

Memorandum

Government of the District of Columbia

TO: Regena Thomas
Director
Office of Constituent
services

Office: Corporation Counsel
prepared by: L&O:LNG:lng
(94-054-L)

FROM: Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

Date: February 16, 1994

SUBJECT: May the bylaws of ANC 4-D provide that less than a majority of the current commissioners are a quorum for the purpose of doing business?

This is in response to your February 4, 1994 request to Leo Gorman of this Office for advice concerning the requirement of the presence of a quorum of commissioners of an Advisory Neighborhood Commission (ANC) at a public meeting in order for that ANC to legally transact business.

More specifically, you state that ANC 4-D, which has 10 commissioners, "has been unable to conduct business for the past several months due to the lack of a quorum." Section 12(a) of 4-D's bylaws provides in pertinent part that "[a] quorum shall consist of one more than half of the elected Commission members." You first ask: "Under what condition(s) is an ANC allowed to conduct official business without a stated quorum?" Secondly, you ask if it is permissible for an ANC to change the number required to constitute a quorum so that it may conduct official business."

In answer to your second question, there is no statutory provision that expressly addresses the quorum requirement vis-a-vis ANCs. The common law rule is that in the absence of applicable ...statutory provision to the contrary, a majority of a definite body, consisting of a definite number, when duly met, constitute a quorum for the transaction of business, and the vote of a majority of those present (there being a quorum) is all that is requisite for the adoption or passage of an ordinance or bylaw or motion, or the doing of any other act which the body has power to do." 4 McQuillin, Municipal Corporations § 13.27 (3rd Ed. 1992). This common law rule "can be changed only by general law or charter, not by internal rule, even when the body in question is given general rule making powers." Traino v. McCoy, 187 N.J. Super. 638, 455 A.2d 602, 607 (1982). Accordingly, ANC 4-D may not adopt a bylaw that establishes a quorum that is less than a majority of the total number of its current commissioners.¹

Thus, in a 10-member ANC, such as ANC 4-D, a quorum is 6. If through resignation or death one of 4-D's commissioners ceased to hold Office, leaving 9 commissioners, a quorum would be 5.

In answer to your second question, § 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-263(e) (1992), states in pertinent part that "[w]here not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order." In § 39 of Robert's Rules of Order (Newly Revised 1970), the following is stated (at pp. 295-296) in regard to the absence of a quorum:

In the absence of a quorum, any business transacted••. is null and void. In such a case, it is the business that is illegal, however, not the meeting; and thus, if the society's rules require the meeting to be held, -the absence of a quorum in no way detracts from the fact that the rules were complied with and the meeting was held -- even though it had to adjourn immediately.

The only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn, adjourn, recess, or take measures to obtain a quorum•••• The prohibition against transacting business in the absence of a quorum cannot be waived even by unanimous consent.... If there is important business that should not be delayed, the meeting should fix the time for an adjourned meeting and then adjourn. Where an important opportunity would be lost unless acted upon immediately, the members present can, at their own risk, act in the emergency with the hope that their action will be ratified by a later meeting at which a quorum is present.

If you have any further questions in this regard, please do not hesitate to contact me.

GP

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

otis H. Troupe
D.C. Auditor