

Government of the District of Columbia



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MEMORANDUM

TO: Dieter Lehmann Morales, Chair ANC 1A
Billy Easley, Treasurer ANC 1A
James Turner, ANC 1A09
FR: Denise Wiktor, General Counsel
DT: 2/28/2024
RE: Ward 1 Mutual Aid Grant Application

Summary

Commissioner Turner asked the Office of Advisory Neighborhood Commissions (OANC) to review a grant application submitted by Ward 1 Mutual Aid Pod 6. The grant was requesting monies for equipment to aid in food distribution, specifically four (4) gravity dispensers for food, one (1) hand cart, one (1) storage cabinet and four (4) produce crates.

Based upon the information provided to the OANC, it must be denied. The project is representative of a current and continuing plan for distributing food, the purchase of the equipment amounts to support of the organization, and the benefits do not inure to all persons who live or work in the ANC. The applicant's policies also run afoul of the D.C. Human Rights Act of 1977, as amended.

Background

Ward 1 Mutual Aid is a 501(c)(4) organization that distributes food without charge within the confines of ANC 1A. Most of the people receiving the food aid walk to the distribution point. It is believed that the recipients are residents of ANC 1A though no addresses of the recipients are taken or tracked. Volunteers provide the work of collection and distribution. Though the application does not mention where this equipment will be housed among other things, it specifically mentions that a member stores things in their basement and the storage cabinet would supplement that.

The Ward 1 Mutual Aid's Patreon website contains the following statement: **"We do not welcome cops/law enforcement/defense contractors or active-duty military into our spaces.** We do not believe the police keep us safe. #WeKeepUsSafe"¹ [emphasis in the original] This statement is also on the DC Mutual Aid's Facebook page.²

¹ <https://www.patreon.com/w1mutualaid/about>

² <https://www.facebook.com/groups/492881801379594/>

Analysis

There are five prongs to consider when determining if a grant is a permissible expense by and ANC. They are Public Purpose, Local Benefit, Proposed Project, Organization and Non-Duplication.³ Expenditure may be prohibited for other reasons, such as Federal Procurement law or D.C. Law.

1. **Organization:** A grant must be to an “organization,” not an individual or a government entity,⁴ although the organization need not be incorporated.⁵ “Ward 1 Mutual Aid” is incorporated in the District, although there are no business licenses associated with it. It does not show up on the IRS website. ANC 1A does not have any incorporation requirements in the grant guidelines on its website. Ward 1 Mutual Aid is an organization as defined by the D.C. Official Code.
2. **Non-Duplication:** A grant must be for services that are not “duplicative of any that are already performed by the District government.”⁶ An ANC grant thus cannot fund services that the District government already provides. The services provided by Ward 1 Mutual Aid are not duplicated anywhere in the District government.
3. **Proposed Project:** A grant must be for a “proposed project.”⁷ The word “project” means a grant must be for a specific undertaking, not for general support of an organization, and the word “proposed” means that a grant cannot reimburse an organization for expenses connected to an existing or completed project.⁸ This prong presented some issues. The organization has continuing distributions and equipment that becomes the property of the organization for use on an ongoing basis which would be considered organizational support in most contexts. However, if one looks at the purchase of the equipment as the project, then it is a singular event⁹ but the items to be purchased are fundamentally operational items in that they are not for a one-time event but, rather, support the operations of the organization.

³ See *Letter to Schanette Grant on Seasoned Settlers and Grants Generally*, April 14, 2022, found at <https://oag.dc.gov/sites/default/files/2022-04/Letter-to-OANC-Re-Seasoned-Settlers-Grant-and-Grants-Generally-.pdf> hereafter “Seasoned Settlers”

⁴ D.C. Official Code § 1-309.13(m)(1); see *Letter to Deborah K. Nichols*, Jan. 14, 2010, at 4, available at <https://oag.dc.gov/sites/default/files/2018-02/ANC-January-14-2010-Guidelines-for-Use-of-ANC-Funds.pdf> (a public school is not an “organization” and therefore cannot receive ANC grants)

⁵ “A plain reading of the statute does not require that an organization be incorporated to be eligible for a grant from an ANC.” *Letter to Deborah K. Nichols re: Grants by ANCs-Public Purpose and Corporate Status of Recipients*, August 4, 2000, Found at: <https://oag.dc.gov/sites/default/files/2018-02/ANC-August-4-2000-Grants-by-ANCs-Public-Purpose-and-Corporate-Status-of-Recipients.pdf>

⁶ D.C. Official Code § 1-309.13(m)(1). The ANC Act does not apply this same restriction to non-grant expenditures. See id. § 1-309.13(l)

⁷ See D.C. Official Code § 1-309.13(m)(2)(A).

⁸ See *Letter to Commissioner Varzi*, Dec. 3, 2019, found at <https://oag.dc.gov/sites/default/files/2019-12/ANC-4C-After-the-Fact-Grant.pdf>

⁹ See, *Letter to Commissioner Speck Re Grant to Feed the Family Pantry*, July 20, 2021 found at <https://oag.dc.gov/sites/default/files/2022-03/ANC-3G03-Letter-to-Commissioner-Speck-Re-Grant-to-Food-the-Family-Pantry-.pdf> This opinion is limited to the Public Purpose requirement only and is an anomaly when viewed against OAG opinions on Projects as it runs counter to those opinions.

4. Local Benefit: A grant must “benefit persons who work or reside in the Commission area.”¹⁰ This does not mean the grant may only benefit Commission residents; it simply means the grant’s benefits should be focused on those residents.¹¹ The applicant states that most of the recipients walk to pick up the food and that they believe that the majority of the families served are local to ANC 1A. Given that there are no records kept of the recipients, there is no way to prove or disprove this assumption. Inasmuch as the local benefit prong is a major consideration for the approval of this grant, the threshold of this assumption is entirely too low to base the approval of the grant on it.
5. Public Purpose: ANC grants, like other expenditures not for the maintenance of the ANC office, must be for “public purposes within the Commission area.”¹² A public purpose is one “that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”¹³ The Office of the Attorney General (OAG) has opined that “a public purpose is one that benefits or potentially benefits a significant number of persons who either reside or work within the Commission area.”¹⁴ “A grant cannot satisfy this requirement unless the specific activities it would support would either benefit a large number of people in the ANC area or be open to (and therefore able to benefit) the community at large.”¹⁵

Ward 1 Mutual Aid states that it serves over 50 families a week which is not a significant portion of the population of ANC 1A.¹⁶ According to the OAG’s opinions, if the benefit is open to community at large even if it actually serves a smaller number, it will meet the Public Purpose test. In other words, if everyone in ANC 1A had the equal opportunity to participate, whether or not they chose to do so, it would meet the public purpose test. However, everyone in the ANC does not have the opportunity to participate in the proposed project. The Ward 1 Mutual Aid Website indicates that it specifically does not want “cops/law enforcement/defense contractors or active-duty military” in their spaces. This excludes what could be a very significant number of ANC 1A residents and therefore defeats the Public Purpose test.

Inherent in the statute is that grants otherwise comply with D.C. Law.¹⁷ Public Policy dictates that grants issued by Advisory Neighborhood Commissions should not be contrary to other District laws. In this case, the actions of the applicant run afoul of the D.C. Human Rights Act of 1977 as amended.

¹⁰ D.C. Official Code § 1-309.13(m)(1).

¹¹ See Letter to Deborah K. Nichols, Nov. 9, 2006, at 2 n.2 <https://oag.dc.gov/sites/default/files/2022-04/Letter-to-Deborah-Nichols-Re-Whether-an-ANC-may-approve-a-grant-to-commission-plans-and-drawings-.pdf> (ANC 4C grant was permissible where “[b]enefit to other ANCs would be incidental to the benefit conferred on ANC 4C residents,” because a grant’s benefits need not “be exclusive to the ANC that gives the grant funds”); see Letter to Comm’r Fletcher, Mar. 15, 2022, at 2, available at <https://oag.dc.gov/sites/default/files/2022-03/ANC-7E-Letter-to-Commissioner-Fletcher-Re-Public-Purposes-Within-the-Commission-Area-.pdf> (making the same point with respect to the public-purpose requirement).

¹² D.C. Official Code § 1-309.13(m)(3)

¹³ *Id.*

¹⁴ Letter to Deborah K. Nichols, Jan. 14, 2010, at 4, available at <https://oag.dc.gov/sites/default/files/2018-02/ANCJanuary-14-2010-Guidelines-for-Use-of-ANC-Funds.pdf>

¹⁵ See, *Letter to Commissioner Speck Re Grant to Feed the Family Pantry*, July 20, 2021 found at <https://oag.dc.gov/sites/default/files/2022-03/ANC-3G03-Letter-to-Commissioner-Speck-Re-Grant-to-Feed-the-Family-Pantry-.pdf>

¹⁶ According to the 2020 census found at [2023 Advisory Neighborhood Commissions by 2020 Census Population.xlsx](https://2023.advisoryneighborhoodcommissions.com/2020-Census-Population) (live.com)

¹⁷ See, D.C. Official Code § 1-309.10(a); See also D.C. Official Code § 1-309.13.(a)

The D.C. Official Code defines a Place of Public Accommodation as “any person or place that provides, to a person in the District, access to an accommodation, service, or good, whether or not that person or place maintains a physical location in the District or charges for those goods or services...”¹⁸ It is an unlawful discriminatory practice to “deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations” based upon the person’s source of income.¹⁹

Ward 1 Mutual Aid meets the definition of Place of Public Accommodation because it offers a good or service albeit one that is free. Ward 1 Mutual Aid has publicly stated that they do not welcome persons with particular sources of income into their “spaces.” In theory a person could get the food distribution if they actively keep their source of income undisclosed. This defeats the purpose of the Human Rights Act of 1977, as amended, which is “to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit...”²⁰ Even if Ward 1 Mutual Aid did not refuse to serve a police officer or a member of the armed forces, the fact that they are not welcome would make the transaction uncomfortable for that officer or armed forces member.

Conclusion

For all of the above reasons, this grant is not an appropriate expenditure of ANC monies.

¹⁸ D.C. Official Code §2-1401.02(24).

¹⁹ D.C. Official Code §2-14-2.31(a)(1)

²⁰ D.C. Official Code §2-1401.01