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GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

Friday, May 31, 2024



Advisory Neighborhood Commissioner Sign-on Letter Advisory Opinion

This opinion responds to the Office of Advisory Neighborhood Commissions’ (“OANC”) request for advice on the parameters around the drafting, circulating, and sending of sign-on letters by Advisory Neighborhood Commissioners (“Commissioners”). Specifically, OANC would like this Office to identify the circumstances under which it is appropriate for Commissioners to participate in sign-on letters. This Office believes that Commissioners may draft or endorse sign-on letters in their official capacity if: (1) they are conducting official ANC/District government business as authorized by their Commissions and doing so within the bounds of the ethics rules and the law, or (2) they are conducting official government business by representing the interests of their Single Member District (“SMD”) and endorsing the letter as a SMD representative. In turn, Commissioners are prohibited from using their official titles to draft or endorse sign-on letters that are personal in nature and unrelated to official District government business.

A. Background

Advisory Neighborhood Commissions are governed by their enabling statute, by-laws, and the District’s Code of Conduct, etc.¹ Each Commission has the authority to advise the Council, the Mayor and each executive agency, independent agencies, and boards and commissions of the government of the District of Columbia with respect to policy, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation and other matters that affect their respective Commission areas. The law also requires that Commissions receive notice from government entities regarding certain actions that will take place within their respective Commission areas. Commissioners are empowered to present the views and recommendations of their Commissions if “appointed by the Commission at a public meeting to represent the Commission’s views on a particular issue or proposed action.”²

A sign-on letter can be used to demonstrate broad support or opposition to an issue, idea, or action.³ Once the letter is drafted, the drafter circulates the letter and asks as many people as possible to “sign-on” to the letter. ANC sign-on letters are often sent to the Council or other government entities. However, these sign-on letters are not promulgated according to the D.C. Official Code and are not official letters from a Commission unless authorized by the Commission.

B. Relevant Rules

¹ See D.C. Official Code § 1–309.01 Advisory Neighborhood Commissions Act; D.C. Official Code § 1–1161.01(7) (defining the Code of Conduct).

² D.C. Official Code § 1-309.11(e)(1)(E).

³ See [Beyond Plastics – How To Create An Organizational Sign-on Letter](#).

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Commissioners are public officials and subject to the District’s Code of Conduct.⁴ Below is a discussion of each implicated rule.

Conflicts of Interest

Public officials, including Commissioners, are not allowed to make decisions or participate in matters that will have a direct and predictable effect on their financial interests or the financial interests of people and entities they are closely affiliated with.⁵ Those ‘closely affiliated’ include “a spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization.”⁶ This means that if a Commissioner votes on a matter that involves their company or their spouse’s company, that Commissioner has violated the District’s Conflict of Interest statute. In the context of a sign-on letter, Commissioners should avoid drafting or signing off on letters that pertain to matters they are financially involved in or that could have a financial effect on their employer, potential employer, business, spouse, or any other affiliated entity or person.

Public Office for Private Gain

Government service is a public trust, requiring public officials and employees to place loyalty to the laws and ethical principles above private gain.⁷ To that end, Commissioners may only use their District government title and position in furtherance of official District government business and are prohibited from the use of that title and position for private gain.⁸ A Commissioner violates this rule when they use their ANC title or position to further their own personal, political or business activities. Since a sign-on letter is a means of demonstrating support or opposition for an issue, a Commissioner is only properly drafting, contributing to, or signing a sign-on letter in their official capacity, when the subject matter of the letter pertains to official ANC/District government business. General political or world issues are not official ANC business. Consequently, the drafting of sign-on letters regarding these kinds of issues using an official title is not authorized by law or regulation and is not an authorized way for an ANC to make use of their District government title.

Misuse of Government Resources

Commissioners have a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.⁹ “Government property” includes any real or personal property that the District government has a property interest in, as well as any

⁴ See D.C. Official Code § 1-1161.01(47)(E) and [BEGA Advisory Opinion #1090-015 - Ethics Applicability to ANC Commissioners, April 10, 2017](#); ANCs are public officials pursuant to D.C. Official Code § 1-1161.01(47)(E).

⁵ D.C. Official Code § 1-1162.23(a).

⁶ D.C. Official Code § 1-1161.01(43) (defining person closely affiliated with the employee); see also D.C. Official Code § 1-1161.01(3), an “affiliated organization” means (A) An organization or entity: (i) In which the employee serves as officer, director, trustee, general partner, or employee; (ii) In which the employee or member of the employee’s household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value; or (iii) That is a client of the employee or a member of the employee’s household; or (B) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

⁷ District Personnel Manual (“DPM”) § 1800.3(a), also in 6B D.C.M.R. Chapter 18 § 1800.3(a).

⁸ DPM § 1800.3(g).

⁹ DPM § 1808.1.

right or other intangible interest that is purchased with government funds.¹⁰ For purposes of Code of Conduct considerations, a Commissioner's title and the discernable time periods they spend serving on the Commission are District government property. Although Commissioners are not paid, they use District government funds to conduct their official duties and exercise the authority vested in them by the government. The District government has an interest in Commissioners fulfilling their official duties and when Commissioners use their title, government resources or government time for other than authorized purposes, they are misusing government resources.

Commissioners are also prohibited from using ANC time or other resources, such as paper, email, and official mail, to draft, contribute to or endorse sign-on letters that do not pertain to District government business. Commissioners should work on letters that pertain to personal matters or other than District government business while in their personal capacity, during their personal time, and while using their personal resources.

Appearance

Commissioners are prohibited from taking actions creating the appearance that they are violating the law or the [District's] ethical standards¹¹. Whether particular circumstances create an appearance that the ethics laws have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.¹² This means that when a Commissioner appears to have acted unethically, that Commissioner has violated the appearance rule and has acted unethically. If a reasonable person with knowledge of the relevant facts reports a Commissioner for writing a sign-on letter, that Commissioner may face an ethics investigation.

C. When Sign-on Letters are Permissible

Commissioners may draft, contribute to, or endorse sign-on letters in their official capacity regarding matters of official ANC business only. Commissioners act in their official capacity when they act for authorized purposes regarding a matter before the Commission and do so within the bounds of the District's rules and the law.

Commissioners are acting in their official capacity when they are conducting the official business of the District, when they are in ANC offices or meetings, when they are using their ANC email and when they are using their official title, etc. Commissioners are using sign-on letters ethically when they are drafting and signing the letters in a manner that comports with the Code of Conduct and District law. An ANC sign-on letter is only authorized if the letter pertains to official District government business either for their SMD or as authorized by the Commission, and the letter must comply with the District's Code of Conduct and District law. If a Commissioner is drafting, signing or sending a sign-on letter on behalf of their SMD and not the Commission, it should be indicated in the signature line of the letter. Commissioners should not purport to be speaking on behalf of their Commission in a sign-on letter, unless they have been authorized by the Commission to write the letter.

¹⁰ See DPM § 1808.2(a).

¹¹ See DPM § 1800.3(n).

¹² *Id.*

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Commissioners are prohibited from drafting, contributing to, or signing sign-on letters in their official capacities, regarding other than official District government business or when doing so would be a violation of the District's Code of Conduct. On the other hand, Commissioners may draft, contribute to, or send sign-on letters in their personal capacity regarding non-official District government business.

Illustrative Examples

Scenario A

In her official capacity, the Commissioner for SMD 9B signed on to a sign-on letter, originally drafted by another Commissioner. The letter supported the licensure and opening of a new event venue in SMD 9B. Constituents were subsequently invited to a town hall meeting to voice their opinions about the venue project. During their comments, one of the constituents stated that the Commissioner of SMD 9B is part owner of the new venue.

What are the issues?

If the Commissioner of SMD 9B is part owner of the new venue, then she signed a letter that supported a matter that will have a direct and predictable effect on her financial interests. This is a violation of the District's Conflicts of Interest statute and would most likely be investigated by BEGA.

Scenario B

The Commissioner for SMD 10A has applied for a job with a large real estate development company. The approval of one of the company's projects is before the Commissioners of SMDs 10A, 10B and 10C since the project would physically span all three SMDs. During a follow-up job interview, the company interviewer lamented the difficulty of getting approval for the project and stated that if the Commissioner supported the project the company would be forever grateful. In his official capacity, and as an SMD representative, the Commissioner for SMD 10A contributed language to and signed a sign-on letter supporting the company's project. Three weeks later the Commissioner took a job at the company.

What are the issues?

This fact pattern implicates several ethics issues. Once the Commissioner heard that he could get a job if he supported the project, it appears he voted in favor of the project and took the job. This constitutes the use of public office for private gain, but it also implicates bribery, conflicts of interest, *quid pro quo*, and the appearance that the Commissioner violated the ethics rules. Additionally, because the company was closely affiliated with him as a potential employer, the Commissioner should have recused himself and not been involved with the sign-on letter.

Scenario C

The Commissioner for SMD 11D is deeply concerned about the war in Palestova. While at her ANC office and using her ANC laptop, she drafts and circulates, via her ANC email address, a

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sign-on letter that demands an immediate cease fire in the area. After being signed by several Commissioners, the letter is sent to the DC Council, the Mayor, the President of the United States, and the President of Palestova.

What are the issues?

The Commissioner for SMD 11D should only use District government resources for District government business. A war in another country is not District government business, therefore, the Commissioner for SMD 11D misused government resources when she used her ANC office, laptop, and email address to draft and circulate this sign-on letter. The Commissioner should have sent this letter in her personal capacity and used her own personal resources to draft it and get signatures. In addition, there is no indication that the Commissioner was authorized to represent the Commission.

The above examples are intended to be illustrative and are in no way exhaustive. Notwithstanding the guidance provided herein, Commissioners should continue to request safe-harbor advice from this Office when considering participation in sign-on letters.

Please be advised that this advice is provided to the Office of the Advisory Neighborhood Commission pursuant to section 219 of the Ethics Act (D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. Pursuant to Chapter 3 of the D.C. Municipal Regulations § 5405.7 this proposed advisory opinion shall be published in the District of Columbia Register for a 30-day public-comment period during which time a person may submit information or comment to bega@dc.gov.



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