

Government of the District of Columbia

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IN REPLY REFER TO:
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(AL-95-318)

June 15, 1995

Sara Maddux
Chairperson
Advisory Neighborhood Commission 2-A
1920 G Street, N.W.
Washington, D.C. 20006

Re: Request for review of proposed change in by-laws
relating to number of votes needed to adopt a
motion

Dear Chairperson Maddux:

This is in response to your May 19, 1995 letter to Acting Corporation Counsel Garland Pinkston, Jr., in which you seek the advice of this Office concerning the legal sufficiency of a proposed amendment to the Rules of Procedure and Bylaws of Advisory Neighborhood Commission (ANe) 2-A.

Article 6, section 4 of ANC 2-A's Rules of Procedure and Bylaws currently provides as follows:

In these bylaws, a majority is understood to be a majority of all currently seated Commissioners of the Advisory Neighborhood Commission of Foggy Bottom and West End.

It has been proposed that Article 6, section 4 be amended to read as follows:

In these bylaws, a majority is understood to be the majority of currently seated commissioners of the Foggy Bottom/West End Advisory Neighborhood Commission present and forming a quorum.

This amendment could be legally sufficient if ANC 2-A's Rules of Procedure and Bylaws defined the term "quorum." A stated purpose of this proposed amendment is to make Article 6, Section 4

consistent with section 302.2 of the ANC Manual.¹ section 302.2 of the ANC Manual provides that: "No official action may be taken by a Commission unless a majority of the elected representatives of the Commission are present." section 302.2 of the ANC Manual is based on the second sentence of § 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992), which states: "No official action may be taken by a Commission unless a majority of the elected representatives of the Commission is present." In view of the other language in the subsection in which this sentence appears (see enclosed copy of the entire text of subsection (d), as codified), we conclude that this sentence was intended to apply only to ANC decisions involving the adoption of written recommendations that formally convey an ANC's position with respect to a proposed District government action.² with respect to other official actions taken by an ANC, there is no statutory directive relating to a quorum requirement, i.e., relating to the minimum number of ANC Commissioners who must be present at a public meeting in order for the ANC to transact other official business. In this regard, this Office has advised that the common law quorum requirement is applicable to ANCs. The common law quorum rule is that a quorum is a majority of the whole number of membership positions entitled to be filled, and not merely a majority of the number of positions that are actually filled at a given time. See the enclosed copy of our letter of advice, dated November 18, 1994, to ANC 2-F commissioner Robert R. Riddle. ANC 2-A has six single-member districts. Thus, under the common law quorum rule, ANC 2-A's quorum number is four, and will always be four as long as the number of single-member districts in ANC 2-A is six. Of course, where, all single-member district seats in a Commission are filled, as is currently the case in ANC 2-A, there is no difference between the common law quorum requirement and the quorum requirement stated in the second sentence of § 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992). If, however, a single-member district seat in ANC 2-A were vacant, thus leaving only five elected Commissioners, then the quorum requirement would drop to three for the purposes of taking official action regarding the adoption of written recommendations conveying the ANC position regarding a proposed District government action.

The ANC Manual has no independent legal force; it is simply a compendium of the applicable law, and as such, is intended to be a convenient source of guidance for ANCs.

² Absent clear statutory indication to the contrary, we are unwilling to assume that the Council intended this sentence to establish a quorum requirement applicable to all official actions of an ANC, for carried to its logical conclusion, it would mean that an ANC could transact business even if a majority of the total number of its single-member district seats were vacant, so long as a majority of the remaining Commissioners were present at a meeting.

Thus, ANC 2-A could adopt two separate quorum requirements, one relating to the adoption of written recommendations on proposed District government actions and based in the language of the second sentence of D.C. Code § 1-261(d), and a second relating to the transaction of other business and based on the common law quorum rule. However, this is not the course we recommend. For the sake of simplicity and to avoid confusion, we recommend that ANC 2-A adopt a single quorum standard that applies to all official actions taken by ANC 2-A. Currently, section 2 of Article V of ANC 2-A's Rules of Procedure and Bylaws provides: "No official action may be taken by the Commission unless a majority of the Commissioners are present and voting." We recommend that Article V, section 2 be amended to read:

No official action may be taken by the Commission unless a quorum of the Commissioners is present at a public meeting. A quorum shall consist of at least four Commissioners.

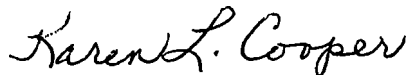
since Article VI of ANC 2-A's Rules of Procedure and Bylaws relates to voting, section 4 of Article VI should state the number of votes necessary to carry a motion. The general (common law) rule is that, if a quorum is present, a majority of those present and voting in favor is the minimum number of votes necessary to carry a motion.³ Therefore, we recommend that section 4 of Article VI be amended to read as follows:

A motion being voted upon shall carry if it receives the favorable votes of a majority of the Commissioners present at a meeting at which a quorum is present.

Thus, if all six commissioners are present, four favorable votes would be sufficient (and necessary) to carry a motion. If five Commissioners are present, three favorable votes would be sufficient (and necessary) to carry a motion. If a bare quorum of four Commissioners is present, again three favorable votes would be sufficient (and necessary) to carry a motion.

If you have any questions concerning this advice, you may contact Leo Gorman of this Office, whose telephone number is 727-3400.

Sincerely,



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

³ ANC 2-A may, if it wishes, adopt more stringent majority requirements for particular types of votes.

Enclosures

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

Lavonia Johnson
Director
Office of Constituent Services

Ayo Bryant
Director
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