

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 3B
GLOVER PARK AND CATHEDRAL HEIGHTS



June 14, 2017

Mr. Brian K. Flowers
General Counsel
Board of Ethics and Government Accountability
441 4th Street, NW 830 South
Washington, D.C. 20001

Dear Mr. Flowers:

As the five individual members of ANC3B, we are writing to share our comments regarding the April 10, 2017, Draft Advisory Opinion (“Draft Opinion”).¹ The Draft Opinion asserts that the Code of Conduct applicable to Advisory Neighborhood Commissioners (ANC Commissioners) includes the rules contained in the District Personnel Manual (“DPM”), and has included the DPM rules since 2014.

By law the Board of Ethics and Accountability (BEGA) is responsible for administering the Code of Conduct and also for training ANC Commissioners on ethics rules covering them. Since that time, BEGA’s training sessions on ethics for ANC Commissioners have taught that “ ‘Code of Conduct’ for Advisory Neighborhood Commissions means those provisions contained in the following: Conflict of Interest Provisions of the Ethics Act; and Annual ‘Clean Hands’ Certification filed with BEGA. But don’t forget other laws that apply. For example Federal bribery laws; Prohibition on Political Activity on government premises; Misuse or theft of government property/funds.” In the BEGA materials used in ANC ethics training in recent years, there is no mention of the rules of conduct for District employees that are contained in the DPM.

What the Draft Opinion proposes not only contradicts the BEGA’s clear statements in ANC training but would also create a code of conduct that goes against the public interest as well as the provisions of the DPM on what constitutes an “employee,” the historic treatment of ANC members, the implicit expectations and intent of the executive and the DC Council through repeated deliberations and legislation on the subject of ANCs, including the ANC Omnibus Act adopted in December 2016.

The DPM defines employees as individuals who receive compensation for service to DC government, are appointed to DC boards and commissions, or both (See DCMR § 6B-1899.1). It is clear that the definition excludes ANC Commissioners from the category of District employees who are subject to the DPM. The Draft Opinion also makes clear that ANC Commissioners are not District employees, citing D.C. Official Code § 1-603.01(7). To our knowledge, there is no plan to change the DPM to amend that definition.

ANC members are neither compensated nor appointed and are explicitly NOT employees of the District but are representatives and active members of their communities. It would be extremely detrimental to the interests of communities and the effectiveness of the ANCs if all Commissioners were barred from holding any offices or vote on policy decisions with community associations, non-profits and other groups who

might adopt a stance on any issue on which the ANC also took a position. This would diminish the capacity of the ANCs as well as community groups, hamper their ability to attract strong candidates, and weaken communities' voice on vital issues affecting the neighborhoods and the city.

We urge the District not to adopt the Draft Opinion as official policy governing ANCs and to reconsider what should be incorporated in the Code of Conduct for ANC Commissioners, based on the statutes governing ANCs, precedent and practices that serve city priorities and needs.

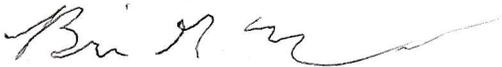
We participated actively in the development of the ANC Omnibus Legislation in 2016 and it was evident to us through the course of that discussion that the Council did not wish or intend to make ANC Commissioners "employees" of the District or subject to all the rules and regulations covering District employees, and the ANCs supported that choice. The Draft Opinion would go directly against that intent, and we hope it will be discarded as counter to the interest of the city and its people.

Thank you for your consideration.

Sincerely,



Jackie Blumenthal
Chairman and Commissioner, ANC3B02



Brian Turmail
Vice Chairman and Commissioner, ANC3B05



Ann L. Mladinov
Commissioner, ANC3B01



Melissa J. Lane
Commissioner, ANC3B03



Mary C. Young
Commissioner, ANC3B04

cc. Chairman Phil Mendelson and Members of the District Council
Mayor Muriel Bowser
Gottlieb Simon, Director, Office of Advisory Neighborhood Commissions

¹ This letter was approved by a vote of 5-0 at a duly noticed public meeting of ANC3B on July 13, 2017, at which a quorum was present. (A quorum is 3 of the 5 Commissioners.)