

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



November 16, 1993

IN REPLY REFER TO:

L&O:LNG:lng

(93-348-L)

(x. ref. 93-059-L)

(93-384-L 91-396-L)

Albrette S. Ransom
Commissioner, ANC 6-B
1508 East Capitol Street, N.E. #2
Washington, D.C. 20003

Re: Did ANC 6-B legally vote to hire a
temporary employee?

Dear Commissioner Ransom:

This is in reply to your September 28, 1993 letter to Assistant Corporation Counsel Leo Gorman in which you seek the advice of this Office in regard to a number of questions, most of which relate to the hiring by Advisory Neighborhood Commission (ANC) 6-B of a temporary employee to perform office functions for the ANC. Your questions and the answers to those questions are as follows:

Question: The draft minutes of ANC 6-B's regular monthly meeting on September 14, 1993, indicate that at that meeting ANC 6-B adopted a resolution to employ Mr. Gottlieb Simon on a three-month (October to December 1993) temporary basis to perform office work and to train a person who would replace him in January of 1994. The vote on the motion was 5 in favor, 1 "abstaining," and 1 "not voting." You ask whether there was a quorum present at the time this vote was taken.

Answer: ANC 6-B has 13 single member districts. Article VII, Section 2 of its by-laws, entitled "Quorum," states that "[n]o official action of the Commission may be taken unless a majority of the members of the Commission is present and voting." It is up to each ANC to interpret its own by-laws. If this by-law is interpreted to mean that a majority of the total number of Commissioners must actually vote "aye," "nay," or "present" on a motion in order for the Commission to take official action, then there was no quorum because only 5 Commissioners voted (*i.e.*, fewer than a majority). If, on the other hand, this by-law is interpreted to give the term "quorum" the meaning set out in Robert's Rules of Order, then there was a quorum present at the time ANC 6-B voted to employ Mr. Simon. As indicated above, there were seven Commissioners present

at the time of the vote which is a majority of the total number of Commissioners. In this regard, Robert's Rules of Order states that "[t]he quorum refers to the number of such members present, not to the number actually voting on a particular question." (Emphasis original.) See Robert's Rules of Order, newly revised 1970, § 39, at p. 293.

Question: Prior to voting on the resolution to employ Mr. Simon, ANC 6-B adopted a "motion to limit debate on the issue of staffing" (draft minutes of September 14, 1993 meeting, at p. 3). The motion, inter alia, limited the debate to the "current employment situation"; limited the time for the debate; limited the debate to "commissioners only"; provided that motions were "in order at any time," but that a motion "must be in writing"; and provided an opportunity to speak for "[p]eople wishing to speak from the community," but limited that time to 2 minutes per person. You ask whether this was a "valid, legal motion."

Answer: An organization, such as an ANC, may adopt a motion to limit debate on a question before it. See generally, Robert's Rules of Order, supra, § 15, at p. 161 et seq. Such motion is a means by which an organization "can exercise special control over debate on a pending question or on a series of pending questions." Id. There is nothing in the statutory provisions applicable to ANCs or in Robert's Rules of Order that affords citizens the right to participate in Commission "debate" on a motion before the Commission. Section 14(d)(1) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code 1-262(d)(1) (1992), provides in pertinent part that an ANC's bylaws shall include "procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels." To the extent that this requirement means that an ANC should permit constituent comment upon a proposal to hire a person to do office work for the ANC, the motion in question expressly allowed for such comment. The determination to limit that comment to 2 minutes per person was within the authority of ANC 6-B. In sum, there appears to be nothing improper about the motion to limit debate.

Question: You state that Mr. Simon "was not at the [September 14, 1993 ANC 6-B] meeting, nor was there a resume, references and/or employment application for review by the general public and other Commissioners." Therefore, the resolution to hire Mr. Simon "contained information which could not be substantiated prior to the vote." In this context, you ask whether the public was "denied a right to...question this information."

Answer: ANC determinations of whether to hire a person to do ANC office work and, if so, who that person should be are matters committed to the discretion of that ANC's Commissioners. The resolution to hire Mr. Simon stated that he has served as the "executive secretary for ANC-2D since 1976." If a majority of those Commissioners present at the meeting were satisfied that, based on

this background, Mr. Simon possessed the necessary qualifications for employment by ANC 6-B, there was no legal reason why they could not proceed to vote for the resolution to hire him. In this regard, it may be noted that no Commissioner present raised any question about the truth of the statement in the resolution regarding Mr. Simon's employment by ANC 2-D. And the draft minutes, at p. 4, indicate that a Commissioner from ANC 2-D was at the meeting and confirmed that Mr. Simon was employed by ANC 2-D. Moreover, it is pertinent to note that citizens attending the meeting were given an opportunity to express their views regarding whether Mr. Simon should be hired.

Question: You state that there is a "possibility that Mr. Simon is a defendant in a Conflict of Interest lawsuit," and that this "information was not made available to the public at this meeting." You ask whether, "[b]ased on standard hiring practices and the public information act," "this" shouldn't "disqualify Mr. Simon as an applicant."

Answer: If by "this" you mean the allegation that Mr. Simon is a defendant in a conflict of interest suit, then the answer is that there is no law that, because of such circumstance, disqualifies him from being employed by ANC 6-B. If by "this" you mean that the allegation that Mr. Simon was a defendant in a conflict of interest suit was not known to the public at the September 14, 1993 meeting, then the answer is that such a circumstance does not disqualify Mr. Simon for employment by ANC 6-B. See answer to previous question. In this regard, "the public information act" (presumably you mean the District of Columbia Freedom of Information Act, D.C. Code § 1-1521 et seq. (1992)) requires that, upon request, the District government must permit access to government records that are public records. There is no indication in any of the documents you have supplied that anyone made a request for information required to be disclosed under that act. And a request for information is a necessary prerequisite to alleging a violation of that act.

Question: At the September 14, 1993 meeting, ANC 6-B adopted a resolution stating that the position of "office assistant" held by Verona Taylor was vacant. The basis of the resolution was that Ms. Taylor "has not performed any work for ANC-6B since August 6, 1993," and "has not provided the Commission or its Chairperson an excuse for her absence since August 16, 1993." You state that Ms. Taylor was not given any prior notice that this resolution would be voted upon on September 14, 1993, and therefore had no "chance to present her side" before the Commission voted to declare her position vacant. You ask whether Ms. Taylor had a right to prior notice of and an opportunity to respond to the draft resolution declaring her position vacant before the Commission acted on it.

Answer: Both the statute and ANC 6-B's by-laws provide that employees "shall serve at the pleasure of the Commission." See § 16(o) of the Advisory Neighborhood Commissions Act of 1975, as

amended, D.C. Code § 1-264(o) (1992), and Article XIII, section 3 of ANC 6-B's by-laws. This means that ANC 6-B had no legal obligation to give Ms. Taylor notice of and an opportunity to respond to the draft resolution to declare her position vacant prior to the time the Commission acted on it.

Question: Is it a violation of laws prohibiting discrimination in employment for a Commission "not to consider a qualified applicant for a job position?"

Answer: The ban on discrimination in employment set forth in the District of Columbia Human Rights Act of 1977, D.C. Code § 1-2501 et seq. (1992), applies to ANCs. Section 211(a) of that act, D.C. Code § 1-2512(a) (1992), provides, inter alia, that a person may not "fail or refuse to hire" an individual "for a discriminatory reason based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation of any individual." In the absence of evidence showing a discriminatory motive, the failure of a Commission to consider a qualified applicant for a job position, does not constitute a violation of the Human Rights Act of 1977.

Question: Are ANCs "empowered to not have to adhere to federal ...laws regarding" illegal drugs.

Answer: No.

Question: Must ANCs have a "Smoke Free Environment Policy"?

Answer: Each ANC that employs one or more persons at a workplace that the ANC controls must have a written smoking policy that designates the areas in the workplace where smoking is and is not permitted. An ANC may, if it wishes, ban smoking throughout its workplace. See § 4b of the District of Columbia Smoking Restriction Act of 1979, as amended, D.C. Code § 6-913.2 (1993 Supp.), and regulations published on August 7, 1992, at 39 D.C. Register 5926-5931 (codified as Title 20 DCMR Chapter 15 under the title "Regulation of Smoking").

Question: You ask whether there is a "potential for a conflict of interest when an individual is working at two different ANC's."

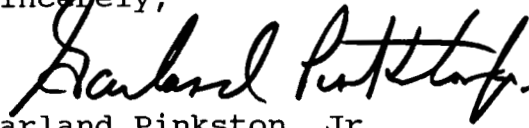
Answer: There is a potential for a conflict of interest. However, the mere existence of a potential for a conflict of interest, without more, would not disqualify an individual from being employed by two different ANCs. If, in regard to a particular matter, an actual conflict of interest arose, it could be resolved in recusal or change of assignment.

Question: When a question is raised that "might be a legal issue, is it generally the policy for the ANC to await a legal

opinion from" the Corporation Counsel "prior to voting on the particular motion?"

Answer: There is no general policy in this regard. It is strictly up to each Commission to decide whether to seek the legal advice of this Office and, if so, when to do so.

Sincerely,



Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

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

Regena Thomas
Director
Office of Constituent Services

Jamie Platt
Chairman
Advisory Neighborhood Commission 6-B