websites last visited Jan. 3, 2022).

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

³ See Letter to Comm’r Silverstein, May 1, 2019, at 3 n.13; Letter to Gottlieb Simon, July 7, 2017, at 2; D.C. Official Code § 1-206.03. Many of those principles are discussed in what is often called the “Red Book”: Principles of Federal Appropriations Law, a publication issued by the United States Government Accountability Office (“GAO”) and available from <https://www.gao.gov/legal/appropriations-law/red-book>.

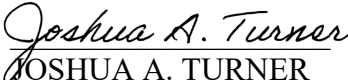
⁴ D.C. Official Code § 1-309.13(l). This is in addition to an ANC’s authority to expend funds “for public purposes within the Commission area.” *Id.*

that this allows ANC's to purchase equipment that Commissioners can use to carry out their official duties. The ANC Act also provides that, although a Commissioner cannot be compensated for personal services they provide on the ANC's behalf, an ANC may reimburse "an authorized purchase made with a personal credit card, debit card, or cashier's check," as long as the purchase is "documented with a receipt" and a copy of that receipt is submitted to the ANC.⁵ Accordingly, an ANC may, if the body has voted to authorize doing so, reimburse Commissioners for expenditures they make for official business. Correspondingly, the ANC Act generally does not authorize an ANC to reimburse a Commissioner for personal expenses. We have thus advised that an ANC cannot supply a Commissioner with equipment for the Commissioner's personal use.⁶ In this respect, the ANC Act echoes federal law, which prohibits the federal government from paying for personal expenses without specific statutory authorization.⁷

Federal appropriations decisions clarify how this principle—that government entities may reimburse official expenses but generally not personal ones—applies to reimbursement for official use of a personal cell phone. Those decisions advise that, because an agency cannot reimburse the use of a cell phone for personal purposes, it cannot "provide reimbursement on the basis of a flat rate, but only on the basis of actual expenses incurred for government use."⁸ As applied here, this means that an ANC cannot offer a flat-rate reimbursement. A Commissioner seeking ANC reimbursement for the official use of their personal cell phone must identify which expenses have been for personal use and which have been for official use.⁹

Sincerely,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

By: 
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(AL-22-717)

⁵ *Id.* § 1-309.13(f)(3). This is distinct from the statutory requirement that an ANC provide certain reimbursement for "qualifying travel or childcare expenses." *Id.* § 1-309.13(l-1).

⁶ See Letter to Comm'r Patel, Nov. 14, 2021.

⁷ See GAO, Red Book at 3-33 (4th ed. 2017) ("The general rule is that appropriated funds are not available for personal expenses").

⁸ GAO, *In re Nuclear Reg. Comm'n: Reimbursing Employees for Official Usage of Personal Cell Phones*, B-291076, at 2 (Mar. 6, 2003), available at <https://www.gao.gov/assets/b-291076.pdf>.

⁹ See *id.* We also note that any Commissioner conducting official business on a cell phone should ensure that records on the phone that concern official business, including voicemail messages, should be preserved, especially since there is a possibility that such records could be sought through a FOIA request. See, e.g., *Kane v. Dist. of Columbia*, 180 A.3d 1073, 1076 (D.C. 2018) (discussing a FOIA request that sought personal emails).