



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

October 30, 1991

Ms. Mary Baird Currie
Chairperson, ANC 5A
Slowe School Demountable
14th & Irving Streets, N.E.
Washington, D.C. 20017

Dear Ms. Currie:

I am in receipt of correspondence challenging the validity of ANC 5A's October 23, 1991 election to fill the vacancy in SMD 5A-02. If the allegations are correct, the Commission must conduct a new election as soon as possible.

First, I am informed that two Commissioners were not allowed to vote because they arrived after the votes were cast -- but before the result was announced. Ordinarily, members may cast their vote or change their vote at any time up until the result is announced. See Robert's Rules of Order Newly Revised §44 (p. 345): "A member has the right to change his vote up to the time the result is announced; after that he can make the change only by permission of the assembly, which can be given by general consent..." In ballot voting, the Chairman may close the polls, but it is doubtful that the procedure to do this was followed precisely as prescribed in Robert's (§30) and further, it is apparent that the Commission was not advised that the polls could be reopened by simple majority vote (Robert's §30). It appears the election was not properly held.

More importantly, the election was invalid because it was conducted by secret ballot. The Corporation Counsel has repeatedly held that secret balloting is not permissible under the law; see the enclosed opinions dated April 28, 1988, February 16, 1989, January 31, 1990, and April 22, 1991. The 1988 opinion was published in the 1989 ANC Manual. Secret balloting violates the open meetings requirement that governs all ANCs.

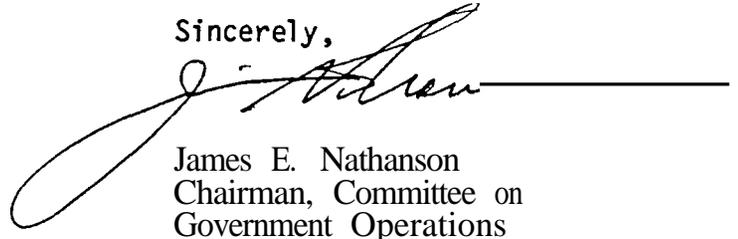
Accordingly, a new election must be called. This may be done at a special meeting which may be called in less than seven days provided notice is given pursuant to D.C. Code Sec. 1-262(c) and Article V of your Bylaws. Because the vacancy in 5A-02 was certified by the Board of Elections and Ethics on July 3, 1991, the old provisions for filling vacancies still apply (see D.C. Law 9-8).

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I have also received complaints about the criteria used by Commissioners in voting to fill vacancies and also about whether adequate consideration was given to public sentiment. There are no criteria specified in the law for candidate selection other than the basic eligibility requirements. The Commission must hold a public hearing and "elicit the preference of the voters" of the affected ANC, but, after that, the Commissioners are free to exercise their judgment.

If you should need additional information, please call my Committee staff at 724-8173.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Nathanson", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

James E. Nathanson
Chairman, Committee on
Government Operations

cc (w/out enc.):

Mr. Emmett Fremaux
Councilmember Harry Thomas
John Payton, Esq.
Commissioners, ANC 5A