

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



**Legal Counsel Division**

June 11, 2010

Lynard Barnum  
Financial Auditor/ANC Program Manager  
Office of the District of Columbia Auditor  
717 14th Street, N.W.  
Suite 900  
Washington, DC 20005

Re: Whether an ANC can issue a grant to support the promotion of a community theater?

Dear Mr. Barnum:

This letter responds to your June 1, 2010 request for advice as to whether an Advisory Neighborhood Commission ("ANC") may make a grant of public funds to support the non-entertainment promotion costs associated with a new community theater.

Specifically, ANC 6C received a grant application from the Mt. Vernon Triangle Community Improvement Corporation to help support its mission of turning a parking lot into an outdoor theater to show films to local residents. The grant money would be used to support the promotion of the theater, including the costs of a marketing banner, marketing flyers, and website design.

Pursuant to section 16(m) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(m) (2009 Supp.), as amended, ANCs have limited authority to award grants:

(m)(1) ... A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area...

Here, the location of the proposed theater is an outdoor parking lot within the Commission area that is prone to crime and nuisance. As such, Mt. Vernon Triangle Community Improvement Corporation is attempting to revitalize the space until it can be developed and to make use of it for a positive activity. To be sure, this use of ANC funds likely would meet the public purpose requirement.

However, a further limitation on ANC grants is that no grant money can be used to support entertainment activities. According to the General Accounting Office (GAO), the use of federally appropriated funds for entertainment purposes is prohibited unless specifically authorized by statute. See General Accounting Office, Principles of Federal Appropriations Law, 4-123 (3d ed., Jan. 2004). Although not attempting to precisely define "entertainment," the GAO has suggested that the term is very broad, including sports, recreation, performances, and other sources of amusement. Principles of Federal Appropriations Law at 4-101 to 102.

In seeking to clarify which expenditures might be impermissibly related to entertainment, this Office has distinguished between interactive, recreational activities, such as roller skating (Letter to Sandra Seegars, June 25, 2004), and passive entertainment, such as a jazz concert series (Letter to Alice Gilmore, Oct. 20 1994). In a letter to Philip Spalding, dated July 13, 2005, this Office elaborated on the difference between the two categories. Specifically, it was noted that:

The true difference between recreation and entertainment is that grants for recreation provide an open opportunity for community participation in an activity that enriches the participants rather than mere passive observance of an event as would be the case with entertainment.

Here, the grant proposal is directly related to a community theater showing movies to community residents. This is exactly the type of passive observance that this Office classified as entertainment. In so far as the promotion of the theater must be viewed as part of the costs of providing the entertainment, a grant to the Mt. Vernon Triangle Community Improvement Corporation for the purchase of a banner, flyers, and website is impermissible.

I hope that this information has been helpful to you.

Sincerely,

Peter Nickles  
Attorney General

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/s/

PN/dps