

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:  
OLC:LNG:lng  
(AL-96-331)

July 5, 1996

Robert L. Hirshberg  
Chairman  
Advisory Neighborhood Commission 1-0  
2122 Bancroft Place, N.W.  
Washington, D.C. 20008-4020

Re: Maya two-member Advisory Neighborhood Commission  
issue checks and take official action after one  
of its two commissioners resigns from office?

Dear Mr. Hirshberg:

This is in reply to your June 26, 1996 letter in which you seek the advice of this Office concerning whether Advisory Neighborhood Commission (ANC) 1-0, a two member ANC, may continue to issue checks and take official actions after one of its two commissioners resigns.

You state in your letter that ANC 1-0 Commissioner Kathleen Early has submitted her resignation from the ANC, and that her resignation will become effective August 1, 1996." You also note that under section 8(d) (1) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-257(d) (1) (1996 Supp.), no midterm ANC vacancy may be filled if the vacancy "occurs within the 6-month period prior to a general election." Since the next general election for ANC commission seats will be held this coming November, this means that Commissioner Early's vacated seat cannot be filled by a new commissioner until January of 1997.

Section 16(f) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264 (f) (1992), inter alia, requires that "[a]ny expenditure made by check shall be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairman." We do not construe this language to be intended to make it impossible for ANC 1-0 to continue to pay its essential bills in the event one of its two commissioners resigns. Therefore, ANC 1-0 may legally continue to pay ANC I-D's essential bills by check with your signature alone. You should, of course, notify the ANC's bank that, as of August 1, 1996, Commissioner Early will no longer be

signing ANC 1-D checks, and that your signature alone will appear on the checks issued during the five-month period beginning August 1, 1996. We suggest that you submit to the bank a copy of this letter along with your notification letter.

As to whether ANC 1-D may continue to transact official business with only one commissioner remaining, section 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992), provides that, with respect to submission by an ANC of written recommendations on proposed District government actions, "[n]o official action may be taken by a commission unless a majority of the elected representatives of the Commission is present." We have construed the quoted language to mean a majority of the number of commissioners actually serving in office. Therefore, even with only one remaining commissioner (out of its total of two), ANC 1-D may still adopt and transmit to the District government written recommendations on proposed government actions. However, with regard to other official business, we have concluded that such business must be transacted at ANC public meetings at which there is present at least a majority of the total number of the ANC's commissioner positions, regardless of whether they are vacant or filled. See enclosed copies of our letters of advice dated November 18, 1994, June 15, 1995, and August 2, 1995. Thus, in the case of ANC 1-0, a majority of the total number of positions is two. Accordingly, for five months beginning August 1, 1996, ANC 1-0 cannot take any official actions at its remaining 1996 public meetings other than to adopt written recommendations on proposed District government actions.

As you are aware, one of the most important official actions that an ANC takes every three months is to approve its quarterly financial report and submit that report to the D.C. Auditor. Therefore, if possible, ANC 1-0 should, at its July 8, 1996 public meeting, or at a special public meeting later this month, approve its quarterly financial report for the April-May-June 1996 quarter so that it can be approved and submitted to the Auditor before the effective date of Commissioner Early's resignation. We recommend that ANC 1-D's quarterly financial report for the quarter July-August-September 1996 be timely submitted to the Auditor with a letter explaining why this quarterly report cannot be properly approved by ANC 1-0 until its membership is brought up to two members in January of 1997.

sincerely,  
Charles F.C. Ruff  
Corporation Counsel  
By:

  
Karen L. Cooper  
Director  
Office of Legal Counsel

Enclosures

cc: The Honorable Harold Brazil  
Chairman,  
Committee on Government Operations  
Council of the District of Columbia

Lavonna Johnson  
Director  
Office of Constituent Services

Ayo Bryant  
Director  
Office of Diversity and  
Special Services

Russell A. smith  
D.C. Auditor