

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

August 17, 2005

Robert Vinson Brannum
Commissioner, ANC 5C-04
158 Adams Street, N.W.
Washington, DC 20001

Re: Whether an ANC may apply to public and private entities for grant funding

Dear Commissioner Brannum:

This letter responds to your inquiry of July 27, 2005 in which you ask about an ANC's authority to request additional funds from individual District agencies, the federal government or its agencies, and private foundations. Also, you inquire about an ANC's authority to seek additional funds in conjunction with a "501(3)(c) non-profit organization," DC public school, or religious institution.

Section 738(c)(2) of the Home Rule Act, approved Dec. 24, 1973, Pub. Law 93-198, 87 Stat. 801, D.C. Official Code § 1-207.38(e) (2001), states that "[e]ach advisory neighborhood commission ... may employ staff and expend, for public purposes within its neighborhood, public funds **and other funds donated to it**" Thus, as stated in a March 24, 1995 letter from this Office to Karen J. Wirt "it was contemplated by Congress that a source of funds that ANCs could use to employ staff and otherwise use for public purposes would be voluntary contributions from private persons."

However, the solicitation of grant funds by an ANC is limited by section 13(l) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(l) (2004 Supp.), as amended by the Advisory Neighborhood Commissions Annual Contribution Amendment Act of 2001, effective December 14, 2001, D.C. Law 14-79, which states in relevant part:

No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$1,000 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$1,000 per calendar year...

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The statute prohibits the solicitation and receipt of funds greater than \$1,000 per donor per year without Council approval. An ANC may also clearly receive funds without the Council's approval up to \$1,000 per donor per year. However, it is unclear whether the Council intended to authorize the solicitation of donations under \$1,000 without Council approval or merely the receipt of volunteered donations.

In the letter to Karen Wirt, discussed above, we addressed whether ANCs could hold bake sales and car washes to raise money – a form of solicitation, to be sure. In our review, we stated without analysis that “[D.C. Official Code § 1-309.10(l)] prohibits an ANC from soliciting funds unless such solicitation is specifically authorized by the Council.” In concluding that such fundraising activities would, nonetheless, be permissible, we narrowly construed the solicitation prohibition by disallowing solicitations of cash donations where the donor does not receive in return any goods or services. As a result, we read this letter as prohibiting all other types of ANC solicitations without Council approval.

This interpretation is supported somewhat by the plain language of § 1-309.10(l) which first prohibits both the solicitation and receipt of funds, without Council approval, then authorizes only the receipt of funds in limited circumstances. We believe that this indicates a legislative intent to open only a narrow exception to the broader prohibition. Thus, an ANC could receive donated funds without Council approval, but could not request donations.¹

We do not ignore the alternative analysis, that in authorizing the receipt of funds up to \$1,000 the Council may have intended to allow solicitation in that range as well. Although, the statute only authorizes “receipt” of contributions and not solicitation specifically, it may be argued that, the power to receive funds is so intertwined with solicitation that the concepts are inseparable unless the legislature uses specific language that they are distinct, which it did not do.

Analogous language, authorizing the Mayor to “accept and use a gift or donation,” has been inserted into the District's Federal Appropriation statute since 1991. See Titles I and II of Pub. L. 102-111, 105 Stat. 559, 571. In a letter to the Honorable Charles Maddox, Inspector General of the District of Columbia, dated August 16, 2002, this Office opined that the “congressional authority to ‘accept and use’ private donations implies the additional power to solicit the donations.” p. 15-16, n. 20, *citing* section 115

¹ The legislative history of § 1-309.10(l) is not helpful. The solicitation prohibition first appears in section 13(l) of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976, D.C. Law 1-58, 22 DCR 5454, which contains language similar to the present day language in that it prohibits solicitation “except as may be specifically and previously authorized by resolution of the Council; provided that, *receipt of contributions* of one hundred dollars or less . . . need not be approved . . .” Curiously, the engrossed version of the bill (Bill 1-193) as well as the Committee Print initially contained language that would have expressly permitted solicitation of funds from private sources, but that language was removed from the enrolled version without explanation. As a result, we do not know whether the Council believed that the final language of the statute still permitted such solicitations, or if the Council changed the language because it wished to prohibit solicitation.

of the District's FY 2002 Appropriations Act (Appropriations Act). The same reasoning could apply to the ANC Act, which expressly authorizes only the receipt of funds.

The analogy between D.C. Official Code § 1-309.10(l) and the Mayor's authorization to "accept and use" funds, is weakened, however, when the two laws are viewed in context. For instance, though the Mayor has some inherent authority as chief executive of the District to solicit and receive donations², receipt and use of donations by subordinate agencies under the Mayor are closely regimented under the Appropriations Act, which not only requires Mayoral approval, but contains requirements to ensure a transparent process such as record keeping and public inspection of documents. It is also the subject of at least two Mayor's Orders that carefully outline the procedures for contributions – and solicitations in particular – going so far as to set up a special office to monitor such activity, the Office of Partnerships and Grants Development. Mayor's Orders 2002-1 (January 8, 2002) and 2002-2 (January 11, 2002). Apparently recognizing the potential for abuse with regard to solicitation, Mayor's Order 2002-1, I(7) and II separately address the practice of solicitation to ensure that there are neither improprieties or even the appearance of impropriety.³ The ANC law, on the other hand, contains only one safeguard – that solicitation and receipt of funds is prohibited unless authorized by the Council except for "contributions" up to \$1000. Given the risk of abuse surrounding solicitation of funds by government officials, it would seem incongruous that the executive branch, which has no minimum contribution amount to trigger the oversight procedures, would be held to a more stringent standard than ANCs, which have no inherent right to solicit or accept contributions absent statutory authorization.

Faced with these two potential interpretations we conclude that an ANC may not solicit funds without Council approval but may only receive donations, volunteered by the donor, up to \$1,000 per person per year. We do not find the argument to allow solicitation without Council approval in limited circumstances sufficiently persuasive to overcome our earlier determination in the letter to Karen Wirt.

The analysis above does not change if an ANC is requesting funds in conjunction with a third party or if the source is private or governmental. D.C. Official Code § 1-309.10(l) prohibits the act of soliciting funds regardless of the source or who is to receive the funds.

² See e.g., *United States v. Burnison*, 339 U.S. 87, 90 (1950).

³ For example, solicitations are not to be approved where there is an expectation of obtaining advantage or preference in dealing with the District, there is an actual or appearance of a conflict of interest, or there are conditions placed on the donation that are inconsistent with the policies of the District government (planning or otherwise.) Mayor's Order 2002-1, (II)(1).

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

/S/

RJS/dps

(AL-05-481)