

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:

AL-cv-156

March 21, 2000

The Honorable Charlene Drew Jarvis
Councilmember
Council of the District of Columbia
Room 708S
441 4th Street, N.W.
Washington, D.C. 20001

Re: ANC 4D Election of Officers

Dear Councilmember Jarvis:

This responds to your March 8, 2000 letter regarding the election of officers at the February 14th meeting of Advisory Neighborhood Commission (ANC) 4D. You state that ANC 4D had an executive meeting scheduled for February 14th at 5:00 p.m., and a public meeting scheduled for 7:00 p.m., although there was no public notification of the public meeting and no members of the public in attendance at the public meeting. You further state that during the executive meeting, new officers were elected. The new officers have not yet been sworn in and you ask whether the officers elected at the February 14th meeting can be sworn in or was that election invalid?

Commissioner Audrey Thompson, Chairperson of ANC 4D, also contacted our Office about this issue and provided us with additional facts. She states that ANC 4D had scheduled both an executive meeting, from 5:30 - 7:00 p.m., and a regularly scheduled public meeting, from 7:00 - 9:00 p.m., for February 14th. When the commissioners arrived for the executive meeting, the room that they were to use was occupied by another group. The Commissioners waited for the prior group to finish before commencing the executive meeting after 7:00 p.m. Since the executive meeting took place so much later than scheduled, it took place in front of persons who had arrived to attend the public meeting. (Including two persons on the agenda to make presentations to ANC 4D, and one staff member from your office.) During the executive meeting, the commissioners took nominations and voted on the election of officers. Commissioner Thompson states this is the usual procedure for ANC 4D and is done to save time

¹ We were not provided a copy of the notice of the public meeting. For reasons stated later in this letter it is not necessary to address the issue of notice of the meeting with regard to the election of officers. If you wish to pursue the issue of whether notice was insufficient with regard to other items on the agenda of the public meeting, please do not hesitate to contact our Office.

and prevent discord during the public meeting, when the election is repeated.² The executive meeting ended and the public meeting began immediately thereafter at about 8:15 p.m. When the commissioners reached the election of officers on the agenda of the public meeting, Commissioner Hattie Holmes made a motion that since officers had already been selected at the executive meeting by a majority vote, that those results be accepted by the Commission and that the election during the public meeting not be held. The motion passed. At the end of the meeting, the staff member from your office refused to swear in the new officers. Subsequently, when the newly-elected officers showed up at your office to be sworn in, they were told that the election was being contested because it had not taken place during the public meeting.

D.C. Code § 1-263(e) states:

Each Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, ~~vice-chairperson~~, secretary, and treasurer.

This Office has previously opined: 1) that the an election of officers is invalid if it takes place at an ANC meeting that is not a public meeting, *see* March 23, 1994 letter from Garland Pinkston, Jr., Deputy Corporation Counsel, to the Honorable Kevin P. Chavous, Councilmember, Council of the District of Columbia; 2) that nominations for officers must be permitted at a public meeting, *see* January 23, 1992 letter from Vanessa Ruiz, Deputy Corporation Counsel, to Vannie Taylor, III, ANC 4B; and 3) that the District's "Sunshine Law", D.C. Code § 1-1504(a), prohibits the formal or informal decision on a matter at a non-public meeting that is required to be voted on at a public meeting, *see* February 26, 1997 letter from Leo N. Gorman, Assistant Corporation Counsel, to Jonda McFarlane, ANC 2E.

ANC 4D's election of officers during the executive meeting of February 14th was invalid because the election did not take place during a public meeting. The fact that members of the public were in attendance at the executive meeting does not by itself change the character of the meeting from an executive meeting to a public meeting. Commissioner Thompson confirmed that both meetings were held, that the meetings were clearly delineated, and that they had different agendas. Therefore, ANC 4D should hold an election for officers at its next public meeting, scheduled for March 21st.³ Furthermore, ANC 4D's procedure of nominating and electing officers at its executive meeting and then repeating the election at the public meeting violates the "Sunshine Law" in that it informally decides an issue required to be voted on at a public meeting - the election of officers - at a non-public executive meeting. Therefore this practice should be discontinued.

² ANC 4D's By-laws do not set out any procedures regarding the election of officers.

³ It is unclear why the election of officers was scheduled to take place at the regularly scheduled February public meeting of ANC 4D. D.C. Code § 1-263 requires that the election of officers take place in January. The only exceptions to this statutory mandate that have been recognized by this Office are the ANC's failure to achieve a quorum at the January meeting, or when the January election results in a tie vote that cannot be broken until a later meeting.

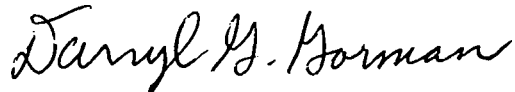
The Honorable Charlene Drew Jarvis

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If you have any further questions with regard to this issue please contact Annette Elseth,
Assistant Corporation Counsel, Legal Counsel Division at 724-5537.

Sincerely,



Darryl G. Gorman
Senior Deputy Corporation Counsel for the
Legal Counsel Division

cc: Commissioner Audrey Thompson
58 Hamilton Street, N.W.
Washington, D.C. 20011

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Commissioner Tina Thompson
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Attachments (3)