

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



**Legal Counsel Division**

February 16, 2006

Charles D. Reed  
Chairman, ANC 2F  
5 Thomas Circle, N.W.  
Washington, D.C. 20005

Sandra Biasillo  
Treasurer, ANC 2F  
5 Thomas Circle, N.W.  
Washington, D.C. 20005

Re: Whether an ANC May Reimburse an Employee Who Has Purchased a Computer  
For The ANC Using a Personal Credit Card

Dear Commissioners Reed and Biasillo:

This is in response to your letter dated January 4, 2006 (received by this Office on January 12, 2006) in which you ask for a legal interpretation of the Advisory Neighborhood Commission (ANC) law. In your query you seek guidance on the propriety of a transaction in which an ANC employee purchased a computer for the ANC using a personal credit card, after which the ANC voted to reimburse the employee for the outlay of funds. The Auditor has disallowed the transaction. For the reasons that follow, we support the Auditor's interpretation of the law.

You state that shortly before the October 1, 2003 regular ANC meeting for ANC 2F, the ANC's computer crashed and became inoperable, resulting in the loss of the ANC's electronic files. The ANC's then-executive director, Sheryl A. Kimbel, was unable to conduct much of the ANC's work, including preparing for the upcoming meeting. Ms. Kimbel reported the problem to then-chairwoman, Commissioner Helen Kramer, and to then-treasurer, Commissioner G. Robert Hinterlong, following an ANC meeting that all three had attended. It was suggested that Ms. Kimbel purchase a replacement computer for the inoperable one using her personal credit card and have the ANC reimburse her at the October 1, 2003 meeting. Ms. Kimbel did so, purchasing a new computer on her American Express card in the amount of \$1200.00 from Dupont Computer Inc., a retail store located in the District.

You advise that at the October 1, 2003 meeting a resolution was considered and unanimously adopted to reimburse Ms. Kimbel for the computer. The resolution reads, in pertinent part: “\$1200 [to] Sherri Kimbel [for] reimbursement for ANC computer.” A duly authorized ANC check thereafter was prepared and issued to Ms. Kimbel.

In your letter, you state your belief that the Auditor has incorrectly taken the view that what occurred was an indirect purchase by the ANC of a computer, through the use of a personal credit card. Instead, you characterize this transaction merely as a repurchase of a computer by the ANC from Ms. Kimbel, not as an indirect credit card purchase. In support, you argue that no action was taken by the ANC until such time as it voted to approve the expenditure to Ms. Kimbel at its regular meeting on October 1, 2003 and that the ANC, even at that time, was not obligated to satisfy Ms. Kimbel’s outlay of funds. You further point out that the ANC is under no obligation to purchase a computer from any particular vendor, and may, in fact, make a purchase from someone in Ms. Kimbel’s position. In essence, you ask us to regard the purchase of the computer as a transaction that occurred between the ANC and Ms. Kimbel, rather than one between the ANC and the computer vendor, through Ms. Kimbel.

ANC expenditures are governed by section 16(f) of the Advisory Neighborhood Commissions Act of 1975, (ANC Act) as amended, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(f) (2005 Supp.). We have addressed this provision and its implicit bar on ANC credit card use on two previous occasions, once in 1996 and more recently in 2004. *See* Letter to Russell A. Smith, Auditor, May 28, 1996 and Letter to Deborah K. Nichols, Auditor, June 14, 2004. In each instance we rejected arguments in favor of ANC credit card use, even where impracticalities would otherwise occur or cost savings could be realized.<sup>1</sup> The prohibition on ANC credit card use, therefore, is a settled matter and is not at issue here. Rather, it is whether, based upon the facts presented, the transaction in question was a prohibited ANC purchase through the indirect use of a credit card,<sup>2</sup> or a permissible purchase of a computer from an ANC employee. We believe the facts weigh in favor of the former.

Several factors lead us to this conclusion. First and foremost, is that Ms. Kimbel appears to have been reimbursed for the computer, rather than paid in the first instance. Your own submission references the ANC resolution which uses the term “reimburse” when referring to the money to be paid to Ms. Kimbel for the computer. It does not speak of purchasing or repurchasing a computer from Ms. Kimbel, and indeed reimbursement

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<sup>1</sup> In the 1996 letter we went so far as to anticipate that the Chair and the Treasurer might be required to shop together for office supplies in order to comply with check-writing dual signature requirements of section 16. Similarly, in the 2004 letter we rejected an argument concerning the “changing technology landscape” which included not only the potential cost savings that might be realized from credit card internet purchases, but the reality that in some cases *only* credit cards could be used for certain types of purchases.

<sup>2</sup> Though it does not appear that the ANC attempted to make a direct purchase with a credit card, even an indirect purchase of an item with a credit card is impermissible. In our 1996 letter we stated: “The exclusion of the use of a credit card not only prohibits an ANC from using a credit card directly to make purchases, but also indirectly through the issuance of an ANC check or the disbursement of cash from an ANC petty cash fund to *reimburse* a Commission member or *employee* of the Commission who makes purchases for the ANC with his or her own personal credit card.” [Emphasis added.]

would be consistent with the reasonable expectations of the interested parties here. Ms. Kimbel, for instance, was told by two Commissioners – the Chairwoman and the Treasurer – that she should purchase a computer for the ANC and then be reimbursed by the ANC at its next meeting. She did so and evidently began using the computer immediately for ANC business. The expectation that Ms. Kimbel would be reimbursed apparently was shared by the ANC which voted for such reimbursement by unanimous vote. We see no evidence that the ANC considered purchasing the computer in the first instance or repurchasing it from Ms. Kimbel as a second-hand item; only that Ms. Kimbel was to be reimbursed.

We have considered your argument that a reimbursement did not occur because Ms. Kimbel was never under any obligation to sell, nor was the ANC under any obligation to purchase the computer from her. It does not persuade us. Though Ms. Kimbel was not formally authorized by the Commission to purchase the computer, as required under District law, two of the ANC's officers advised her to make the purchase for which she would be reimbursed later. Had the ANC later decided not to cover her outlay of funds, we believe that a good argument could have been made under the "coercive deficiency" doctrine of Federal appropriations law that Ms. Kimbel should have been compensated because the government is under a "moral obligation" to pay for benefits incurred.<sup>3</sup> See e.g., Office of the General Counsel, U.S. General Accounting Office, *Principles of Federal Appropriations Law*, 2d ed., Vol. II, pp. 6-56 and 7-14 (1992). Moreover, Ms. Kimbel could have been able to make a claim under District law on a theory of *quantum meruit*, or, "as much as deserved," because goods were provided, accepted and used by the ANC, and the ANC (through its officers) was on notice that Ms. Kimbel expected to be paid for the goods.<sup>4</sup> This would be especially compelling where, as here, the computer was used solely and immediately for ANC business and purchased, as you state, because the ANC could not otherwise carry out its functions.

We have also considered the emergency circumstances which you indicate existed at the time the purchase was made. As we have stated previously, however, even *necessity* cannot serve as a basis to overcome the restrictions of the expenditure provisions of the ANC Act. We recognized as much both in the June 14, 2004 letter as well as a letter we issued on February 26, 2001, in which we concluded that the use of a cashier's check by an ANC would be prohibited (because it could not meet the check-writing requirements of the ANC Act) even where the Board of Elections and Ethics – an instrumentality of the District Government – would not accept ANC checks or cash. Letter to Deborah K. Nichols, Auditor, February 26, 2001.

Finally, we address your argument that the underlying purpose of the ANC Act's expenditure provisions were not offended by what occurred here. These you describe as

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<sup>3</sup> This is analogous to Federal Anti-Deficiency law insofar as the innocent party is compensated, but the expenditure is still considered to be unauthorized. In such cases, those responsible for making the unauthorized expenditure are still held accountable, apparently as the Auditor has held the ANC accountable here.

<sup>4</sup> These are the elements of a successful *quantum meruit* claim. See *In re Rich*, 337 A.2d 764, 766 (D.C. App. 1975). *Accord, TVL Associates v. A&M Construction Corp.*, 474 A.2d 156, 159 (D.C. App. 1984); *Vereen v. Clayborne*, 623 A.2d 1190, 1193 (D.C. App. 1993).

maintaining adequate accounting controls and preventing ANC's from impairing their allotted funds by incurring credit debt. Even were we to agree that such is the case, it matters little. Our interpretation of this and other provisions of the ANC Act rest on the principle of statutory construction known in Latin as "*expressio unius est exclusio alterius*" which, for these purposes, means that if the legislature has specified certain methods for making expenditures, it intended to exclude other methods.<sup>5</sup> Section 16 of the ANC Act, D.C. Official Code § 1-309.13 (2005 Supp.), carefully details the ways in which ANC's may make expenditures. Credit card use, even when viewed as reimbursement to another, is not one of them.

In concluding that the method of the ANC expenditure here was impermissible, it is important to recognize that ANC's are not precluded from making purchases from vendors of their choosing, even if such vendors happen to be individuals employed by the ANC's. That is not what occurred here. There is ample evidence that the employee was informally directed to buy the computer with the express promise by two of the ANC's officers that she would be reimbursed later. Reimbursement is what was expected and is what actually occurred, as demonstrated by the language of the subsequent ANC resolution authorizing payment to the employee. In light of these circumstances, we can reach no other result.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

\_\_\_\_\_/s/\_\_\_\_\_  
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RJS/dps

(AL-06-021)

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<sup>5</sup> This rule of statutory construction may only be overcome by a strong indication of contrary legislative intent – a conclusion which we do not find supported by the legislative record. See Norman J. Singer, *Statutes and Statutory Construction*, § 47:23 (6<sup>th</sup> ed. 2000).