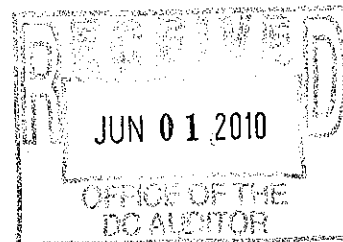


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

May 26, 2010

Gottlieb Simon
Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: May ANC funds be used to purchase plaques to recognize community service?

Dear Mr. Simon:

This letter is in response to your May 21, 2010 request for guidance from the Office of the Attorney General ("OAG") as to whether an ANC may use its funds to purchase plaques and awards to acknowledge good works in the community. You question whether these items would be considered impermissible personal gifts or under what circumstances they would be regarded as providing a public benefit to the Commission area.

An ANC's authority to expend funds is set forth in the ANC statute found in sections 16(l) and 16 (m) of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135 (D.C. Official Code §§ 1-309.13(l) & (m)) (2009 Supp.) (collectively, "ANC Act"). Those provisions permit an ANC to expend funds in two ways: either as a direct expenditure (§ 1-309(l)) or as a grant to an organization (§ 1-309(m)).¹ See also section 738(c)(2) of Home Rule Act (D.C. Official Code § 1-207.38(c)(2)) ("[m]ay .. expend [public funds], for public purposes within its neighborhood commission area"). In either instance, the expenditure must be for a public purpose within the Commission area.²

¹ The ANCs may also expend funds for the function of the Commission's office.

² Further, any expenditure by the ANC may not be used to duplicate services already provided by the District. D.C. Official Code § 1-309(l). While the duplicative services prohibition appears only in D.C. Official Code § 1-309(l), OAG has historically opined that it applies both to ANC expenditures made directly under D.C. Official Code § 1-309(l) or those made as a grant under D.C. Official Code § 1-309(m). See Letter to Councilmember David Catania, March 23, 2004.

As OAG has consistently explained in its legal advice letters, to meet the public purpose test, the expenditure must benefit or potentially benefit a significant number of persons in the Commission area. While this benefit cannot be precisely defined and may take many forms, its objective must be “the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all, or at least a substantial part of, the inhabitants or residents.” 15 EUGENE MCQUILLIN ET AL, THE LAW OF MUNICIPAL CORPORATIONS § 39.19 (3RD Ed. 2001) Further, the benefit to the public must not be just a negligible one, but have some measurable effect on the community. One frequently enunciated test is “whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit.” *Opinion of the Justices*, 384 So. 2d 1051, 1053 (Ala. 1980), citing *Opinion of the Justices*, 197 N.E. 2d 691 (1964).

The purchase of a plaque or other award to be presented, for example, to a teacher, police officer, or citizen working or residing in the Commission area, may only be made using ANC funds (directly or through a grant) if the intention is not just to reward the individual, but to provide incentives for others to excel at their particular jobs or to make contributions to the community. Therefore, it would be permissible for an ANC to select certain individuals for recognition through awards for outstanding contributions, provided that others working in the community would also be eligible for such awards if they provided comparable community service, and the awards were given to encourage others to strive for this same high level of performance. In this situation, the public purpose test would be satisfied because the funds would be used to motivate and inspire others to strive for similar recognition through their contributions, thus benefiting those residing or living in the Commission area who would be the recipients of these good works.


In contrast, if the plaque or award is just to reward an individual for past performance, e.g. service as an ANC Commissioner or 20 years of teaching in the Commission area, then the award, although well-intentioned, would be an impermissible gift for which ANC funds cannot be expended. See Letter to Commissioners of ANC 1-B, dated March 25, 1997,³ in which this Office concluded that the purchase of a floral arrangement for a deceased ANC commissioner was not an allowable ANC expenditure because it was in the nature of a personal gift that should have been paid with private, not government funds. Appropriated funds may not be used for personal gifts, unless there is specific statutory authority for doing so. 68 Comp. Gen. 226 (1989). Although honoring an individual with a gift plaque or award may provide some value to the community as a whole who has benefited from the work of the honored individual, this benefit is too “remote and theoretical” to satisfy the public purpose requirement of the ANC Act and therefore is not a permissible use of the ANC’s appropriated funds. As this Office explained in a Letter to The Honorable

³ Copies of the OAG advice letters referenced in this letter may be accessed on the ANC website.

James E. Nathanson, dated June 3, 1991, the "relevant criterion [to satisfy the public purpose test] is whether there is a direct relationship between the use of the requested ANC funds and the provision of tangible benefits of a reasonably general character to all or to a significant part of the persons residing or working in the ANC area."

Sincerely,

PETER J. NICKLES
Attorney General

By: 
SHEILA KAPLAN
Senior Assistant Attorney General
Legal Counsel Division

(AL-10-125)

cc: Lynard Barnum