

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

September 10, 2004

Mr. Daniel M. Pernell, III
Commissioner, ANC 6C
1163 3rd Street, N.E.
Washington, D.C. 20002

Re: Commissioner Moving Out of Single Member District

Dear Commissioner Pernell:

This is in response to your request to this Office for legal advice, made by letter dated July 14, 2004, concerning whether an ANC Commissioner who moves out of his/her Single Member District, must resign from any executive position and turn that position over to the Vice Chairperson.

You state that on July 14, 2004, ANC 6C held its regularly scheduled meeting during which Commissioner Robert Hall (SMD 6C05) announced that he had moved into another Single Member District. When you asked Commissioner Hall whether he therefore intended to turn his Chairpersonship of the Commission over to Vice Chairperson Mark Dixon, he stated that he would not do so. You query whether Commissioner Hall must resign as a Commissioner and step down from his position as Chairman. We conclude that he must.

Section 8(e) of the Advisory Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 (collectively, the ANC Act), effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.06(e)(2004 Supp.) states: “Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant.” Section 8(f)(1) – (5) of the ANC Act, D.C. Official Code § 1-309.06(f)(1) – (5), requires the resigning member to submit a copy of a letter of resignation to the Board of Elections and Ethics, the Council of the District of Columbia, the Mayor, and the Chairperson of the member’s Advisory Neighborhood Commission.

If the commissioner does not submit the required letter of resignation, section 8(f), D.C. Official Code § 1-309.06(f)(2004 Supp.), prescribes the procedures to be followed to have a vacancy declared. After giving the commissioner an opportunity to rebut the

allegation that he or she no longer resides in the single-member district, the ANC must petition the Board of Elections and Ethics to declare a vacancy by submitting to the Board a resolution. The resolution must be signed by the Chairperson and the secretary of the ANC following consideration by the ANC at a special meeting called for that purpose. If a qualified elector challenges the validity of the resolution, the Board must hold an evidentiary hearing and make a determination. Thereafter, either the challenger or the affected commissioner may apply to the D.C. Court of Appeals for a review of the reasonableness of the Board's determination.

In your situation, though Commissioner Hall himself announced that he has moved out of his SMD, allegedly no letter of resignation has been submitted. If that is the case, the ANC should begin both the petition process to have the vacancy formally declared by the Board of Elections and Ethics as well as its own efforts to have Commissioner Hall removed as the Chairperson of the ANC. The removal provisions for ANC officers are set forth in Section 14(e) of the ANC Act, D.C. Official Code § 1-309.11 (2004 Supp.), and permit removal of an officer upon a majority vote at a special meeting convened for that purpose at the request of at least one-half of the elected Commissioners (request must be in writing and Chairperson must convene meeting within 30 days of the request). Of particular note is section 13(e)(2)(C), D.C. Official Code § 1-309.11(e)(2)(C) (2004 Supp.), which permits the Vice Chairperson to preside over any such meeting where the Chairperson's position is at stake, as it clearly would be here.

As for your query concerning whether the Chairpersonship should be assumed by the Vice Chairperson, that is not a question answerable by interpretation of the ANC Act. Instead, you should look to your ANC's bylaws for rules concerning selection and succession of ANC officers.¹

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

_____/S/_____

RJS/dps

(AL-04-434(B))

¹ Section 13(d)(1)(E) of the ANC Act, D.C. Official Code § 1-309.11(d)(1)(E) (2004 Supp.) requires ANCs to establish bylaws which include, among other things, "[t]he manner of selection of chairpersons and other officers."