

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

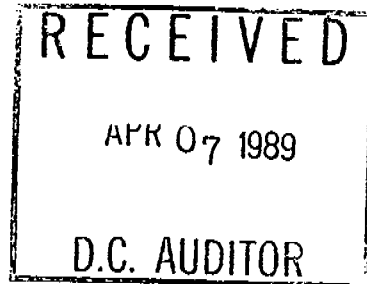
DISTRICT BUILDING

WASHINGTON, D. C. 20004



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April 5, 1989



Jack Evans
Chairman
Advisory Neighborhood Commission 2-B
1526 Connecticut Avenue, N.W.
Washington, D.C. 20036-1104

Re: ANC commissioner serving as staff employee

Dear Mr. Evans:

This is in response to your March 24, 1989 letter in which you ask whether it is legally permissible for Advisory Neighborhood Commission (ANC) 2-B to hire one of its commissioners on a temporary basis to take care of a backlog of administrative work that resulted when ANC 2-B's prior staff coordinator became ill and subsequently died.

Neither § 738 of the District of Columbia Self-Government and Governmental Reorganization Act ("Self-Government Act"), approved December 24, 1973, 87 Stat. 824, D.C. Code § 1-251 (1987), nor any act of the Council of the District of Columbia directly addresses the question of compensation for ANC commissioners. Nevertheless, the language of § 738(e) and legislative history of the Self-Government Act indicate that Congress intended ANC commissioners to serve without compensation.¹

¹ Section 738(e) of the Self-Government Act provides that the District government shall allot funds to the ANCs so that they may pay their "expenses," "employ staff as may be necessary," and "conduct programs for the welfare of the people in a neighborhood commission area." See Home Rule for the District of Columbia 1973-1974, Background and Legislative History of H.R. 9056, H.R. 9682, and Related Bills ("Home Rule Legislative History"), 3102 (1974). Section 738 of the Self-Government Act was in part modeled on recommendations of the Federal government's Advisory Commission on Intergovernmental Relations. In these recommendations members of advisory neigh-

On the other hand, ANCs are authorized to employ staff. See § 738(e) of the Self-Government Act, D.C. Code § 1-251(e) (1987). Although under the Self-Government Act the Council of the District of Columbia has the authority to establish uniform guidelines with respect to the employment of persons by each ANC (see § 738(f), D.C. Code § 1-251(f) (1987)), the Council has not prohibited ANCs from hiring their own members to fill staff positions. Compare §§ 16(c) and (d) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, as added by § 2 of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58, D.C. Code §§ 1-264(c) and (d) (1987). Therefore, so long as the commissioner is compensated solely for staff duties for the performance of which ANC 2-B would otherwise compensate a person who is not an ANC 2-B commissioner, then there would be no violation of the general rule of law that ANC commissioners are not entitled to compensation for the work they do as commissioners.

You emphasize in your letter that the commissioner's employment would be temporary, and "would involve updating... [ANC 2-B's] filing system by sifting through the many piles of documents throughout the ANC office." In view of the "limited nature" of this employment, you state that you "do not perceive any conflict of interest between her role as a SMD Commissioner and her employment by the ANC." While your perception may be generally correct, it is important to be alert to the possibility that with regard to a specific matter that the commissioner may be asked to handle in her role as staff employee there may arise a conflict of interest. If such a conflict of interest does arise, it may be dealt with on an individual basis.²

Sincerely,

Thomas F Bastow

Thomas F. Bastow
Chief
Legislation and Opinions Section
Legal Counsel Division

borhood councils "shall receive no compensation but may receive reimbursement of actual and necessary...expenses." Home Rule Legislative History, at 1157.

² It would, of course, not be appropriate for the commissioner in question to vote as a commissioner on any question related to her employment by ANC 2-B.