

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

In Re:)	
)	
Treatment Instead of Jail for)	Administrative Hearing
Nonviolent Drug Offenders)	No. 02-003
)	
)	

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics (hereinafter “The Board”) on Friday, March 8, 2002, and involved a determination by the Board that the proposed initiative—the “Treatment Instead of Jail for Non-Violent Drug Offenders Initiative”—could not be accepted on the grounds that it does not meet the “proper subject” requirements set forth in the District of Columbia’s law governing initiatives.

District of Columbia law provides that an initiative is “the process by which [its] electors ... may propose laws (*except laws appropriating funds*) and present such laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.” D.C. Official Code § 1-204.101 (*emphasis added*). The courts of the District of Columbia have interpreted this restriction on initiatives to mean that, while the electorate may, through the initiative process, attempt to “authorize a substantive program,” *Convention Center Referendum Committee v. District of Columbia Bd. Of Elections & Ethics*, 441 A.2d 889, 912 (D.C. 1989)(*en banc*), “measure[s] which would intrude upon the discretion of the Council to allocate District government revenues in the budget process [are] not proper subjects for initiative.” *Hessey v. Board of Elections & Ethics*, 601 A.2d 3, 19 (D.C. 1991).¹ In other words, the Initiative,

¹ 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

Referendum, and Recall Charter Amendments Act of 1977 may have conferred upon the D.C. electorate “the right ... to authorize the establishment of a new office with specific duties,” but it did not grant the right to “authorize[e] ... appropriations for [that] office to carry out its duties[.]” *Id.* at 12.

The proposed measure does not simply take the allowable step of authorizing the establishment of a new program. Rather, it goes significantly beyond that step into forbidden territory; that of allocating funds.² The proposed measure establishes a Substance Abuse Treatment Fund, which, proponents state “*shall* be comprised of general revenue funds appropriated by a line-item in the budget submitted pursuant to § 1-204.46 of the District of Columbia Code, and authorized by Congress in an appropriations act.” Treatment Instead of Jail for Non-Violent Drug Offenders Initiative, at § I(3). It further provides that the Mayor *shall* “deposit in the Fund any and all other funds received on behalf of the Fund for the purposes of the [initiative].” *Id.* The measure goes on to state that the “director of the Department of Health shall determine the allocation of monies from the Substance Abuse Treatment Fund,” *Id.* at I(6), and that they “shall distribute annually all monies appropriated to the Substance Abuse Treatment Fund to the Department of Health’s affiliated agencies or bodies to pay for the costs of providing treatment programs [contemplated under the initiative].” *Id.* at I(5). These provisions, insofar as they attempt to wrest control of the allocation of District government revenues from the Council in violation of District law, render the measure defective.

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 “Treatment Instead of Jail for Non-Violent Drug Offenders Initiative.”

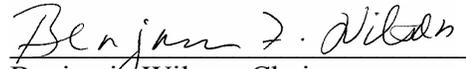
officials and not be subjected to control by the electorate through an initiative.” *Hessey*, 601 A.2d at 15.

² In *Hessey*, the D.C. Court of Appeals established that “laws appropriating funds” and laws apportioning or allocating funds are one in the same.

Accordingly, it is hereby

ORDERED, that the “Treatment Instead of Jail for Non-Violent Drug Offenders Initiative” be rejected on the grounds that it seeks to establish a law which would appropriate funds in violation of District of Columbia law.

March 11, 2002



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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was hand delivered this 12th day of March, 2002 to William McColl c/o DC Campaign for New Drug Policies/Treatment, 4455 Connecticut Avenue, NW, Suite B-500, Washington, DC 20008.

Terri Stroud