

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004

FILE



IN REPLY REFER TO:  
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(88-69) (LCD-3997)

February 16, 1989

Philip Mendelson  
Commissioner ANC 3-C  
2737 Devonshire Place, N.W.  
Washington, D.C. 20008

Re: Propriety of secret balloting by ANCs

Dear Mr. Mendelson:

This is in reply to your February 3, 1989 letter in which you assert that the conclusion of this Office in its April 28, 1988 letter to Valerie Costelloe is incorrect. That conclusion was that it is not legally permissible for an Advisory Neighborhood Commission (ANC) to use the voting method of a secret ballot to appoint a person to fill an ANC vacancy.

In support of your contention that ANCs are not legally prohibited from using the secret ballot to vote on public matters that come before them, you state that there is no statute which expressly prohibits ANCs from voting in such a manner. Further, you cite that part of D.C. Code § 1-262(e) (1987) which provides that "[w]here not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order," and observe that Robert's Rules of Order describes as one method of voting the secret ballot method. See Robert's Rules of Order § 44, p. 347 et seq. (1970 ed.).

The conclusion reached in the April 28th letter of this Office was based on (1) language which is part of the so-called "Sunshine Amendment" to the District of Columbia Self-Government and Governmental Reorganization Act, namely § 742(a) of the Self-Government Act, D.C. Code § 1-1504(a) (1987); (2) the origin of this language as an amendment offered by a Florida Congressman, modeled on a Florida law; and (3) a Florida Supreme Court case stating that the Florida law "should be construed so as to frustrate all evasive devices."<sup>1</sup>

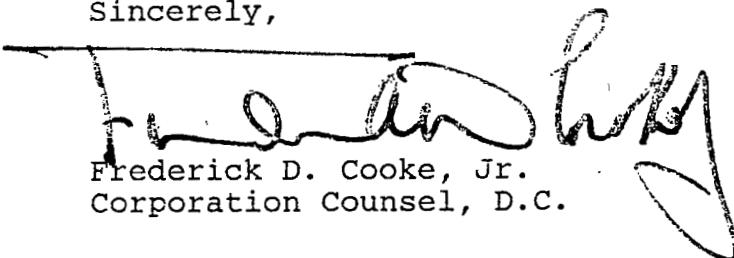
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<sup>1</sup> Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

The reference to Robert's Rules of Order in D.C. Code § 1-262(e) (1987) does not lead to a contrary conclusion. First, the sentence which refers to Robert's Rules of Order is prefaced by the phrase "Where not otherwise provided." Section 742(a) of the Self-Government Act otherwise provides. Second, in Robert's Rules of Order, voting by secret ballot is not among the list of "Regular Methods of Voting on Motions."<sup>2</sup> And although voting by secret ballot is listed under the category "Other Methods of Voting" (see § 44, p. 347 (1970 ed.)), there is no suggestion in the 1970 edition of Robert's Rules of Order that voting by secret ballot is an acceptable method of voting for publicly elected bodies carrying out governmental functions. Indeed, precisely the opposite is suggested in an earlier edition. At p. 194 of the 1951 edition of Robert's Rules of Order the following is stated in this regard: "Voting by [secret] ballot is rarely if ever used in legislative bodies, but in ordinary societies, especially secret ones, it is habitually used in connection with elections and trials...." An ANC is not an "ordinary society," much less a secret one, but rather is a publicly elected body whose members are accountable to the electors of their single-member districts. Voting by secret ballot is inconsistent with such accountability.

For the foregoing reasons I believe that the April 28th letter of this Office correctly interprets the Sunshine Amendment to the Self-Government Act.

Sincerely,

  
Frederick D. Cooke, Jr.  
Corporation Counsel, D.C.

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<sup>2</sup> The "regular" methods of voting on motions are listed as: "by voice," which is described as "the normal method of voting on a motion;" "by rising;" and "by show of hands." Robert's Rules of Order § 44, p. 346 (1970 ed.); emphasis original.