

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

In Re:

Support for a Public  
Hospital in the Nation's  
Capital of 2004

Administrative Hearing  
No. 04-001

**MEMORANDUM OPINION AND ORDER**

This matter came before the Board of Elections and Ethics (hereinafter “The Board”) on Tuesday, January 27, 2004, and involved a determination by the Board that the proposed initiative—“Support for a Public Hospital in the Nation’s Capital of 2004”— may not be accepted on the grounds that it does not meet the “proper subject” requirements set forth in the District of Columbia’s laws governing initiatives.

District of Columbia law provides that registered qualified electors may use the initiative process to “propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.” D.C. CODE §1-204.101. The District of Columbia courts have consistently interpreted this provision to mean that while the citizens of the District may use the initiative process to enact authorizing legislation and influence the legislative priorities of the Council, they may not “intrude upon the discretion of the Council to allocate District government revenues in the budget process.” *Hessey v. Board of Elections & Ethics* (“*Hessey*”), 601 A. 2d 3, 19 (D.C. 1991).<sup>1</sup>

In the instant case, the proposed measure attempts to establish a trust, the purpose of which is to provide “comprehensive community-centered health care for the benefit of

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<sup>1</sup> This restriction “reflect[s] a decision...by the Congress and the Council that the power of the purse which Congress had delegated to the District government in the Self-Government Act would remain with the elected officials and not be subjected to control by the electorate through an initiative.” *Hessey*, 601 A. 2d at 15.

the citizens of the District of Columbia.” Initiative Measure, Sec. 1(f). The trust would consist of “at least one full-service hospital and clinics located throughout the [District],” Initiative Measure, Sec. 1(g), and would be governed by a commission which would have the power to “do any and all things necessary and proper to carry out its corporate purposes,” Initiative Measure, Sec. 2(a), and would also have the power, among other things, to “acquire, construct, and dispose of real property of every kind and character, including a health facility, or any interest therein for its corporate purposes.” Initiative Measure, Sec. 2(c).

Based on relevant case law, the establishment of the trust constitutes a violation of the “law appropriating funds” exception to the right of initiative. In *Hessey*, the D.C. Court of Appeals invalidated two initiative measures; the first measure would have created a new trust fund for the deposit of new revenues which could only be used to increase the supply of housing for low and moderate income families, and the second measure directed that revenues based on a surcharge on commercial properties be deposited into a pre-existing fund. These measures, the court found, “segregate[d] public moneys or a part of the public revenue to [a] narrow purpose”, or, in other words, appropriated funds in violation of the law on initiatives. *Hessey*, 601 A.2d at 8 (quoting *In re Opinion of Justices*, 297 Mass, 577, 580, 9 N.E.2d 186, 188(1937)). The latter measure also insured by its terms that the Council would have no discretion with respect to the allocation of these revenues. As the *Hessey* court noted, the

the effect of [these] initiative[s] would be to delay or condition the Council’s allocation authority, forcing the Council to use those funds in accordance with the initiative rather than in the discretion of the Council to meet District government needs. The electorate, rather than the District government’s elected officials would direct the allocation of District revenues.

*Id.* at 20.

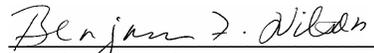
The establishment of the trust would similarly limit the Council's control over public assets. To the extent that the trust's corpus would require at least one facility over which the Commission would be entitled to exercise total control, including with respect to the acquisition and disposal of such facilities, and to fee schedules related to services provided via such facilities, that control would be outside of the Council's purview. More significantly, the use of any facilities comprising the trust would be "segregated to a narrow purpose," namely, the provision of comprehensive community-centered health care for citizens of the District. Accordingly, the proposed measure constitutes a "law appropriating funds" in violation of District law governing initiatives.

Since the Board may not process any initiatives that would have the effect of establishing a law which would appropriate funds, the Board is compelled to reject the "Support for a Public Hospital in the Nation's Capital of 2004" initiative.

Accordingly, it is hereby

**ORDERED** that the "Support for a Public Hospital in the Nation's Capital of 2004" initiative be rejected on the grounds that it seeks to establish a law which would appropriate funds in violation of District of Columbia law.

February 4, 2004

  
Benjamin Wilson, Chairman,  
D.C. Board of Elections and Ethics