

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

November 29, 2017

Nicholas Delle Donne
Commissioner, ANC 2B
1622 Riggs Pl NW
Washington, DC 20009

Re: September 13 Censure Resolution

Commissioner Delle Donne:

On September 13, 2017, Advisory Neighborhood Commission 2B adopted a resolution to censure you, and you have asked us to opine on the narrow question of whether this motion was validly adopted. You also supplied us with information concerning the resolution, including the text of the censure resolution and an audio recording of the meeting in which the resolution was adopted. We conclude that the resolution was not validly adopted.¹

Censure of an Advisory Neighborhood Commissioner is a serious matter that affects the ANC as well as the neighborhood area. It represents the ANC's official, public reprimand of a Commissioner's conduct, and in ANC 2B, it carries disciplinary consequences. Under ANC 2B's Policy and Procedures Manual, a censured Commissioner "shall be immediately removed from all Commission committees and from any officer position(s) which the censured Commissioner holds at the time of the censure," and is "ineligible to be nominated for any officer position or to serve on any Commission committee for the remainder of the calendar year during which censure is imposed."²

When ANC 2B seeks to censure a Commissioner, it must, under District law and its own Bylaws,³ follow Robert's Rules of Order.⁴ District law requires that "the procedures of the

¹ This letter, like all of our advice letters, rests on the information that has been provided to us. We express no opinion on the substantive claims contained in the resolution.

² Policy and Procedures Manual, Part II(XV), available at <http://www.dupontcircleanc.net/wordpress/wp-content/uploads/2010/08/ANC2BPolicyProceduresManual-Version2pt0-AS-ADOPTED-5-14-14.pdf> (p. 50 of the document) (last visited Oct. 26, 2017).

³ See Bylaws of Advisory Neighborhood Commission 2B ("Bylaws"), available at <http://www.dupontcircleanc.net/wordpress/documents/bylaws/> (last visited Oct. 26, 2017).

⁴ HENRY MARTYN ROBERT III, ET AL., ROBERT'S RULES OF ORDER NEWLY REVISED (11th ed. 2011) ("Robert's Rules").

Commission” be “governed by Robert’s Rules of Order” where “not otherwise provided,”⁵ and nothing in ANC 2B’s Bylaws allows a censure motion to be conducted in a manner inconsistent with Robert’s Rules. Moreover, the ANC’s Bylaws require it to follow its Policy and Procedures Manual,⁶ and the Manual requires the ANC to follow Robert’s Rules when adopting a censure resolution.⁷

Under Robert’s Rules, as this office explained in a 2009 letter,⁸ a Commissioner facing censure has the “right to due process.”⁹ That includes the right to be “informed of the charge and given time to prepare his defense,” and the right “to appear and defend himself.”¹⁰ Moreover, if a Commission wishes to censure and discipline a Commissioner “other than promptly after [a] breach occurs,” or to censure and discipline a Commissioner for conduct that took place outside of any ANC meeting, the ANC must take steps to assure itself that the allegations in question are true.¹¹ “[T]here is a need for a trial, or at least fact-finding by the whole assembly or a committee,” which should “occur in a confidential setting because the reputation of the accused is at stake.”¹²

The resolution’s adoption violated Robert’s Rules. You have advised us that the resolution and the broad allegations in it were not made available to you or disseminated to the Commission until the day before the meeting in which the resolution would be considered. The audio recording of that meeting also makes clear that the resolution was adopted without any opportunity for substantive debate. Once the resolution was introduced and read, and brief points of order were considered,¹³ a Commissioner successfully moved to call the question and vote on the measure, preventing any substantive debate.¹⁴ You therefore had no opportunity to

⁵ Advisory Neighborhood Commissions Act of 1975, § 14(e)(3), effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.11(e)(3)).

⁶ See Bylaws art. VIII sec. 3 (“The Commission shall conduct its business in accordance with the most recently approved version of the Dupont Circle Advisory Neighborhood Commission Policy and Procedures Manual”).

⁷ Policy and Procedures Manual Part II(XV) (p. 50 of the document). The Manual is available at <http://www.dupontcircleanc.net/wordpress/wp-content/uploads/2010/08/ANC2BPolicyProceduresManual-Version2pt0-AS-ADOPTED-5-14-14.pdf> (last visited Oct. 26, 2017)

⁸ See Letter to Albrette “Gigi” Ransom, Comm’r, ANC 5C, July 20, 2009 (“2009 Letter”), available at <http://app.occ.dc.gov/documents/2009/20090720.pdf> (last visited Nov. 13, 2017).

⁹ Robert’s Rules, *supra*, p. 656, ll. 3-4; see 2009 Letter, *supra*, at 2.

¹⁰ Robert’s Rules, *supra*, p.656, ll. 4-5.

¹¹ *Id.* p. 649, ll. 19-29.

¹² 2009 Letter, *supra*, at 3.

¹³ One Commissioner challenged the last-minute inclusion of this resolution in the meeting agenda as a violation of District public-notice and open-meetings requirements. Although applicable open-meetings laws precluded the ANC from adopting this censure resolution in closed session, see D.C. Official Code § 1-207.42(a) (2012 Repl.), the Chair correctly concluded that no provision of District law requires an ANC to give the public advance notice of every item on a meeting agenda. Another Commissioner contended that the adoption of this resolution was “not following Robert’s Rules of Order,” but did not specify the grounds of objection. A third Commissioner raised a point of order to note that he was recusing himself from the vote.

¹⁴ It is true that a few Commissioners interjected (out of order) substantive comments about the merits of the resolution. Those scattered statements do not change the fact that the ANC did not permit substantive debate on the merits of the resolution, or the fact that you were not afforded an opportunity to defend yourself.

defend yourself against the resolution's allegations.¹⁵ Indeed, after the question was successfully called, the Chair was asked whether you would have the opportunity to respond, and the Chair stated that you would not have such an opportunity because the question had been called. In addition, although none of the conduct described in the resolution was alleged to have taken place in a recent ANC meeting, and much of it was alleged to have taken place outside of a Commission meeting, it does not appear that the ANC or any ANC committee conducted any fact-finding to verify the accuracy of the allegations in the resolution. The audio recording of the September 13 meeting does not mention any fact-finding and you have advised us that none has taken place.

In these circumstances, the resolution's adoption violated Robert's Rules, and the resolution and any penalties imposed under it are null and void. Under Robert's Rules, an ANC action is "null and void" if it "conflicts with the bylaws (or constitution) of the [ANC]," or "has been taken in violation of applicable procedural rules prescribed by [District or federal] law."¹⁶ By failing to follow Robert's Rules, the ANC violated both District law and its own Bylaws. These violations do not appear to have been raised in the September 13 meeting, but because the resolution is null and void, these violations may be raised at any time.¹⁷

You raised two other potential procedural issues.

First, it appears that the agenda that included the resolution was adopted later than the Policy and Procedures Manual allows. Under the Manual, if a meeting agenda needs to be revised sooner than two Mondays before the meeting, that revised agenda must be "re-finalized for re-publication by the Executive Director no later than the Monday before the meeting."¹⁸ The agenda containing the resolution did not appear to comply with this rule because it appears that it was not re-finalized until the Tuesday before (less than 24 hours before) the meeting. We also note, however, that the Manual also allows Commissioners to amend the agenda in the meeting itself.¹⁹

Second, under Robert's Rules, the ANC should not have considered and voted on Commissioner Warwick's Previous Question motion on the censure resolution while a public-notice point of order on that same resolution was still pending. The ANC considered the Previous Question motion once the Chair concluded that the motion superseded the point of order. That conclusion, however, was incorrect. A Previous Question motion on an underlying matter (here, the resolution) does not supersede a pending point of order on that same matter.²⁰ The Chair needed

¹⁵ There is also an open question as to whether you were given sufficient opportunity to prepare a defense to the allegations raised in the censure resolution. Notice less than a day before the ANC meeting is quite short, but neither Robert's Rules nor the Policy and Procedures Manual clearly establishes how much notice must be given in this context.

¹⁶ Robert's Rules, *supra*, p. 251, ll. 9-10, 16-17.

¹⁷ *Id.* ll. 25-26 ("it is never too late to raise a point of order" against actions that violate applicable bylaws or applicable law).

¹⁸ Policy and Procedures Manual, *supra*, Part II(III)(A) (p. 25 of the document).

¹⁹ *Id.*

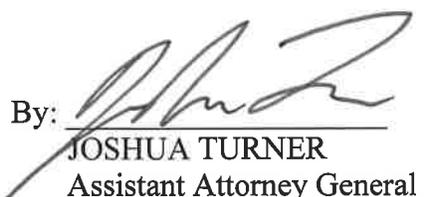
²⁰ See Robert's Rules, *supra*, pp. 247-248.

to rule on the point of order before the ANC could consider and vote on any Previous Question motion on the resolution.

If you have questions about the contents of this letter, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

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By: 
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