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March 11, 1992

Patricia Wamsley
Chairman, ANC 3-C
2737 Devonshire Place, N.W.
Washington D.C. 20008

Re: What refreshments may an ANC purchase and when may it serve them? May an ANC delegate to a committee or to an individual commissioner the authority to take official action?

Dear Ms. Wamsley:

This is in response to your February 25, 1992 letter in which you request the legal advice of this Office as to the meaning of certain sections of the Advisory Neighborhood Councils Act of 1975.

You note in your letter that section 3 of the Advisory Neighborhood Commission Amendment Act of 1990, effective March 6, 1991, D.C. Law 8-203, amended section 16(1) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-264(1) (1991 Supp.), to read in pertinent part:

> A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office, including staff salaries and <u>nominal refreshments at Commission meetings</u>. * * * Funds allocated to the Commissions may <u>not</u> be used for a purpose that involves partisan political activities, personal subsistence expenses, Commissioner compensation, <u>meals</u>.... [Emphasis added.]

You state in your letter that "the law now permits us to have juice and cookies at our regular monthly meetings," but then ask: "...[W]hat about foods such as pizza or deli cold cuts? Is 'nominal' determined by type of food, quantity, or amount spent?"

The underscored phrase "nominal refreshments at Commission meetings" was part of Bill 8-626 when it was introduced by Councilmember Kane on June 26, 1990. The Committee Report on Bill 8-626 (Committee on Government Operations, October 25, 1990) does not mention this language. At page 2, the Committee Report does state, however, that many of the provisions of the bill "are modeled after Bill 7-567," the predecessor bill that was never reported out by the Committee on Government Operations. Bill 7-567, as introduced by Councilmember Kane on September 27, 1988, followed Mayor's Memorandum 76-108 by prohibiting ANC expenditures for "refreshments" as well as for "meals."[1] Following the testimony presented at the October 20, 1988 Public Roundtable on Bill 7-567 before the Committee on Government Operations, Committee Chairperson Kane inserted in Bill 8-626 a "nominal refreshments at Commission meetings" exception to the general prohibition that ANC funds may not be used for "personal subsistence expenses" or for "meals." See § 16(l), D.C. Code § 1-264(l) (1991 Supp.). At the October 20, 1988 Public Roundtable on Bill 7-567, Paul Strauss of ANC 3-E testified that ANCs ought to be able to spend a "very small" amount of funds for refreshments such as "doughnuts and coffee." Chairperson Kane responded: "You're suggesting perhaps refreshments should be taken out of there [i.e., taken out of the prohibition] if they're kept at a minimal nature."[2] In Webster's Third New International Dictionary (Unabridged, 1981), the word "refreshments" is defined as "a light meal," and the term "nominal" is defined as "being so small, slight or negligible as scarcely to be entitled to the name." Given the language of the statute, its legislative history, and these dictionary definitions, I conclude that the Council intended the phrase "nominal refreshments" to mean light food and drink that is inexpensive - something short of a "meal." Therefore, as you have suggested, the kind of drink that would be

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[1] Mayor's Memorandum 76-108 was issued on July 23, 1976. Its originator was Comer S. Coppie, then Special Assistant to the Mayor for Budget and Management Systems. In outlining fiscal procedures for ANCs, the memorandum states in pertinent part (at page 2):

> It will be the responsibility of each Commission to maintain control and to ensure the integrity of its financial accounts. * * * In the absence of specific authority, funds allocated to the ANCs may not be used for such purposes as to furnish refreshments, meals, or out-of town travel expenses.

[2] There is no transcript of the testimony presented at the October 20, 1988 Public Roundtable on Bill 7-567. The quotations are from a tape recording of that hearing which is available at the Legislative Services Office of the Council of the District of Columbia.

appropriate is coffee, tea, juice, or soft drinks, and the kind of food that would be appropriate is snack food such as doughnuts, cookies, pretzels, potato chips, or something comparable. Pizza and deli cold cuts would not fit within the category of light food that is inexpensive, and something short of a meal.

Your next question concerns the "at Commission meetings" part of the nominal refreshments exception:

> What about other meetings such as a committee meeting? We have a monthly meeting that is essentially a committee of the whole: May we use Commission funds to provide refreshments at such a meeting? Does it matter whether the meeting is not a public meeting? What about an unannounced committee meeting that is open to the public? Does it matter whether the food is consumed by Commissioners?

The Committee Report on Bill 8-626 does not address the Council's intent as to the meaning of this phrase. However, when the Advisory Neighborhood Councils Act of 1975 elsewhere uses the term "Commission meetings," it is in reference to the regularly scheduled public meetings that each ANC is required to hold annually. See § 14, D.C. Code § 1-262(b) (1991 Supp.). Therefore, I construe the Council's intent to be that the nominal refreshments authorized by § 16(l) may be served only at regularly scheduled public meetings of the ANC. ANC funds are not to be spent for the principal purpose of feeding Commission members. See § 16(l), D.C. Code § 1-264(l) (1991 Supp.), which prohibits use of ANC funds for "personal subsistence expenses" or "meals." This conclusion is supported by the testimony of Rob Yeldell at the October 20, 1988 Public Roundtable on Bill 7-567. Supporting Mr. Strauss' testimony that ANCs ought to be able to spend a small amount of their funds on "refreshments," Mr. Yeldell stated that this would help in "getting communities out to our meetings." There is nothing in the statutory language or in its legislative history that suggests that the Council intended that such refreshments may be consumed only by members of the public who attend Commission meetings. Therefore, such refreshments may be consumed at such meetings by Commissioners as well.[3]

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[3] At the October 20, 1988 Public Roundtable on Bill 7-567, Stanley J. Mayes of ANC 1-B complained that the person who was hired by that ANC to staff its office had to pay for coffee out of the employee's own money. An ANC may not use its funds to purchase food or drink for an ANC employee at his or her ANC workplace. See § 16(l), D.C. Code § 1-264(l) (1991 Supp.); compare Principles of Federal Appropriations Law (1st ed. 1982) at page 3-76: "[A]s a general rule...appropriated funds are not available to pay subsistence or to provide food to Government employees at their official duty stations."

You also seek advice concerning whether the Commission may "delegate the decisionmaking on proposed government actions (that is, actions within the meaning of section 13, D.C. Code § 1-261(a)) to a committee or individual Commissioners."

Section 13(d), D.C. Code § 1-261(d) 1991 Supp. , provides in pertinent part:

> Each Commission...notified...of proposed District government action or actions shall consider each such action or actions in a meeting with notice given... [and] which is open to the public....No official action may be taken by a Commission unless a majority of the elected representatives of the Commission is present. [Emphasis added.]

See also § 14(g), D.C. Code § 1-263(g) (1987), which makes ANCs subject to the open meetings requirement of § 742(a) of the Self-Government Act, D.C. Code § 1-1504(a) (1987).[4]

The delegation of official action decisionmaking to a committee of the ANC or to an individual Commissioner would be inconsistent with the above-quoted language of § 13(d). Sections 13(d) and 14(g) require that when an ANC takes an "official action," it must do so: (1) as a Commission, and (2) at a properly noticed public meeting at which at least a majority (i.e., a quorum) of the Commissioners is present. Compare Allen v. District of Columbia Zoning Commission, 146 U.S. App. D.C. 24, 449 F.2d 1100 (1971) (when the Zoning Commission holds a statutorily required public hearing on a proposed zoning map change, a quorum of the members of the Zoning Commission must be present). Therefore, the answer to this question is that an ANC may not delegate decisionmaking on proposed government actions to a committee of the ANC or to an individual Commissioner.

As a corollary to the delegation question, you ask whether an ANC "may delegate [to a Commissioner] the decision to enter into an agreement," for example, with a developer, "on behalf of the ANC without first coming back to the ANC for final approval." Such an agreement would be an "official action" of the ANC within

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[4] Section 742(a) of the Self-Government Act provides:

> All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

the meaning of D.C. Code § 1-1504(a) (1987). Therefore, a final decision to enter into such an agreement may not be delegated to a single Commissioner, but rather must be approved by the full ANC at a public meeting.

Sincerely

Vanessa Ruiz
Deputy Corporation Counsel, D.C.
Legal Counsel Division

cc: The Honorable James E. Nathanson
Council of the District of Columbia

Warren Graves, Director
Office of Constituent Services

Otis H. Troupe
D.C. Auditor