

Government of the District of Columbia

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(AL-95-475)

September 14, 1995

Robert R. Riddle
Commissioner
Advisory Neighborhood Commission 2-F
1101 Massachusetts Avenue, N.W.
Apartment 807
Washington, D.C. 20005

Dear Commissioner Riddle:

This is in reply to your August 30, 1995 letter to Leo Gorman of this Office in which you seek advice concerning a number of matters relating to the functioning of advisory neighborhood commissions.

In your first question, you ask whether it is "permissible for an individual Commissioner to publish and distribute a newsletter on neighborhood developments and issues of note, to residents of the Single Member District, using Commission funds for reproduction and paper costs."

By letter dated February 22, 1994 (copy enclosed), to ANC 2-B Chairperson Russell Gamble, this Office opined that an ANC newsletter may not carry paid advertising unless expressly authorized by statute. Implicit in that advice is the conclusion that an ANC or an individual ANC Commissioner may publish a news letter using ANC funds. The two conditions that must be met are: (1) that the newsletter furthers the purposes of the ANC as those purposes are set forth in the governing statutory provisions; and (2) that the expenditure of funds to publish the newsletter is approved by the full ANC.

Your second question is whether Corporation Counsel opinions on legal questions relating to ANC matters are "binding," and if so, who is responsible for their enforcement.

Under section 15(d) (3) (A) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-263(d) (3) (A) (1992), the Corporation Counsel is charged with the duty of providing ANCs with "[1]egal interpretations of statutes concerning or affecting the Commissions or of issues or concerns affecting the Commissions."

Corporation Counsel opinions on legal questions submitted by an ANC or an ANC Commissioner are, vis-a-vis ANCs, advisory in nature. Accordingly, there is no agency in the District government that directly enforces such opinions vis-a-vis ANCs. However, if an ANC acts in disregard of legal advice rendered by this Office, adverse consequences may result. Opinions of this Office on legal questions affecting ANCs will generally be followed by other agencies of the District government that interact with ANCs. Thus, for example, if an ANC approves the expenditure of funds or approves a quarterly financial report at a public meeting at which a quorum is not present, as the quorum requirement has been determined by this Office in its opinions, the D.C. Auditor will not accept the expenditure as proper or the quarterly financial report as properly approved. The failure to approve expenditures in a proper manner or the failure to submit a properly approved quarterly financial report to the D.C. Auditor in a timely manner may result in the withholding of all or part of a future quarterly allotment of funds to the ANC. Similarly, the written recommendations of an ANC as to a proposed District government action are not entitled to "great weight" by the District agency that is proposing the action if the written recommendations were adopted by the ANC in a manner that is not substantially in conformance with applicable statutory requirements, as determined by this Office in its opinions.

In your third question, you ask whether the incumbent members of an ANC may approve an expenditure for personal services that was made by a former group of Commissioners who did not follow proper approval procedures when the payment for personal services was actually made. The answer to this question is "yes." Subsections (f) and (g) of section 16 of the Advisory Neighborhood Commissions Act of 1975, D.C. Code §§ 1-264 (f) and (g) (1992), require the expenditure of funds to be specifically authorized by the full ANC, and, in regard to the expenditure of funds for personal services exceeding \$50, specific approval is required "at a public meeting prior to the disbursement." Subsection (g) further provides that an improper disbursement for personal services "shall be deemed the personal expense of the officer who authorized the payment, unless the Commission subsequently approves the expenditure." (Emphasis added.) In this regard, it may be noted that the statutory language expresses no time limit within which the ANC may subsequently approve a former expenditure that was made without following the required procedure. In regard to financial matters, this Office has opined that ANCs are continuing bodies. That is, each newly elected group of ANC Commissioners inherits the financial obligations of the predecessor group of Commissioners. (See our April 8, 1993 advice to ANC 3-C Chairperson Patricia Wamsley, and our June 17, 1991 advice to Kathleen McLynn of ANC 3-B.) Consistent with this advice, we interpret the above-quoted underscored language to authorize the incumbent members of an ANC to approve a disbursement for personal services (or for any other purpose) that was made, by a predecessor group of ANC Commissioners without

compliance with statutory procedures.¹

In your fourth question, you ask whether it is legally proper to use ANC funds to pay for a brochure that explains the purpose of the ANC, explains the meaning of "great weight," gives examples of how an ANC can be helpful in citizens' lives, explains how citizens can aid an ANC in its efforts, explains how to run for the office of ANC Commissioner, gives the names of ANC committees, and provides "useful phone numbers." This information appears to further the statutory purposes of the ANCs. Therefore, it is legally proper to use ANC funds to produce such brochures, so long as such use of ANC funds for this purpose is approved by the full ANC. In this general regard, you ask whether there is any rule or guideline on whether single-member district brochure expenses should be paid from a single-member district grant allocation, or from funds controlled by the full Commission in one of its general budget categories. There is no statutory provision that addresses this question. Thus, the matter would appear to be one that may be decided by the ANC, subject to the general requirement that ANCs must be able to demonstrate to the D.C. Auditor through their quarterly financial reports and other records that all expenditures of ANC funds (1) were properly approved by the ANC, and (2) were for purposes permitted by law.

Your fifth question relates to the statutory requirements that govern the signing of ANC checks. section 16(f) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(f) (1992), provides 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." Thus, the statute requires two signatures. Both must be the signatures of officers of the ANC. One of those signatures must be that of either the Chairperson or the treasurer. Accordingly, it is not statutorily required that the treasurer of an ANC sign ANC checks. For example, the Chairperson and the secretary may be the two signers of ANC checks. Within the above-quoted statutory parameters, it is up to each ANC to determine which of its officers shall sign its checks. The bylaws of an ANC would be an appropriate place to set forth which officers shall sign the ANC's checks. Since the applicable statutory language does not limit the number of officers who shall sign ANC checks to two, an ANC is free to require a greater number of signatures.

Your sixth and last question is a multi-part question relating to the minutes of ANC meetings. The statutory provisions governing ANCs do not address these questions. And since you have not submitted any relevant bylaws of ANC 2-F, we assume that your ANC's

We assume that the expenditure or disbursement was for a purpose that is permitted by the statutory provisions governing ANC spending. An ANC cannot remedy, by subsequent approval, a prior expenditure that was for an impermissible purpose.

bylaws likewise do not address these questions. Accordingly, we turn for answers to Robert's Rules of order.² All references to Robert's Rules of Order Newly Revised ("Robert's") are to the 9th edition that was published in 1990 by Scott, Foresman.

First, you ask what is the correct procedure for correcting an error in the minutes after they have been adopted. section 47 of Robert's states in pertinent part (at p. 465):

If the existence of an error or material omission in the minutes becomes reasonably established after their approval--even many years later--the minutes can then be corrected by means of the motion to Amend Something Previously Adopted (34), which requires a two-thirds vote, or a majority vote with notice, or the vote of a majority of the entire membership, or unanimous consent.

The number 34 in this quotation is a reference to section 34 of Robert's, a copy of which is enclosed.

Second, you ask whether it is "allowed to make subsequent corrections to 'approved' minutes." In this regard, you state that "ANC 2F's Chairman often moves that minutes be approved, pending later review for revisions and corrections by Commissioners." After the minutes have been approved or adopted by the ANC, no substantive changes may be made to the minutes without following the procedures set forth in the answer to your previous question.

Your third question is as follows: "In the event a prohibited action was taken, by a majority vote, and the meeting minutes misrepresent the motion made and the substance of the action taken, could that same majority block accurate correction to the minutes?" As a practical matter, the answer to this question is "yes." Nevertheless, such action would not preclude an ANC Commissioner from keeping his or her own notes as to what he or she believes actually happened, and from challenging the action taken in an appropriate manner, such as by presenting testimony or a written statement to the D.C. Auditor or to an agency of the District government that is affected by the action taken.

Fourth, you ask whether ANCs are "required to distribute copies of meeting minutes to ALL commissioners for approval" (bolding, underscoring and capitalization in original).

In section 40, at pages 348-350, Robert's discusses the subject of the reading and approval of the minutes. (Copies of

² The last sentence of section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1992), provides that "[w]here not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order."

these pages are enclosed.) This section indicates that draft minutes of a prior meeting are not required to be sent to each member prior to the meeting at which their adoption is on the agenda. However, if draft minutes of the previous meeting are not sent to members in advance so that the members may review the draft minutes prior to the meeting at which adoption of the minutes is on the agenda, and the members have no other opportunity to read the draft minutes prior to a motion to adopt them, then the secretary is required to read the draft minutes aloud to the members before the minutes may be adopted. After the secretary reads the minutes aloud, the members are entitled to object to the draft minutes and make appropriate motions to correct any errors or omissions.

Your bolding, underscoring, and capitalization of the word "all" in your question suggests that you wish to know whether it is proper for the secretary to distribute copies of draft minutes to some commissioners of an ANC, but not to other Commissioners of that ANC. Implicit in the above-cited Robert's discussion of the reading and approval of minutes, is the proposition that if copies of draft minutes of a prior meeting are distributed to members in advance of the meeting at which their adoption is on the agenda, or are distributed to members at the beginning of such a meeting for their review prior to adoption, a copy of the draft minutes must be distributed to all members.

Lastly, you ask: "If one Commissioner has not received minutes, can the other Commissioners adopt the minutes as "approved"? If the failure of a Commissioner to receive a copy of draft minutes was not accidental, but that Commissioner was deliberately singled out for treatment different from all other Commissioners in regard to the distribution of the draft minutes, and that Commissioner was given no opportunity to hear read aloud or otherwise to review the proposed minutes prior to the motion to adopt, then, consistent with the answer to the previous question, the approval of the minutes would not be valid.

Sincerely,



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

Enclosures

cc: The Honorable Harold Brazil
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