

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



Legal Counsel Division

April 2, 2007

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

Re: May ANCs reimburse their commissioners for parking tickets received during the course of official duties?

Dear Ms. Nichols:

This letter responds to your inquiry concerning whether an Advisory Neighborhood Commission (ANC) may reimburse individual commissioners for parking tickets received in the District during the course of official duties. The answer is “no.”

You advise that an ANC commissioner received a parking ticket while on ANC sanctioned business before the Alcoholic Beverage and Control Board (ABC Board). Further inquiry revealed that the commissioner was parked at a parking meter while attending an ABC Board hearing at 941 North Capitol Street, and that the hearing went longer than expected. Although ANC commissioners are permitted to park at meters without charge (as long as they are on official business and display a placard), they are not permitted to park in “no parking zones.” Unfortunately, the metered parking ended at 4:30 p.m. and the parking space became a no parking zone. As a result, any parking tickets received under such circumstances cannot be voided by the Department of Public Works and must be paid. The question is whether the ANC may treat this as a permissible covered expense for purposes of reimbursement to the ANC commissioner.

We begin with the premise that ANCs, like any governmental entity, may only expend funds pursuant to applicable law. A review of the ANC expenditure provisions, contained in section 16(*l*) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.13(*l*) (2006 Repl.), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135 (collectively, the “ANC Act”), reveals no provision that expressly authorizes expenditures to pay for parking tickets. It does, however, permit an ANC to expend funds “to

pay the local transportation expenses of a Commissioner if the Commissioner is officially representing the Commission or a committee of the Commission at public hearings or meetings or is engaged in official Commission business.” D.C. Official Code § 1-309.13(l)(2) (2006 Repl.). Certainly, under the circumstances presented, the commissioner in question probably meets the second part of this test in several respects, not the least of which is that he was likely engaged in official ANC business. But, whether a parking fine may be considered a permissible “local transportation expense” is a different question entirely, and it is one that must be guided not by ANC law alone, but also by principles of federal appropriations law. ¹

The United States Comptroller General has opined that appropriated funds are not available to pay a fine assessed against an individual employee for a traffic violation that occurred during the course of performing official duties. Office of the General Counsel, United States General Accountability Office (GAO), *Principles of Federal Appropriations Law*, 3rd Ed., Vol. I, p. 4-140 (2004). The rationale is that,

[W]hile an employee may have certain discretion as to precisely how to perform a given task, the range of permissible discretion does not include violating the law. If the employee chooses to violate the law, he is acting beyond the scope of his authority and must bear any resulting liability as his personal responsibility.

Id. This rule has been applied as early as 1946 to cases involving the issuance of parking citations. *See id.* at 141, citing B-58378, July 31, 1946 (holding that a government employee ticketed for parking a government vehicle in a “no parking” zone could not be reimbursed because the offense, though committed *in the course of* official duties, was not *part of* the employee’s official duties). *See also* 31 Comp. Gen. 246 (1952) (holding that a government employee who “double-parked” a government vehicle to make an official delivery could not be reimbursed for a resulting parking ticket).

We do not ignore the practicalities involved here. Street parking availability in the city is often uncertain and, in this case, limited by certain time periods. Public transportation, while widely available, may not be practical time-wise for ANC commissioners. And, garage parking is expensive.² Nonetheless, the GAO has been clear on this issue and we are constrained from reaching a contrary conclusion.

Consequently, for the foregoing reasons, we conclude that parking citations may not be considered travel expenses within the meaning of the ANC Act and ANC funds may not be used to pay any such fines.

¹ The money allocated to an ANC by the District falls under this federal restriction because Congress must appropriate the District’s local revenue before the District can obligate or spend it.

² Though likely to be regarded as a reimbursable travel expense under the ANC Act, such reimbursement would still be subject to the discretion of the ANC, which might decide that no reimbursement is warranted.

If you have any questions with regard to this letter, please do not hesitate to contact me at 727-3400 or Wayne C. Witkowski, Deputy Attorney General for the Legal Counsel Division, at 724-5524. Thank you.

Sincerely,

LINDA SINGER
Acting Attorney General for the District of Columbia

/s/

LS/dps

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