

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



Legal Counsel Division

December 3, 2010

Faith Wheeler
ANC 4B
6856 Eastern Avenue, NW #314
Washington, DC 20012

**Re: Potential Grant Application for Upgrade of Stage Lighting at
Takoma Education Campus**

Dear Ms. Wheeler:

This letter responds to your recent email inquiry to Lynard Barnum in the Office of the D.C. Auditor concerning a constituent's potential application for a grant from ANC 4B to improve the stage/auditorium lighting at the Takoma Education Campus (TEC). Mr. Barnum forwarded your email to this Office, which attached the inquiry by the constituent.

Specifically, the constituent foresees an upgrade to the lighting in the "TEC Theater" that may include what is described as "relatively-portable theater lighting bars for [the] sides of [the] room, and better spotlighting thru additions to the ceiling racks." The constituent notes that the present stage lighting is "ok," but is not satisfactory for performances off stage and for community events. In this regard, the constituent suggests that the improvements could benefit the community in light of the TEC Theater having "ramped" audience seating that is not found in other local schools, and therefore can be a forum for events after school hours. While the constituent states that he has consulted with a lighting expert, no monetary figure was provided. The constituent further notes that the local PTA appears not to be an option for funding the potential lighting upgrade. Your email suggests that you are concerned that the project would be in a public school, which, of course, is already funded by the District budget.

While we realize the inquiry is preliminary, it would be problematic as a grant application because it suggests the grant would be to an individual, not an organization. Section 16(m) of the Advisory Neighborhood Commissions Act of 1975, effective March 6, 1991, (D.C. Law § 8-203; D.C. Official Code § 1-309.13(m) (2006 Repl.)) ("the Act") governs the award of grants by the ANCs. This section reads:

(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. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.

D.C. Official Code § 1-309.13(m)(1) (2006 Repl.). While our Office has previously interpreted the above phrase “public in nature and benefit persons who reside or work within the Commission area” to be a somewhat awkward description of the type of grants that are permitted from ANCs, rather than a directive on the type of organizations that may receive them, it is clear that individuals cannot be grant recipients, only organizations.

Your concern about the potential project taking place in the public schools is also valid, but not necessarily fatal to the proposal. Grants for projects on public school grounds are always questionable in light of the last sentence of the statute quoted above, as DCPS and the Office of Public Education Facilities Modernization (OPEFM) are responsible for providing an array of educational services and related equipment/facilities for education of children. D.C. Official Code §§ 38-172 and 38-453(6) (2010 Supp.). Thus, we have previously advised ANC 1C that a grant requesting funds for the purchase of microscopes, musical instruments, art supplies and athletic equipment to be provided to students of Adams Elementary School would be prohibited as duplicative of items that the then-Board of Education should have provided to the schools (Letter to Nik Apostolides, April 14, 2003). However, our Office also advised ANC 3C that a grant to a parent-teacher organization for building of a climbing wall on the playground area of Oyster Bilingual Elementary School was permissible, both because we viewed the unique climbing apparatus to be in the form of optional recreational equipment that the school could fund but was not required to, and because the school indicated it would not be spending money for its construction (Letter to Trudy Reeves, April 14, 2006). The wall was not therefore “duplicative” of school services, and was likely to benefit all children in the community, rather than just the school’s students.

While we view improvements to the TEC stage/auditorium lighting proposed by the constituent to likely benefit more than just TEC students if the facilities are used by the community after school hours, it is not clear that OPEFM is responsible for the upgrade. The constituent suggests the lighting is adequate for stage performances put on by the school. If true, and we have no information on the lighting adequacy, then presumably OPEFM is under no obligation to expend funds for improvements to assist in community use of the auditorium, and the grant would therefore not be duplicating what the District government must provide. However, OPEFM may choose to upgrade the TEC facilities for better student performances or other educational use of the auditorium. We note that adequate lighting for DCPS students at least in the classroom is a focus of OPEFM in its Master Facilities Plan. *OPEFM 2010 DCPS Master Facilities Plan*, Plan Detail Narrative, §3.1.1. Thus, a grant application for this project should indicate whether the TEC administration and OPEFM have determined that the lighting is inadequate, and/or

have planned to modernize the lighting of the TEC Theater. The more immediate concern, however, is that only an individual would be seeking the grant.

I hope that this information has been helpful to you. If you have any questions, please do not hesitate to contact this office further.

Sincerely,

PETER J. NICKLES

Attorney General

By:



Jason Lederstein

Assistant Attorney General

Legal Counsel Division

(AL-10-514)

cc: Gottlieb Simon, Executive Director
Office of Advisory Neighborhood Commissions