

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

July 29, 2010

Lynard Barnum  
District of Columbia Auditor  
717 14<sup>th</sup> Street, N.W. Suite 900  
Washington, D.C. 20005

Re: Whether an ANC may provide air conditioning units to its at-risk constituents

Dear Mr. Barnum:

This letter responds to a request from your office, on behalf of Commissioner Monique Smith, for guidance concerning the propriety of a proposed grant from ANC 4B to two neighborhood churches to purchase air conditioning units at a reduced rate from Home Depot. According to Commissioner Smith, the grant would provide the air conditioning units free of charge to those at risk (i.e., seniors, handicapped persons, and persons with small children), in response to this summer's heat wave. Our understanding is that Commissioner Smith would purchase the units, which would then be distributed to these individuals from two locations — Plymouth Baptist Church and St. Mark's Baptist Church. For the reasons that follow, the ANC may not approve such a grant request.

First, section 16(*l*)(1) 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(*l*)(1) (2010 Supp.) states in pertinent part: "A Commission shall expend funds . . . for public purposes within the Commission area." Such expenditures "may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m)." *Id.*

In an advice letter published on March 7, 2003, we opined that "an ANC may grant monies to an organization that is public in nature provided the money does not inure to the benefit of a private party but rather is for the public good." Letter to Commissioner Louis Lieb, ANC 4B, March 7, 2003. Further, "a balancing test must be employed to determine whether the public benefit outweighs the private gain." *Id.* There, the question was whether ANC 4B could grant money to revitalize the Takoma Theatre. Ultimately, we advised the ANC Commissioner to "determine whether this type of enhancement appreciably adds to the value of the private property." *Id.*

Here, based on the e-mails dated July 23, 2010 from Commissioner Smith and you, we conclude that the proposed grant does not satisfy the public purpose test because the ultimate benefit is private, not public, in nature. The grant program would essentially provide select individuals with the benefit of ownership of private property, an air conditioning unit, to be used within their homes, without providing any benefit to the community at large.<sup>1</sup>

Second, even if we could agree that there is a valid public purpose, the grant would nonetheless be prohibited by D.C. Official Code § 1-309.13(1)(2) (2010 Supp.), which states that “[f]unds allocated to Commissions may not be used for a purpose that involves . . . personal subsistence expenses.” Although the term “personal subsistence” is not defined in the ANC Act, the ordinary meaning of the phrase suggests that it includes necessary living expenses. The provision of air conditioning units would fall within such a definition because the purchase of the units is predicated on the units being a need of the at-risk residents to protect against abnormally high temperatures. Oddly, the stronger the argument for the public purpose analysis — that the units are necessary for these residents for health purposes — the more likely it would be impermissible under the personal subsistence prohibition.

Finally, an ANC may not approve a grant if “[t]he services provided by the grantee organization [are] duplicative of any that are already performed by the District government.” D.C. Official Code § 1-309.13(m)(1) (2010 Supp.). Upon consultation with the District Department of the Environment (“DDOE”), Energy Efficiency & Conservation Services, we have learned that the District provides at least two programs to assist low-income and at risk persons with cooling systems. First, DDOE provides an Appliance Replacement Program, where low-income residents may replace free-of-charge window air conditioning units that are either broken or deemed non energy efficient. Second, the District provides a Fan Distribution Program as part of the D.C. Energy Office’s Low Income Home Energy Assistance Program (LIHEAP).<sup>2</sup> This program distributes fans to households that meet low-income criteria and have a household member with special needs, meaning that there is: (1) a child under age 6; (2) a household member age 60 or above; or (3) a household member with a documented respiratory condition or medical need for cooling assistance. These criteria are waived whenever the heat index exceeds 100 degrees. Insofar as these programs would overlap with the proposed grant, the grant would be duplicative and therefore prohibited.

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<sup>1</sup> For a more general discussion of the public purpose limitation on ANC spending, *see* Letter to Chairman Stanley Allen, ANC 1E, May 19, 1986.

<sup>2</sup> After consulting with DDOE, Energy Efficiency & Conservation Services, we learned that LIHEAP currently has no fans for distribution, but expects to receive more shortly.

Accordingly, for all of the above-stated reasons, ANC 4B does not have the authority to make the proposed grant. Thank you for bringing this matter to our attention.

Sincerely,

PETER J. NICKLES  
Attorney General for the District of Columbia

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/s/

PJN/cmb (AL-10-393)