

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

July 21, 2017

Gottlieb Simon  
Executive Director  
Office of Advisory Neighborhood Commissions  
1350 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

**Re: Open Meetings Question**

Mr. Simon:

You asked whether a quorum of Advisory Neighborhood Commissioners (“ANC Commissioners”) could conduct a closed planning meeting – meaning, as you have described it, a closed meeting in which Commissioners gather and take no official action, but discuss upcoming ANC meetings and consider issues that should be discussed at those upcoming meetings. Any meeting of this kind must be open to the public, except to the extent that legal or personnel matters are discussed.

**I. Legal Framework**

The Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),<sup>1</sup> and the District of Columbia Home Rule Act (“Home Rule Act”),<sup>2</sup> regulate ANC meetings. The ANC Act requires advance notice of these meetings,<sup>3</sup> and both the Home Rule Act and the ANC Act require that most ANC meetings be open.

The basic open meetings requirement that applies to ANCs, and the only requirement that has applied to them since their creation, is in section 742 of the Home Rule Act (“section 742”), which states:

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

<sup>2</sup> Approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-201.01 (2012 Repl. and 2016 Supp.)).

<sup>3</sup> The ANC Act states that an ANC must provide advance notice of any “meeting[ ] or convocation[.]” D.C. Official Code § 1-309.11(c) (emphasis added). We have never read the word “convocation” to mean anything other than a meeting, however, in part because nothing in the ANC Act describes or regulates “convocations” as occurrences that are separate from meetings.

All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

ANCs fall under this open meetings requirement because they are “commissions,”<sup>4</sup> and because section 14(g) of the ANC Act states that “each Commission, including each committee of a Commission, shall be subject to [section 742’s] open meetings provisions.”<sup>5</sup> Section 742’s significance for ANCs is twofold. First, it establishes a requirement: all ANC meetings “at which official action of any kind is taken shall be open to the public.” Second, it establishes a consequence of any violation: any official action at a non-public meeting is invalid.

Many ANC meetings are not covered by section 742, however, because not every ANC “meeting” (as the Home Rule Act and the ANC Act use the term) involves official action. In ordinary English,<sup>6</sup> an ANC conducts a “meeting” when its Commissioners meet for the purpose of transacting ANC business as a body, whether or not they vote on any matter.<sup>7</sup> For example, a quorum of ANC Commissioners could gather to hear a grant proposal,<sup>8</sup> “hold [a] hearing[] on requested or proposed government actions,”<sup>9</sup> or plan the agenda for an upcoming public meeting.<sup>10</sup> None of these would constitute official action, but each of them would involve transacting official ANC business.

The notion that a gathering of ANC Commissioners without official action can constitute a “meeting” makes sense against the backdrop of applicable law and long-standing OAG legal interpretation. Section 742 refers to “meetings . . . at which official action of any kind is taken,” which implies that it is possible to have a meeting at which no official action is taken. The ANC Act forbids an ANC from taking official action outside of a properly noticed meeting,<sup>11</sup> but never suggests that a gathering of Commissioners with no official action is not an ANC meeting. Robert’s Rules of Order, the default authoritative standard for internal ANC procedures,<sup>12</sup> observes that a body “meets” any time the members of that body are “assembled to transact

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<sup>4</sup> See Letter to Gottlieb Simon, Aug. 10, 2015, at 2 (on file).

<sup>5</sup> D.C. Official Code § 1-309.11(g) (2012 Repl. and 2016 Supp.).

<sup>6</sup> See *Gonzalez v. Carhart*, 550 U.S. 124, 152 (2007) (“In interpreting statutory texts courts use the ordinary meaning of terms unless context requires a different result”).

<sup>7</sup> See, e.g., *Meeting*, BLACK’S LAW DICTIONARY (7th ed. 1999) (“[a]n assembly of persons, esp. to discuss and act on matters in which they have a common interest”).

<sup>8</sup> See D.C. Official Code § 1-309.13(m) (2012 Repl. and 2016 Supp.).

<sup>9</sup> See *id.* § 1-309.10(h)(2).

<sup>10</sup> See, e.g., Letter to Jonda McFarlane, Comm’r, ANC 2E, Feb. 26, 1997 (“McFarlane Letter”), at 3, available at <http://app.occ.dc.gov/documents/1997/feb/19970226.pdf> (last visited July 20, 2017) (Section 742 does not forbid Commissioners from “meet[ing] in person at a non-public meeting” to “discuss and decide” the “agenda items to be taken up at the next public meeting of the ANC”).

<sup>11</sup> See D.C. Official Code § 1-309.11(b) and (c).

<sup>12</sup> See *id.* § 1-309.11(e)(3) (“Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order”).

business,” regardless of whether the body actually votes on a matter.<sup>13</sup> In addition, our prior letters have consistently recognized that the lack of official action does not prevent a gathering of Commissioners from being an ANC meeting.<sup>14</sup>

In 2000, the Council decided to expand the open meetings requirements applicable to ANCs. The fact that an ANC could comply with the Home Rule Act while still holding important meetings outside of public view convinced the Council’s Committee on Local and Regional Affairs that the Home Rule Act’s open meetings requirement was not strong enough. ANC residents, the Committee contended, were often “prevented from participating in Commission meetings.”<sup>15</sup> To address this problem, the Council added a new requirement, hereafter known as the “2000 Amendment,” to section 14(g) of the ANC Act: “No meeting may be closed to the public unless personnel or legal matters are discussed.”<sup>16</sup> This language, according to the Committee, was designed to “facilitate the general public [sic] in monitoring the activities of their respective ANCs” by “prohibit[ing] the exclusion of the public from meetings at which no legal or personnel matters are to be discussed.”<sup>17</sup>

The 2000 Amendment accomplished the Committee’s goal.<sup>18</sup> By its plain language, if an ANC conducts a meeting, and no personnel or legal matters are discussed in that meeting, the meeting cannot be closed. Conversely, because the amendment does not say that an ANC may close any meeting in which personnel or legal matters are discussed, the amendment did not limit the Home Rule Act requirement that *all* ANC meetings that include official action, including meetings that also involve the discussion of personnel or legal matters, must be open.<sup>19</sup> Nor could this amendment have limited the Home Rule Act’s requirement, since the Council cannot amend the Home Rule Act through ordinary legislation.<sup>20</sup>

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<sup>13</sup> Henry M. Robert III *et al*, ROBERT’S RULES OF ORDER NEWLY REVISED 2 II. 26-28 (11<sup>th</sup> ed. 2011); *see id.* at 81 l.16 – 82 l.1 (“A meeting of an assembly is a single official gathering of its members in one room or area to transact business for a length of time during which there is no cessation of proceedings and the members do not separate, unless for a short recess”) (emphasis removed).

<sup>14</sup> *See, e.g.*, McFarlane Letter, *supra* n.10, at 3 (discussing non-public meetings that an ANC may, consistent with section 742, conduct); Letter to Frank E. Jackson, II, Treasurer, ANC 4B, Apr. 14, 1999, at 3, *available at* <http://app.occ.dc.gov/documents/1999/apr/19990414.pdf> (last visited July 20, 2017) (distinguishing between an Executive Committee meeting and “public meetings at which official action is taken”).

<sup>15</sup> Committee on Local and Regional Affairs, “Report on Bill 13-468, the ‘Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000’” (“2000 Report”), at 9, Jan. 11, 2000.

<sup>16</sup> Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, § 3(b), effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.11(g)).

<sup>17</sup> 2000 Report, *supra* n.15, at 9.

<sup>18</sup> *See Williams v. Taylor*, 529 U.S. 362, 404 (2000) (“It is . . . a cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute”) (internal quotations omitted). Reading the 2000 Amendment to apply only to meetings in which official action is taken, as has on occasion been suggested, would “defeat and destroy the plain meaning of” that provision. *United States v. Menasche*, 348 U.S. 528, 538 (1955).

<sup>19</sup> In other words, an ANC may (and often should) discuss personnel and legal matters in closed session, but any official action it takes on those or any other matters must be taken in a public meeting.

<sup>20</sup> Title IV of the Home Rule Act (the Charter) may be amended, but only through the Charter amendment process. *See* D.C. Official Code § 1-203.03 (2012 Repl.) (establishing a procedure to amend Title IV of the Home Rule Act (the Charter)). The District has no authority to amend the other titles of the Act, including Title VII, the title that

## II. Analysis

Taken together, section 742 and the 2000 Amendment mean that any meeting in which an ANC takes official action must be open, and any meeting in which personnel or legal matters are not discussed must be open.<sup>21</sup> ANC planning meetings are “meetings” within the meaning of these two provisions because they involve the transaction of official ANC business. Accordingly, any ANC planning meeting that will not involve the discussion of legal or personnel matters must be open to the public.

This echoes the conclusion that we reached in a 2010 letter to Commissioner Sara Green.<sup>22</sup> We explained that “[t]he Council’s amendment in 2000 clearly denotes a legislative intent that all meetings now be open, regardless of the matters addressed in the meeting (unless they meet the stated exceptions), or whether they culminated in a vote by commissioners.”<sup>23</sup> We therefore concluded that ANC planning meetings involving a quorum of Commissioners “must be open to the public, unless there are matters discussed regarding personnel or legal issues,”<sup>24</sup> but we explained that this does not forbid individual Commissioners from “communicat[ing] with each other about ANC business” outside of a public meeting.<sup>25</sup> Nor does it forbid Commissioners from discussing ANC business in non-public events that are convened and controlled by a third party.<sup>26</sup> It simply forbids Commissioners from gathering, formally or otherwise, to conduct ANC business as a body in private when no legal or personnel matters are being discussed.<sup>27</sup>

If you have questions about the contents of this letter, including about whether a recent or proposed gathering of Commissioners constitutes an ANC meeting, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

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includes the Home Rule Act open meetings requirement. *See id.* § 1-206.02(a) (“The Council shall have no authority to pass any act contrary to the provisions of this act, except as specifically provided in this act”).

<sup>21</sup> Section 742 and the 2000 Amendment are the only two open meetings requirements that apply to ANCs because ANCs are not subject to the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.* (2012 Repl. and 2016 Supp.)). *See* D.C. Official Code § 2-574(3)(F) (2012 Repl.) (an ANC is not a “public body,” although this exemption does not “affect the requirements of [section 14 of the ANC Act]”).

<sup>22</sup> Letter to Sara Green, Sec’y, ANC 4B (“2010 Letter”), Oct. 8, 2010, *available at* <http://app.occ.dc.gov/documents/2010/20101008.pdf> (last visited July 18, 2017).

<sup>23</sup> *Id.* at 5 (emphasis in original).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> For example, if all of an ANC’s Commissioners agreed to serve as panelists for a bar association-run panel discussion involving ANC matters, there would be enough ANC Commissioners to form a quorum, and the Commissioners who make up the quorum would be discussing issues of concern to the ANC. It would not be reasonable, however, to call the event an ANC meeting because the event was run by the bar association, not convened by ANC Commissioners.

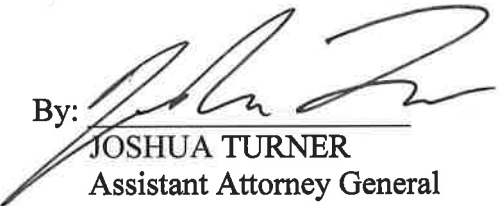
The 2010 Letter could be read to imply that an ANC meeting takes place any time a quorum of Commissioners discusses ANC business, even if the Commissioners do so as part of an event hosted and controlled by a third party. *See id.* at 5 (“We believe, at a minimum, that when a quorum of commissioners exists during a discussion concerning ANC matters, it becomes a ‘meeting’ of the Commission that needs to be open to the public”). As the above analysis makes clear, that is not the case.

<sup>27</sup> *Id.*

Sincerely,

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By:

  
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