

Government of the District of Columbia



Office of Advisory Neighborhood Commissions  
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**MEMORANDUM**

TO: Commissioner Jim Malec, Chair ANC 2A  
FR: Denise Wiktor, General Counsel  
DT: December 20, 2023  
RE: ANC Fire Relief Grant

You have asked about a \$10,000 grant for fire relief to persons affected by a fire at the Foggy Bottom West End Village. This grant was approved in the December 2022 ANC 2A meeting. There was no written resolution introduced at the meeting. The applicant was a 501(c)(3) organization that intended to use the proceeds to buy items and secure counseling for fire victims. You have asked a series of questions related to whether the ANC is still bound to the terms of the grant, is the Commission still able to issue the money, and is the Commission permitted under law and under the terms of the agreement to issue payments to the grant recipient for reimbursing an entity that was not a party to the agreement.

As explained below, grants that do not benefit the “community as a whole” are not permissible under the D.C. Code. Redirection of the monies intended for this grant without official action by the ANC would be inappropriate and likely result in the expenditure being rejected at the QFR stage or by the Auditor (if it weren’t already an inappropriate use of monies). Additional concerns are that there was not really fixed detail as to what the money would be used on and after the fact grants, as reimbursement suggests, are prohibited. Finally, the grant closure date was March 2023, and the grant request has expired.

The D.C. Official Code §1-309.13(l)(1) states that an ANC “shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office...” The same section further states that “[a] public purpose shall be a purpose that benefits the community as a whole and is not done for the primary purpose of benefitting a private entity.”

The D.C. Official Code also states that ANC “[e]xpenditures may be in the form of grants by the Commission for public purposes.”<sup>1</sup> It further states that “A public purpose shall be a purpose that benefits the community as a whole...”<sup>2</sup> The population of ANC 2A is 18,658 persons.<sup>3</sup> This

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<sup>1</sup> D.C. Official Code § 1-309.13(l)(1)

<sup>2</sup> Id.

<sup>3</sup> According to the 2020 census found at [2023 Advisory Neighborhood Commissions by 2020 Census Population.xlsx \(live.com\)](#)

grant does not state the number of persons it would benefit but based on the language of the grant to be at least 8 persons but less than 20 or about a tenth of a percent of the ANC. While sympathetic to the plight of the victims, pursuant to the statute, there is no benefit to the “community as a whole” with this grant.

The Office of Attorney General (OAG) discussed “public purpose” in *Seasoned Settlers and Grants Generally*,<sup>4</sup> where it found that a grant that only “students of a specific age group at a specific school” was too small a target to meet the public purpose requirement.<sup>5</sup> The OAG made similar findings in another opinion letter that a grant to fund teacher training where the beneficiaries of the training were 14 teachers and their 275 students did not serve the community as a whole; in the same letter the OAG found that a grant to fund computer training that would benefit 8 persons and a number of online persons also did not meet the “community as a whole” standard.<sup>6</sup>

The second question presented is whether the ANC could give out the full disbursement or was it only permitted to give out disbursements/reimbursements for qualifying items. While the grant in question does not have a public purpose, this question is applicable to all grants an ANC may disburse. Grant monies should only be used for qualifying items. This is normally determined at the time the grant is approved.

A grant application should always be specific and list the items in the budget that it is seeking monies for. This way the ANC can determine in advance if the expenditures are qualifying items. The organization would then close out the grants with receipts for its expenditures. If expenditures made by the grantee were for expenses that did not qualify for the grant, the ANC should seek reimbursement from the grantee. If monies were used for non-qualifying expenses, it will be flagged at the QFR stage or by the Auditor and the ANC will have monies withheld from the next allotment.

The grant at hand did have a list of expenses but also stated that it was subject to change by a committee. This does not give an ANC sufficient information on the nature of the expenses. Had the listed expenses been qualifying but subject to change, the ANC had insufficient information to determine in advance if the monies would be used in a way that conformed with the requirements of the D.C. Official Code.

Occasionally an ANC will approve a grant then later the organization presents receipts for reimbursement for items approved as part of the grant but were incurred after the grant was approved. Though not illegal it is problematic. The Auditor has expressed to the OANC that it does not like this method of grant disbursement as it could be an after-the-fact grant or a grant approved after the expenditures were incurred which is not an acceptable grant.

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<sup>4</sup> 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”

<sup>5</sup> Id. at p. 6.

<sup>6</sup> *Letter to Commissioner Israel re Proposed ANC 4D Grants*, July 19, 2022, found at <https://oag.dc.gov/sites/default/files/2022-07/ANC-4D-Letter-to-Commissioner-Israel-re-Proposed-ANC-4D-Grants-.pdf>

The third question presented was could the ANC issue payments for the purpose of reimbursing a third party who was not part of the original grant agreement. Again, this question applies to all grants and the answer would be that it depends on the circumstances.

Grants should list with specificity what the organization will be doing with the money. For example, rental costs for tents, tables, and chairs were an itemized and listed expense for a fun fair grant which was approved by an ANC. A member of the organization used their personal credit card to secure those items. The organization would present the receipt for those items as part of the close-out of the grant but would have reimbursed the individual for the expense. A similar example we have seen is where a company account at ACE Hardware was used to buy flowers for a neighborhood beautification project. A check by the organization was issued to ACE Hardware for the expense on the account. Both examples are acceptable since the expenses were in the budget and were items approved by the ANC for the events. Additionally, each third party was an agent of the applicant.

More problematic is if this is a reimbursement for items not in the detailed budget that was part of the grant application and therefore not approved by the ANC. In the case at hand, the ANC, based upon the grant application, understood the monies were to be used by the applicant in a particular way. Based upon the facts given it appears the applicant wants to route money to a non-applicant organization. As stated, the ANC has no idea how this organization used the money or determined its use or even if the expenses are permissible under the D.C. Official Code. This is a substantial change to the grant that was not approved by the ANC. Were the ANC to approve the change now it would be an after-the-fact grant request. That is a grant awarded after an event or project has occurred which is not acceptable. A grant must be for a future project<sup>7</sup> not reimbursement for one that has already occurred.<sup>8</sup>

The last issue is the 1-year delay between the time of approval and disbursements. The grant application that was approved by the ANC specified that “disbursement of funds would begin in January and the grant funds would be fully spent by the end of March.” This did not happen nor did the applicant make any amendment or request to change the dates. Since a check was never written, it also appears that the applicant never requested the money. The grant should be considered expired.<sup>9</sup>

In conclusion, this grant expenditure is not a permissible use of ANC allotment money. Unfortunately, not all good causes meet the public purpose requirements of the D.C. Code.

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<sup>7</sup> D.C. Official Code § 1-309.13.(m)(2)(A); See also, *Seasoned Settlers* page 2 item number 3.

<sup>8</sup> See *After the Fact Grant*, 12/3/2029 found at <https://oag.dc.gov/sites/default/files/2019-12/ANC-4C-After-the-Fact-Grant.pdf>

<sup>9</sup> Additionally, The D.C. Official Code § 1-309.13(m)(2)(D)(3) requires that “[w]ithin 60 days following the issuance of a grant, and every 90 days thereafter during the life of the grant, the grant recipient shall forward to the Commission and the OANC a statement as to the use of the funds consistent with the grant application, complete with receipts that support the expenditures.”

