

FILE

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:
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(91-502-1.) (LCD-5900)

November 20, 1991

Brian K. Flowers
ANC commissioner, SMD SA09
Slowe School Demountable
14th and Irving Streets, N.E.
Washington, D.C. 20017

Re: Procedures used by ANC SA to fill a
vacancy on the commission

Dear Mr. Flowers:

This is in reply to your November 20, 1991 letter to the Corporation Counsel in which you request the advice of this Office on the question of whether the public hearing on the SMD SA02 vacancy held by ANC SA prior to the October 23, 1991 vote of ANC SA to fill that vacancy was in compliance with law.¹

You state in your letter that you have obtained a copy of the November 4, 1991 letter from Clayton L. Butler to the Corporation Counsel challenging the propriety of that public hearing and "concur with the facts as stated in Mr. Butler's letter." In his November 4, 1991 letter to the Corporation Counsel, Mr. Butler stated that at the October 15, 1991 public hearing ANC SA's chairperson refused to allow any member of the public attending the hearing to speak, other than to pose questions to the two candidates present.

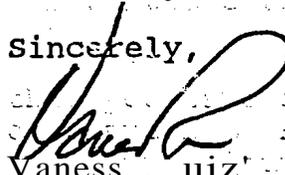
The law applicable to the filling of this vacancy on ANC SA provides in pertinent part that "[t]he Advisory Neighborhood Commission shall appoint, after a public hearing and any other efforts designed to elicit the preference of the voters of the affected single member district, by majority vote of the remaining members, an individual from the said list to fill the

¹ By letter, dated November 7, 1991, to another member of your ANC, James W. Johnson, I have advised that the secret ballot utilized by ANC SA on October 23, 1991 to fill this vacancy violated the open meetings law, D.C. Code § 1-1S04(a) (1987), and that ANC SA should hold a new vote.

vacancy at its next regular meeting." D.C. Code § 1-257(d) (5) (C) (1987) (emphasis added). Thus, while the law does not set forth precisely how such a public hearing is to be conducted, nevertheless the underscored language indicates that the public hearing should be conducted in a manner "designed to elicit the preference of the voters of the affected single member district." Thus, it would be inconsistent with this language if at such a public hearing a voter who resided in the affected single member district were denied the right to address the Commission with respect to his or her views on the candidates. The right to speak, however, is not unlimited. In order to conduct an orderly public hearing at which each person with a right to speak would have an opportunity to address the commission, the Commission's chairperson may set an appropriate time limit for each speaker.

In sum, under D.C. Code § 1-257(d) (5) (C) (1987), a properly conducted public hearing is a mandatory prerequisite to a vote by ANC 5A to fill the vacancy in SMD 5A02. Assuming the facts asserted by Mr. Clayton in his November 4, 1991 letter about how the October 15, 1991 ANC 5A-public hearing was "Conducted are correct, then it is my conclusion that that hearing did not meet statutory requirements. Therefore, before it may conduct a new vote to fill the vacancy on SMD 5A02, ANC 5A must hold a new public hearing at which voters residing in SMD 5A02 must be given an opportunity to address the Commission regarding their preference as to who should fill this vacancy.

Sincerely,


 Vanessa Ruiz
 Deputy Corporation Counsel, D.C.
 Legal Counsel Division

cc: The Honorable James E. Nathanson
 Council of the District of Columbia

Mary Baird Currie
 --Chairperson, ANC 5A

Clayton L. Butler