

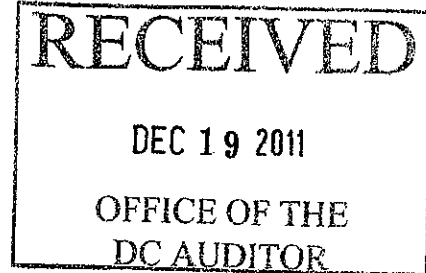
GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

December 19, 2011

Yolanda Branche
District of Columbia Auditor
Office of the District Columbia Auditor
717- 14th Street, N.W., Suite 900
Washington, DC 20005



Re: Request for Interpretation of ANC Statute as to Quarterly Reports and Fiscal Year Allotment

Dear Ms. Branche:

This responds to your November 10, 2011 letter requesting our advice on an interpretation of D.C. Official Code § 1-309.13(j)(3) (2011 Supp.), which states that

If, on the last day of the fiscal year, a Commission has not received a quarterly allotment because it failed to file a quarterly report approved by the Auditor, the Commission shall forfeit the unclaimed allotment or allotments and the funds shall be returned to the District's General Fund.

Your letter suggests that ANCs may at times file their quarterly reports referenced in the above provision up to September 30th of a given fiscal year. You ask whether under the above statutory provision, the Auditor is required to approve the reports by the end of the fiscal year in order for an ANC's allotment not to be forfeited to the District's General Fund. As set forth below, I conclude that the Auditor's approval of such reports by September 30th is a necessary condition for an ANC to avoid losing its allotted funds.

As background, I note that ANCs are funded out of the District's general revenues pursuant to section 738 of the Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 777, D.C. Official Code § 1-207.38 (2006 Repl.), and the Council has directed that these allocations be distributed quarterly during the fiscal year. D.C. Official Code § 1-309.13(a) (2011 Supp.). We understand that the quarterly allocations are provided to ANCs at the end of a quarter rather than at the beginning. Moreover, ANCs must provide an accounting of their disbursements in each quarter by filing quarterly reports with the Auditor. D.C. Official Code § 1-309.13(j)(1) (2011 Supp.).

Those reports, which must be approved by the full Commission, may be filed up to 60 days following the end of the quarter. *Id.*

As you are aware, the sub-paragraph immediately preceding the sub-paragraph that you cite states, in pertinent part, that “[n]o quarterly allotment shall be forwarded to a Commission until all reports of financial activity for the quarters preceding the immediate previous quarter are approved by the Auditor.” D.C. Official Code § 1-309.13(j)(2) (2011 Supp.). Clearly, for such reports to be “approved” under § 1-309.13(j)(2), they must also be filed. Thus, the allotments that § 1-309.13(j)(3) are referring to are those that have been initially withheld for failure of the ANC to either file time quarterly reports, or to have filed them in such a way that they could not be approved by the Auditor. It follows, then, that for the funds to be taken out of a withheld status and released to the ANC, the quarterly reports associated with those funds would have to be filed and approved by the Auditor. Under sub-paragraph (j)(3), the only condition that would prevent forfeiture of the ANC allotments would be that the withheld funds were in fact ultimately provided to the ANC. Thus, it is not sufficient for the subject reports to be merely filed by the end of the fiscal year. They must also be approved in a manner that would allow release of the withheld funds.

The legislative history regarding § 1-309.13(j)(3) confirms this reading. The sub-paragraph at issue was enacted through the Advisory Neighborhood Commissions Act of 1975 Financial Reporting Amendment Act of 1998, effective July 24, 1998 (D.C. Law 12-140; 45 DCR 2978) (“Act”). At the time of the Act, § 1-309.13(j)(2)’s call for withholding of allotments to ANCs already existed as a mechanism to motivate ANCs to file timely and accurate quarterly reports, as it had been put into the law in 1990. However, according to the committee report accompanying the Act, the practice was for the allotment to be placed into a reserve fund that ANCs could claim months or even years later upon correcting its omissions. *Report of the Committee on Government Operations on Bill 12-262, the “Advisory Neighborhood Commissions Act of 1975 Financial Reporting Amendment Act of 1998”* (Council of the District of Columbia, January 27, 1998), p. 1. This not only encouraged sloppy efforts by ANCs at documenting their spending years after such spending had occurred, it also resulted in some ANCs simply depleting their resources, only to then eventually obtain all of their withheld allotments in one lump-sum, causing a “feast-or-famine” pattern of spending that was not conducive to effective planning and budgeting. *Id.* at 2-3. Moreover, in the period during which the funds were depleted, the ANCs were not using resources to assist their local community. *Id.* Further, the lack of timely reporting resulted in no oversight of ANC spending of public funds, and the committee report suggests this made taxpayers vulnerable to waste, fraud and abuse. *Id.* at 3-4.

By adding the forfeiture provision to the law, the Council was clearly seeking to promote both timely **and** accurate reporting by ANCs of their financial activities.¹ Although the Council gave ANCs a window of time to cure deficiencies in its financial reporting, they

¹ Indeed, the Act amended the allotment withholding provision now codified at § 1-309.13(j)(2) to require withholding unless the reports are “approved” rather than merely “reviewed,” as the provision had previously read.

set a specific deadline for these efforts which the Council presumably determined was warranted to motivate ANCs into responsible budgeting and proper spending.

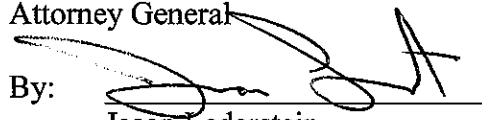
Consequently, ANC funds that are in a withholding status as of September 30th, must be forfeited unless the Auditor not only receives the omitted reports, but also approves them by that date. While this may lead to harsh results for ANCs who at least file their missing reports by end of the fiscal year, the deterrent purpose of the Act suggests that the Council felt it was incumbent upon ANCs who already failed to comply with its financial obligations, to cure these deficiencies with enough lead time for the Auditor to approve the reports by the Act's deadline.²

I hope this is helpful to you.

Sincerely,

IRVIN B. NATHAN
Attorney General

By:



Jason Lederstein
Assistant Attorney General
Legal Counsel Division

(AL-11-541)

cc: Gottlieb Simon, Executive Director
Office of Advisory Neighborhood Commissions

² We do not mean to suggest that any delays in approving quarterly reports that result from circumstances not attributed to an ANC, such as staffing shortages in the Auditor's office, was expected by the Council to nonetheless work a forfeiture of ANC allotments. We understand that the Auditor typically requires 30-days to approve quarterly reports, assuming they contain no deficiencies. As ANCs may file their reports up to 60 days following the end of a quarter, such practice by the Auditor would ensure that reports are approved before the end of the succeeding quarter, and this seems reasonable.