

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

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WASHINGTON, D. C. 20001



IN REPLY REFER TO,

Prepared by: OLC:LNG
(AL-98-067)

February 18, 1998

Tom Coumaris
Commissioner
Advisory Neighborhood Commission 1-B
1413 S street, N.W.
Washington, D.C. 20009

Re: Propriety of procedure used to elect the chairperson
of ANC 1-B at its January 1998 meeting

Dear Commissioner Coumaris:

This is in reply to your January 20, 1998 request for the advice of this Office concerning the legal propriety of the procedure followed by Advisory Neighborhood Commission (ANC) 1-B in its election of a chairperson at its January 1998 meeting.

You state in your letter that 11 commissioners were present at the January meeting and that two persons were nominated for the position of chairperson, namely the incumbent chairperson and another commissioner. The result of the first round of voting was 5 to 5 with one abstention. Since there was no majority, a second round of voting was conducted with the same result. At this point, you and some other commissioners made a motion to "open the next round [of voting] to new nominations." The chairperson overruled this motion, stating that ANC 1-B's "bylaws require re-balloting between the two candidates until one of them is finally elected, even if it takes all night." You state that the "chair insisted that we keep repeating the balloting between the two candidates with no new nominations before we could move to any other business. We went through numerous ballots with the same result until finally when everyone was tired, the abstaining member Yoted for the chair for reelection so we could get on with ANC business.††† You state

† In an article about ANC 1-B's January meeting that appeared on page 19 of the February 6, 1998 issue of the Washington City Paper, it was stated, inter alia, that 11[t]he [voting] stalemate eventually ended when the one abstaining Yoter gave in because she

in your letter that the balloting for the office of chair took over an hour and had been repeated "about 10 rounds." You state that the additional ballots were conducted under your protest of two rulings of the chair, namely (1) that other commissioners were not permitted to be nominated and, (2) that no other business could be conducted until the election for chair had been successfully completed. For the purposes of this advice, I assume that the facts as stated above are correct.

Article IV, section 3 of the bylaws of ANC 1-B provides in pertinent part that "[t]here shall be no limit as to the number of nominations except that each nomination must be seconded." Article IV, Section 5 of the bylaws provides in pertinent part that "[e]ach candidate for office shall be nominated from the floor." Thus, although there may be as many nominees for an office as there are commissioners, Article IV, Sections 3 and 5 reasonably may be interpreted to mean that in order to be a candidate for office, a commissioner must first be nominated and then have that nomination seconded.²

Article IV, Section 9 of the bylaws of ANC 1-B provides in pertinent part that "[i]n the event that there is not a simple majority after the first ballot, there shall be an election between the two candidates receiving the most votes." Here, there were only two nominees to start with, so there was no candidate required to drop out at this point as required by Article IV, Section 9. While Article IV, Section 9 does not expressly address the circumstance of a tie vote, it implies that balloting should continue in an effort to break the tie. This is also the procedure specified by Robert's Rules of Order, *supra*, where at section 45 the following is stated at page 433 in regard to the situation "where two candidates tie for a majority vote of an office": "[I]f any office remains unfilled after the first ballot..., the balloting should be repeated for that office as many times as

had an issue she wanted addressed that night."

² Under Robert's Rules of Order, a member of an organization who is otherwise eligible to hold an office in the organization need not first be nominated in order to be elected to that office. See Robert's Rules of Order (9th ed. 1990) § 45 Nominations and Elections, at page 422. However, where there is a conflict between an ANC's bylaws and Robert's Rules of Order, the bylaws govern. See section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1992) ("Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order"). Thus, Article IV, section 5 of ANC 1-B's bylaws reasonably may be interpreted as providing otherwise than is provided in Robert's Rules of Order with regard to the necessity of a (seconded) nomination as a prerequisite to becoming a candidate for office.

necessary to obtain a majority vote for a single candidate."³

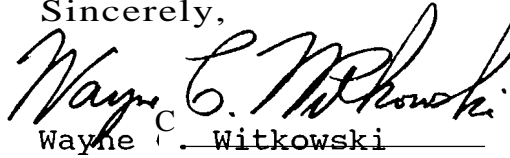
Of course, the statement in section 45 of Robert's Rules of Order that "the balloting should be repeated...as many times as necessary to obtain a majority vote for a single candidate" must not be given an unreasonable interpretation. Thus, what this statement means is that reasonable efforts, through additional ballots at the meeting, should be attempted to break the tie. It does not mean that in order to break the tie, balloting must continue "even if it takes all night." Nor does it authorize a chair to rule that under no circumstances can an ANC conduct any other official business until a new chair is elected. In this regard, this Office previously has opined that, where there is a tie vote for the office of chairperson at an ANC's January meeting and the impasse cannot through reasonable efforts be resolved at the January meeting, the incumbent chair may continue to serve as chair of the ANC for the meeting and at future meetings until there is a valid election for the office of chair. See our letter (copy enclosed) of January 9, 1992 to Grace Bateman, then chair of ANC 2-E.

Based upon the facts and circumstances recited above, I conclude that, at the January 1998 meeting of ANC 1-B, the chairperson of ANC 1-B misapplied ANC 1-B's bylaws and Robert's Rules of Order and used such misapplication improperly to coerce a resolution of the impasse in the election of a chair. Accordingly,

³ Here, Robert's Rules of Order goes on to say (at page 433) that if repeated balloting is necessary, "the names of all nominees are kept on the ballot. The nominee receiving the lowest number of votes is never removed from the next ballot unless the bylaws so require, or unless he withdraws -- which, in the absence of such a bylaw, he is not obligated to do. The nominee in the lowest place may turn out to be a 'dark horse' on whom all factions may prefer to agree." As noted above, under Article IV, section 9 of ANC 1-B's bylaws, if there are more than two nominees, only the top two vote getters may continue as candidates after the first ballot. Robert's Rules of Order regards such a rule as an "unfortunate practice" which "should be discouraged" because of its effect on precluding "the choice of a compromise candidate" by two rival factions. See Robert's Rules of Order, supra, at page 429. ANC 1-B may wish to consider amending Article IV, Section 9 of its bylaws to permit all nominees to remain candidates after the first ballot, as is recommended by Robert's Rules of Order.

I conclude that the election for the office of chair that occurred at ANC 1-B's January meeting is invalid. A new election for chair should be conducted at ANC 1-B's next pUBLIC meeting, including the reinitiation of the nomination process.

Sincerely,



Wayne C. Witkowski
Director
Office of Legal Counsel

Enclosure

cc: The Honorable Kathleen Patterson
Chairperson, committee on Government Operations
Council of the District of Columbia

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