

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL..

JUDICIARY SQUARE

441 FOURTH ST. N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

**Prepared by:**LCD:WCW:pw  
(AL-98-229)

May 27, 1998

Vannie Taylor  
Chairman  
Advisory Neighborhood Commission 4-B  
5615 First street, N.W.  
Washington, D.C. 20011

Dear Chairman Taylor:

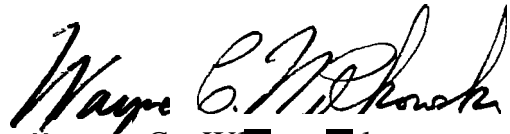
This is in response to the May 5, 1988 letter to me from Pat Kidd of Advisory Neighborhood Commission (ANe) 4-B. In her letter, Commissioner Kidd seeks the advice of this Office concerning the procedures to be followed in filling ANC single-member district vacancies. Commissioner Kidd has requested by telephone that my response to her letter be addressed to you.

The first three questions relate to the resolution that must be adopted by an ANC and transmitted to Board of Elections and Ethics that officially notifies that Board that a single-member district vacancy has been filled (either by appointment or by election). This subject is addressed by section 8(d) (6) (F) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code section 1-257(d) (6) (F) (1992 and 1997 Supp.), a copy of which is enclosed. The adoption of the resolution in question is an official action of the ANC, and as such must take place at a properly noticed, public meeting at which there is a quorum present. The only exception to the quorum requirement is when it is impossible to obtain a quorum because of the number of vacant single-member districts in the ANC. If there are not enough commissioners holding seats to make a quorum possible, then all the incumbent commissioners may adopt the necessary resolution at a properly noticed, public meeting of the ANC.

The fourth (and last) question is whether a vacancy in a

single-member district may be filled "without utilizing the statutes and procedures followed by the [B]oard of [E]lections and [E]thics." The answer to this question is no. The filling of a single-member district vacancy must follow the procedures set forth in section 8 of the Advisory Neighborhood Commissions Act of 1975, D.C. Code section 1-257. The general rule of statutory construction applicable here is that, where the legislature establishes a specific set of procedures to accomplish a certain result, the legislature intends (by implication) that alternative procedures may not be substituted for those set forth in the statute.

Sincerely,



Wayne C. Witkowski  
Deputy Corporation Counsel  
Legal Counsel Division

Enclosure

cc: The Honorable Kathleen Patterson  
Chairperson  
committee on Government Operations  
Council of the District of Columbia

William Vazquez  
Director  
Office of the Ombudsman

Ayo Bryant  
Director  
Office of Diversity and Special Services

Kenneth J. McGhie  
General Counsel  
Board of Elections and Ethics

Pat Kidd  
Commissioner  
ANC 4-B

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§ 1-257

ADMINISTRATION

nCR 2068; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (b), 31 DCR 3952.)

Section references. - This section is referred to in §§ 1-257 and 1-267.

Legislative history of Law 1-21. - See note to § 1-252.

Legislative history of Law 1-27. - See note to § 1-251.

Legislative history of Law 5-111. - See note to § 1-252.

Editor's notes. - Section 2(a) of D.C. Law 5-111 substituted "Commission" for "council" throughout the section. This change had already been given effect by D.C. Law 1-27.

Cited in *Shiflett v. District of Columbia Bd. of Appeals & Review*, App. D.C., 431 A.2d 9 (1981).

§ 1-257. Same - Election of members; term of office; vacancies; change in residency; resignation; removal.

(a) Following the initial elections of members of Advisory Neighborhood Commissions in November 1976, subsequent elections of such members occurred in November of odd-numbered calendar years through 1981. Beginning in 1984, general elections of members of Advisory Neighborhood Commissions shall take place on the 1st Tuesday after the 1st Monday in November of each even-numbered calendar year.

(b)(1) Each member of an Advisory Neighborhood Commission shall serve for a term of 2 years which shall begin at noon on the 2nd day of January next following the date of election of such member, or at noon on the day after the date the Board certifies the election of such member, whichever is later.

(2) Repealed.

(3) Each member of an Advisory Neighborhood Commission holding office at August 2, 1983, shall continue in office until noon on the 2nd day of January next following the date of the election provided for in paragraph (2) of this subsection.

(c) Repealed.

(d)(1) Whenever a vacancy exists in a single-member district Advisory Neighborhood Commission, the Board shall hold a special election in the single-member district to fill the vacancy on the 1st Tuesday occurring more than 90 days after the date on which the Board certifies the vacancy, unless the Board determines that the vacancy could be more practically filled in a special, primary, or general election to be held in the District within 60 days of the date on which a special election would otherwise be held under the provisions of this paragraph. If no eligible person submits the petition required pursuant to paragraph (3) of this subsection, the Board shall recertify the vacancy and hold a special election in accordance with the provisions of this paragraph. No special election shall be held to fill a vacancy that is certified by the Board if the certification would require a special election to be held between the date of the next regularly scheduled general election and January 2nd of the following year. A special election, unless conducted in accordance with a previously scheduled general, primary, or special election pursuant to this subsection, shall be conducted in one of the following manners:

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(A)(i) In the single-member district represented by the Advisory Neighborhood Commissioner at the voting precinct containing the majority of the registered qualified electors; or

(ii) If the voting precinct is unavailable, at an appropriate alternative site within the Commission area and, if possible, within the single-member district; or

(B) By postal ballot by mailing by 1st class mail no later than 7 days prior to the date of the election an official ballot issued by the Board. The ballots shall be mailed to each qualified registered elector in the single-member district at the address at which the elector is registered, except for those persons who have made arrangements with the Board for absentee voting pursuant to § 1-1313(b)(2). The Board shall, pursuant to § 1-1306(a)(14), issue rules to implement the provisions of this subparagraph. The ballots shall be printed with prepaid 1st class postage and shall be postmarked no later than midnight of the day of the election.

(2) A special election called to fill a vacancy in a single-member district of an Advisory Neighborhood Commission shall not be considered an election for the purposes of § 1-1320(p).

(3) Within 5 days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares a vacancy by publication in the District of Columbia Register, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the single-member district in which the vacancy has been certified.

(4) Within 30 days of the date on which the Board makes the petitions available, persons interested in filling the vacancy shall submit a petition to the Board containing the signatures of 25 qualified registered electors from the single-member district. The Board shall consider each petition pursuant to its rules.

(5) Each person elected to fill a vacancy shall meet the qualifications of an Advisory Neighborhood Commissioner stated in § 1-256(a).

(6) The person elected as a member to fill the vacancy on the Advisory Neighborhood Commission shall take office on the day on which the Board of Elections and Ethics certifies the election, and shall serve as a member of the Advisory Neighborhood Commission only for the remainder of the term during which the vacancy occurred.

(e) Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant.

(£)(1) Any member of an Advisory Neighborhood Commission who resigns from the single-member district from which he or she is elected shall submit a copy of the letter of resignation to: (A) The Board of Elections and Ethics; (B) the Council of the District of Columbia, and the Mayor; and (C) the Chairperson of the member's Advisory Neighborhood Commission. The District of Columbia Board of Elections and Ethics shall then declare the vacancy.

(2) When a vacancy occurs on an Advisory Neighborhood Commission and no letter of resignation is submitted as required by paragraph (1) of this subsection, the respective Advisory Neighborhood Commission shall petition

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§ 1-257

ADMINISTRATION

the District of Columbia Board of Elections and Ethics, by a resolution signed by the Chairman and the secretary of the Advisory Neighborhood Commission, to declare the vacancy. The resolution shall be considered by the Commission at a public meeting of the Commission. Prior to the meeting, the Commission shall make a good faith effort to notify, in writing, the Commissioner who is the subject of the resolution. Notice of the meeting shall be sent to the Commissioner no later than 20 days prior to the meeting by certified mail, return receipt requested, and shall provide that the Commissioner shall have an opportunity to rebut the alleged vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to: (A) The District of Columbia Board of Elections and Ethics, (B) the Council of the District of Columbia, and the Mayor, and (C) the Commissioner, whenever the vacancy is due to removal or failure to continue the qualifications for office under § 1-256(a).

(3)(A) Any qualified elector may, within a 10-day period, challenge the validity of the resolution filed under paragraph (2) of this subsection, by a written statement duly signed by the challenger, filed with the District of Columbia Board of Elections and Ethics and specifying concisely the alleged defects in said resolution. A copy of the challenged statement shall be sent by the District of Columbia Board of Elections and Ethics to the Chairperson of the petitioning Advisory Neighborhood Commission.

(B) The District of Columbia Board of Elections and Ethics shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged resolution not more than 30 days after the challenge has been filed. Within 3 days after the announcement of the determination of the District of Columbia Board of Elections and Ethics with respect to the validity of the resolution, either the challenger or the affected single-member district commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination.

(C) The District of Columbia Court of Appeals shall expedite consideration of the determination. The decision of such Court shall be final and not appealable.

(D) If the resolution is found to be valid, then the District of Columbia Board of Elections and Ethics shall declare the vacancy.

(g) Repealed. (1973 Ed., § 1-171e; Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(b), 24 DCR 3336; Sept. 8, 1979, D.C. Law 3-15, § 2, 25 DCR 11003; June 23, 1981, D.C. Law 4-14, § 2(b), 28 DCR 2132; Aug. 2, 1983, D.C. Law 5-17, § 2, 30 nCR 3196; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (c), 31 DCR 3952; Sept. 26, 1984, D.C. Law 5-116, § 3, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 2, 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 3(b), 37 DCR 8420; Mar. 11, 1992, D.C. Law 9-75, § 3, 39 DCR 310.)

Cross references. - As to general election for members of Board of Education, see § 1-1314.

Section references. - This section is referred to in §§ 1-268 and 1-1321.  
Effect of amendments. - D.C. Law 8-203

of Law 11-52. - Law Budget Support Act of in Council and assigned h was referred to the e. The Bill was adopted dings on April 19, 1995, ectively. Signed by the it was assigned Act No. to both Houses of Con-. C. Law 11-52 became 26,1995.

eat weight" to Com- ations upheld. - Be- this section and § 1- lity ratemaking among ch Advisory Neighbor- (s) are entitled to spe- at the Public Service in failing to give "great actually received from ual ANC Commission- ounsel v. Public Servo A.2d 692 (1993). lited For A Safer Com- ing Adjustment, App. -I.

of both Advi- as and sin- sory Neigh- as. clive September 10, 9-112. Section 2(b) of d that the act shall of its having taken e date of the Advisory 'ns Ward 1 Bound- er Occurs first. lve October 3, 1992, to change the bound- istricts 1C03, 1C04,

## nomination

orhood Commis-

Effect of amendments. - D.C. Law 10-68 substituted "Holds" for "Hold" at the beginning of (a)(1)(C).

Legislative history of Law 10-68. - Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for

its review. D.C. Law 10-68 became effective on February 5, 1994.

Eligibility of candidate. - Where petitioner met all legal requirements for access to the ballot, and where her candidacy was never officially challenged during the challenge period, she met all requirements necessary to ensure her place on the ballot and was therefore a candidate within the meaning of § 1-258. *Bates v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 625 A.2d 891 (1993).

## § 1-257. Same - Election of members; term of office; vacancies; change in residency; resignation; removal.

\* \* \* \* \*

(d)(1) Whenever a vacancy exists in the office of a Commissioner, and the vacancy does not occur within the 6-month period prior to a general election, the vacancy shall be filled pursuant to paragraph (6) of this subsection. No vacancy shall be filled if it occurs within the 6-month period prior to a general election.

(2) For purposes of this section, a vacancy is deemed to exist upon the publication of a notice of the vacancy in the District of Columbia Register.

(3) Within 90 days of the date that the Board declares a vacancy, the members of the Advisory Neighborhood Commission area where the vacancy exists shall fill the vacancy pursuant to paragraph (6) of this subsection.

(4) Each person appointed or elected to fill a vacancy shall meet the qualifications set forth in § 1-256(a).

(5) Each person appointed or elected to fill a vacancy shall serve until a successor has been certified and sworn in pursuant to subsection (b) of this section.

(6)(A) Within 5 days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares a vacancy, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the affected single-member district.

(B) In the event petitions are not obtained by any registered qualified elector within the affected single-member district within 7 working days after the petitions have been made available, the Board shall recertify the vacancy by republishing the notice required by paragraph (2) of this subsection.

(C) Within 21 days of the date the Board makes the petitions available, persons interested in filling the vacancy shall submit a petition to the Board that contains the signatures of at least 25 registered qualified electors within the affected single-member district. The Board, after a 5-working-day challenge period, shall transmit a list of the names of persons who qualify for appointment to the affected Advisory Neighborhood Commission area.

(D) If there is only one person qualified to fill the vacancy within the affected single-member district, the area Advisory Neighborhood Commissioners shall appoint the qualified person to the vacant Advisory Neighborhood Commissioner position at its next regularly scheduled meeting.



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(1) This list shall be published at least annually in the District of Columbia Register. This list shall also be provided by the Board to the Alcoholic Beverage Control Board and to any other government agency that requests it.

(2) Any change, which may be due to resignation, election, moving, or for any other reason, shall be reported when it occurs by the Board to the Alcoholic Beverage Control Board and to any other government agency that requests it. (1973 Ed., § 1-171e; Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(b), 24 DCR 3336; Sept. 8, 1979, D.C. Law 3-15, § 2, 25 DCR 11003; June 23, 1981, D.C. Law 4-14, § 2(b), 28 DCR 2132; Aug. 2, 1983, D.C. Law 5-17, § 2, 30 DCR 3196; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (c), 31 DCR 3952; Sept. 26, 1984, D.C. Law 5-116, § 3, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 2, 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 3(b), 37 DCR 5420; Mar. 11, 1992, D.C. Law 9-75, § 3, 39 DCR 310; Oct. 3, 1992, D.C. Law 9-174, § 3(a), 39 DCR 5859; Mar. 25, 1993, D.C. Law 9-257, § 2, 40 DCR 805; Sept. 30, 1993, D.C. Law 10-18, § 2, 40 DCR 5455; Sept. 22, 1994, D.C. Law 10-173, § 3, 41 DCR 5154; May 27, 1995, D.C. Law 11-17, § 2, 42 DCR 1545; Oct. 26, 1995, D.C. Law 11-66, § 2, 42 DCR 4324.)

Effect of amendments.  
D.C. Law 9-174 added (h).  
D.C. Law 10-18 rewrote (d); and added (f)(4) and (5).  
D.C. Law 10-173 rewrote (d)(l).  
D.C. Law 11-66 rewrote (d).

Temporary amendments of section.  
Section 2 of D.C. Law 9-257 rewrote (d); and added (f)(4) and (5).

Section 3(b) of the D.C. Law 9-257 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 11-17 rewrote (d).  
Section 3(b) of D.C. Law 11-17 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Advisory Neighborhood Commission Special Election Amendment Act of 1995, whichever occurs first.

Emergency act amendments.  
For temporary amendment of section, see § 2 of the Election Emergency Amendment Act of 1992 (D.C. Act 9-367, December 31, 1992, 40 DCR 611).

For temporary amendment of section, see § 2 of the Advisory Neighborhood Commission Special Election Emergency Amendment Act of 1995 (D.C. Act 11-25, March 6, 1995, 42 DCR 1282).

For temporary amendment of section, see § 2 of the Advisory Neighborhood Commission Special Election Emergency Amendment Act of 1995 (D.C. Act 11-25, March 6, 1995, 42 DCR 1282).

Legislative history of Law 9-174. - Law 9-174, the "Alcoholic Beverage Control Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-125, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 27, 1992, it was assigned Act No. 9-280 and transmitted to both Houses of Congress for its review. D.C. Law 9-174 became effective on October 3, 1992.

Legislative history of Law 9-257. - Law 9-257, the "Election Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-750. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-405 and transmitted to both Houses of Congress for its review. D.C. Law 9-257 became effective on March 25, 1993.

Legislative history of Law 10-18. - Law 10-18, the "Advisory Neighborhood Commission Vacancy Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-76, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 25, 1993, it was assigned Act No. 10-50 and transmitted to both Houses of Congress for its review. D.C. Law 10-18 became effective on September 30, 1993.

Legislative history of Law 10-173. - Law 10-173, the "National Voter Registration Act Conforming Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-572, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-293 and transmitted to both Houses of Congress for its review. D.C. Law 10-173 became effective on September 22, 1994.