

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:
L&O:LNG:lng
(AL-95-414)

August 2, 1995

Maria Tyler
Commissioner
Advisory Neighborhood Commission 2-A
949 25th street, N.W.
Washington, D.C. 20037

Re: Mayan Advisory Neighborhood Commission continue to conduct official business at a pUBLIC meeting when the departure from the meeting of one or more of its commissioners results in the absence of a quorum?

Dear Commissioner Tyler:

This is in reply to your July 24, 1995 letter to the Acting Corporation Counsel in which you seek the advice of this Office concerning quorum requirements as they apply to official actions taken by Advisory Neighborhood Commissions in general, and by Advisory Neighborhood Commission CANC) 2-A in particular.

Your request for advice concerns the ANC 2-A pUBLIC meeting that was held on July 19, 1995. In regard to that meeting you state in your letter that:

The meeting began with five of the six elected Commissioners present, a quorum therefore being present. Near the end of the meeting, before a vote was taken on approving the minutes of ANC-2A's pUBLIC monthly June 21, 1995 meeting, another Commissioner and I left the meeting, leaving three Commissioners remaining. The Chairperson declared that, according to Robert's Rules of Order, a quorum still existed since there had been a quorum present at the beginning of the meeting, and the three remaining Commissioners proceeded with the meeting and voted on the motions relating to the approval of the above cited minutes and subsequently on motions on the Treasurer's report, including authorizing the expenditure of ANC-2A funds. [Underscoring in original.]

You ask whether the business that was transacted after you and the other commissioner left the meeting was properly transacted.

As you are aware, on June 15, 1995, this Office advised ANC 2-A chairperson Sara Maddux by letter, that, under the common law rule applicable to ANCs, a quorum of the commissioners of an ANC is required to be present at a pUBLIC meeting in order for that ANC to take official action, and that a quorum in the case of six-member ANC 2-A is at least four commissioners. This common law rule is expressed in Article V, section 2 of ANC-2-A's bylaws which provides that "[n]o official action may be taken by the Commission unless a majority of the Commissioners are present and voting." (Emphasis added.) Thus, the physical presence at a properly noticed pUBLIC meeting of at least four commissioners of ANC 2-A is required in order for ANC 2-A legally to take such official actions as approving the minutes of the previous month's meeting, approving a treasurer's report, and approving the expenditure of ANC 2-A funds.

As noted above, you state in your letter that the chairperson of ANC 2-A invoked Robert's Rules of Order to justify the taking of votes on these matters at a time when there were only three commissioners physically present at the meeting. For the following reasons, I conclude that the chairperson acted improperly in proceeding in this manner after the loss of a quorum. Therefore, I also conclude that votes on these matters are null and void.

First and foremost, Robert's Rules of Order does not govern the instant situation. statutory provisions, the common law, and the provisions of ANC 2-A's bylaws take precedence over Robert's Rules of Order. "[T]he procedures of the Commission shall be governed by Robert's Rules of Order" only "[w]here not otherwise provided." section 14(e) of the Advisory Neighborhood Commission Act of 1975, D.C. Code § 1-263(e) (1992). section 14(d) (1) of the Advisory Neighborhood Commission Act of 1975, D.C. Code § 1-262 (d) (1) (1992), provides in pertinent part that "an ANC's bylaws shall be consistent with the provisions of this act and other applicable laws...." The term "other applicable laws" includes the common law. Thus, if either the common law or ANC 2-A in its bylaws otherwise provides, then Robert's Rules of Order does not govern. As noted above, both the common law and the bylaws of ANC 2-A require the physical presence of a quorum in order for ANC 2-A to transact official business.

In sum, I conclude that the business that was transacted by ANC 2-A at its pUBLIC meeting on July 19, 1995, after the loss of its quorum is null and void. To be legal, such transactions will have to be voted upon again at a properly noticed pUBLIC meeting at which a quorum (i.e., at least four commissioners) is physically present at the time the vote is taken.¹

While Robert's Rules of Order does not govern the instant situation, even if it did, the result would not be different. In this regard, Robert's Rules of Order states in pertinent part:

sincerely,

Karen L. Cooper

Karen L. Cooper, Chief
Legislation & Opinions section
Legal Counsel Division

In the absence of a quorum, any business transacted (except for the actions noted in the next paragraph) is null and void. In such a case, it is the business that is illegal, however, not the meeting; and thus, if the society's rules require the meeting to be held, the absence of a quorum in no way detracts from the fact that the rules were complied with and the meeting was held - even though it had to adjourn immediately.

The only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn, adjourn, recess, or take measures to obtain a quorum. * * * The prohibition against transacting business in the absence of a quorum cannot be waived even by unanimous consent•••

* * * * *

When the chair has called a meeting to order after finding that a quorum is present, the continued presence of a quorum is presumed unless the chair or a member notices that a quorum is no longer present. If the chair notices the absence of a quorum, it is his duty to declare the fact, at least before taking any vote or stating the question on any new motion - which he can no longer do except in connection with the permissible proceedings related to the absence of a quorum as explained above. * * *

Emphasis added; Robert's Rules of Order, Newly Revised, 1970, § 39, pp. 295, 296.

The verb "notices" in the underscored part of the above-quoted excerpt means to become aware of. If two of five ANC commissioners present at an ANC meeting get up and walk out, it would be difficult to imagine that the chairperson would not immediately be aware of their departure. Your statement of facts indicates that at the time you and the other commissioner left the meeting, the chairperson of ANC 2-A was aware of your departure. Accordingly, even under Robert's Rules of Order, it was the chairperson's duty at that time to declare the fact of your departure and then to proceed with only those actions that are permissible in the absence of a quorum.

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

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Advisory Neighborhood Commission 2-A

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