

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:

L&O:LNG:lng
(93-403-L)

November 5, 1993

Kathryn A. Pearson-West
commissioner, ANC 5-A
Slowe School Demountable
14th and Irving Streets, N.E.
Washington, D.C. 20017

Re: What records must an ANC keep of its meetings?
May a Commissioner be removed for non-attendance
at ANC meetings?

Dear Commissioner Pearson-West:

This is in reply to your October 1, 1993 letter to the Corporation Counsel in which you request the advice of this Office in regard to Advisory Neighborhood Commission (ANC) record keeping, voting, and attendance by Commissioners at ANC meetings.

You first ask whether ANCs are required "to maintain a public record of how Commissioners vote on issues." section 14(e) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code § 1-262(e) (1992), provides in pertinent part that the "secretary [of each ANC] shall ensure that appropriate minutes of Commission meetings are kept••••" The statute does not expressly define what constitute "appropriate minutes." This matter would normally be dealt with in each ANC's by-laws. If ANC 5-A's by-laws do not address this subject, then Robert's Rules of Order govern. See the last sentence of § 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1992): "Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order." Under Robert's Rules of Order, Newly Revised 1970, § 45, at p. 390, the minutes of an ANC meeting are required to contain, among other things, how the ANC voted on each motion that was presented for a vote, and the name of the mover in the case of all important motions (but not the seconder unless ordered by the ANC). And under the District of Columbia Freedom of Information Act, the voting records of each ANC are required to be maintained and made "available for public inspection." D.C. Code § 1-1525 (1992).

In regard to ANC 5-A's obligation to maintain the records relating to its public meetings, including the approved minutes of each meeting, it is pertinent to note that the District of Columbia Public Records Management Act of 1985, effective September 5, 1985, D.C. Law 6-19, D.C. Code § 1-2901 *et seq.* (1992) (the "act"), is applicable to ANCs. See § 16(a) of the act, D.C. Code § 1-2914(a) (1992). Unless otherwise authorized by law, or by the Records Disposition committee established by § 6 of the act, D.C. Code § 1-2905 (1992), ANC 5-A may dispose of its records only in accordance with the applicable records retention schedules developed by the Public Records Administrator of the District of Columbia and approved by the Records Disposition Committee. See § 7(a) (2) (A) of the act, D.C. Code § 1-2906(a) (2) (A) (1992). General Records Schedule 24, approved by the Records Disposition Committee on September 24, 1986, applies to the minutes of ANC meetings. This schedule (a copy of which is enclosed) provides that minutes of all meetings of all District of Columbia boards and commissions (including ANCs) are "permanent" records. (General Records Schedule 24, p.1.) When, because of lack of adequate storage space or for other reasons, ANC 5-A determines that it no longer wishes to keep the minutes of its past meetings, it must transfer these records to the D.C. Archives in 2 year blocks." *Id.* For more detailed guidance regarding ANC 5-A's obligations under the act and the General Records Schedules, see the regulations promulgated by the Public Records Administrator to implement the act. These regulations are codified at Title 1 DCMR Chapter 15, and were published on October 30, 1987, at 34 D.C. Register 7001-7026. Questions regarding record keeping and disposal should be addressed to Philip Ogilvie, Public Records Administrator, Office of Public Records, 1300 Naylor Court, N.W., Washington, D.C. 20001 (tel. 727-1165).

In a related question, you ask whether in reporting votes the secretary should "list the number of Commissioners supporting and opposing...an issue." For the answer to this question, again you should first look to ANC 5-A's by-laws. Any question not resolved by the by-laws should be resolved by reference to Robert's Rules of Order, *supra*, which, at p. 391, states the following in regard to the recording of votes:

When a count has been ordered or the vote is by ballot, the number of votes on each side should be entered; and when the voting is by roll call, the names of those voting on each side and those answering "Present" should be entered. If members fail to respond on a roll call vote, enough of their names should be recorded as present to reflect that a quorum was present at the time of the vote.

Thus, unless a vote count has been ordered, or the vote is by secret ballot, or a roll call vote is ordered, it is sufficient for the secretary simply to record in the minutes that the motion has passed or has failed according to the chairperson's determination

regarding whether the vocally expressed "ayes" have prevailed "or the vocally expressed "nays" have prevailed.

Your final question relates to attendance at ANC 5-A meetings by Commissioners. In this regard you ask:

How many consecutive meetings, excused or unexcused, can a Commissioner miss before he/she is considered derelict in duty? Who has the responsibility for removing that Commissioner from office - his/her constituents, the government, or fellow ANC Commissioners?

There is no set number of unattended meetings that renders an ANC Commissioner derelict in duty. Failure to attend meetings may be grounds for removing a Commissioner from serving as the chairperson, vice-chairperson, secretary, or treasurer of a Commission. This may be accomplished by the members of the Commission if they follow proper removal procedures. See enclosed copy of our July 30, 1993 letter to ANC 1-A Commissioners Lenwood Johnson and Joan Mayes Gillison. Unless a Commissioner fails to continue the statutory qualifications for office (namely residing in and being a registered voter of the single-member district the Commissioner was elected to represent, and holding no other elected political office; see D.C. Code § 1-256(a) (1) (1992), it appears that the only way that a Commissioner may be forced out of office as a Commissioner prior to the end of the Commissioner's two-year term is through the recall process. See D.C. Code § 1-1321 (1992), a copy of which is enclosed.

Sincerely,



Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

Enclosures

cc: The Honorable Harold Brazil
Chairman, Committee on Government Operations

Regena Thomas
Director, Office of Constituent Services