

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

May 2, 2017

Gale B. Black
Advisory Neighborhood Commission 4A
1761 Crestwood Drive, N.W.
Washington, D.C. 20011

Re: Proposed Design Review Committee

Commissioner Black:

You asked us for advice concerning a design review committee that your Advisory Neighborhood Commission (“ANC”) is considering creating. This letter responds to your request.

The proposed committee would “study, review and make recommendations to the full Commission for all matters related to development and maintenance of the housing stock, historic preservation, neighborhood improvement and stabilization, commercial development, zoning, and public space.”¹ We explained in an April 14, 2017 letter² that creating such a committee would be consistent with the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),³ the statute governing ANCs, although the chairmanship of the committee would need to be open to any ANC resident.⁴

You asked us to follow up on our prior letter by explaining what legal restrictions would apply to the operations of the new committee. For example, you would like to know what open meetings requirements the committee must follow, whether owners or employees of entities whose business may come before the ANC may be selected as committee members, and whether there would be an impermissible conflict of interest if the spouse of the ANC Chairperson sat on the committee.

¹ Res. # 4A-17-0401, at 1 (on file).

² Letter from Karl Racine, Attorney General, to ANC 1A Commr. Stacey Lincoln (“Lincoln Letter”), Apr. 14, 2017, available at <https://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/Letter%20to%20ANC%204A%20Commr%20Lincoln%20re%20Design%20Review%20Cmte--4-14-17.pdf> (last visited Apr. 28, 2017).

³ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2012 Repl. and 2016 Supp.)).

⁴ Lincoln Letter at 1-2.

The meetings of this new committee would need to be open to the public. ANC committee meetings are “subject to the open meetings provisions” of section 742 of the Home Rule Act,⁵ and no committee meeting may be closed “unless personnel or legal matters are discussed.”⁶ The existence of this new committee would not diminish the ANC’s own responsibility to hear and transmit community views. In ANC meetings, Commissioners would be required to hear and consider concerns or recommendations from members of the community, regardless of whether those concerns or recommendations related to matters that would fall under the committee’s purview.⁷ Additionally, the ANC would need to adopt written recommendations of its own if it sought to have a District agency give the ANC’s opinion great weight, since an ANC committee’s recommendations are not entitled to great weight under the ANC Act.⁸

Committee business would also need to be conducted in a manner consistent with the District’s ethics laws. Commissioners must avoid conflicts of interest, which means that a Commissioner may not take official action that would financially benefit the Commissioner or a member of the Commissioner’s family.⁹ As our previous letter explained, no resident of the ANC area could be excluded from the chairmanship of the committee. Therefore, appointing an ANC Chairperson’s spouse as the committee’s chair would not appear to be an impermissible conflict of interest. We continue to recommend, however, that the ANC Chairperson recuse him- or herself from any such vote. Moreover, allowing committee positions to be filled by representatives of entities whose business or competitors may come before the ANC could raise ethical concerns that would require an ANC Commissioner or a committee member to recuse him- or herself or take other action necessary to avoid a conflict. If you or any other Commissioner has a question about what the District’s ethics laws would require of Commissioners or committee members, you should contact the Board of Ethics and Government Accountability.¹⁰

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

⁵ Approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42 (2012 Repl.)).

⁶ D.C. Official Code § 1-309.11(g) (2012 Repl.).

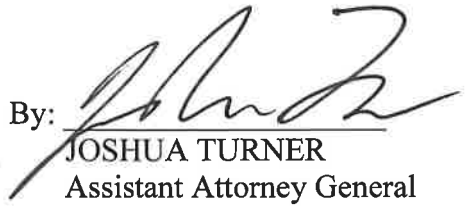
⁷ *See id.* § 1-309.11(b)(3) (“Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission.”).

⁸ *See id.* § 1-309.10(d)(3).

⁹ *See id.* § 1-1162.23 (2012 Repl.) (conflict of interest requirements); Letter from Darrin P. Sobin, Director of Government Ethics, to Mr. Peter Sacco, July 10, 2013, available at <http://www.bega-dc.gov/sites/default/files/documents/1075-001-Advisory%20Opinion.pdf> (last visited Apr. 28, 2017).

¹⁰ *See* Board of Ethics and Government Accountability, “Ethics Advice,” <http://www.bega-dc.gov/ethics-advice-1> (last visited Apr. 28, 2017).

By:

A handwritten signature in black ink, appearing to read 'Joshua Turner', is written over a horizontal line.

JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

(AL-17-232 B)