



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

April 20, 1992

Mr. Caesar L. Marshall, Jr.
Executive Secretary, ANC 6-B
921 Pennsylvania Ave., S.E.
Washington, D.C. 20003

RE: Filling SMD Vacancy

Dear Mr. Marshall:

I am in receipt of your April 15 letter requesting an opinion about the procedures for filling an ANC Single Member District vacancy by appointment. Enclosed is a copy of D.C. Law 9-88 which prescribes the current procedure for filling vacancies. The language particularly relevant to your questions is in section 3(5)(C):

"---The Board, after a 10-day challenge period, shall transmit a list of the names of individuals qualifying for appointment to the respective Advisory Neighborhood Commission. The 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 open and non-secret majority vote of the remaining members, an individual from the said list to fill the vacancy at its next regular meeting."

It is my understanding that the Board of Elections and Ethics will work closely with you to minimize any delays in the vacancy-filling process. If you make arrangements, the Board will make available to you a letter certifying the eligible candidate(s) immediately upon the close of the challenge period. You should discuss this with Joe Baxter at the Board. -

There must be a public hearing. However, it can occur at the same meeting as the ANC's vote to fill the vacancy. In a November 20, 1991 opinion to ANC 5A, the Office of the Corporation Counsel wrote: "While the law does not set forth precisely how such a public hearing is to be conducted, nevertheless the 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."

The notice requirements for the public hearing and meeting are the same as prescribed for all ANC meetings (see D.C. Code § 1-262(c):

"Each Commission shall give notice of all meetings or convocations to each Commission member and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings may be given by: "(1) Posting written notices in at least 2 conspicuous places in each ~~single-member~~ district within the Commission area; "(2) Publication in a city or community newspaper; "(3) Mailing notice to a mailing list; and "(4) In any other manner directed by the Commission."

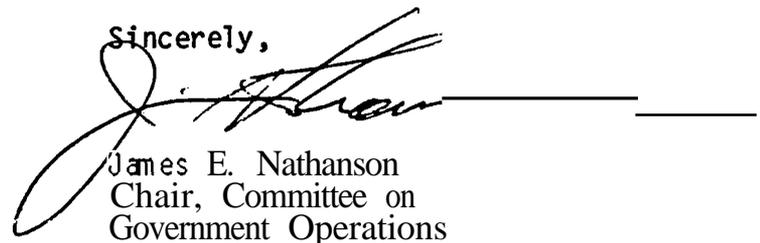
The statute gives broad discretion to ANCs. Please note, however, that the filling of an ANC/SMD vacancy must occur at a regular meeting of the Commission (although the public hearing, if separate, may be a special meeting).

While an ANC must provide notice of its meetings, it does not have to include within that notice each and every agenda item. The public hearing notice, however, must be content-specific in order for it to be meaningful. Thus, after a fully noticed public hearing the ANC may act to fill the vacancy without having also listed that proposed action in the meeting notice. This expediency may be unavoidable, given that the law requires an ANC to act within 90 days of when the vacancy was published in the D.C. Register. However, the spirit of the statute -- that the ANC should elicit the preference of the voters -- strongly suggests that the ANC should either include the election within the regular meeting notice or disseminate separate notice.

You also ask when the appointee may undertake the responsibility of Commissioner. It has generally been the practice, simply, that the individual is sworn in. This may occur immediately following the vote. However, D.C. Code § 1-257(b)(1) and D.C. Law 9-88 § 3(5)(E), when read together, suggest that the appointee may not assume the responsibilities of Commissioner until the Board [of Elections] certifies the election of such member" and the member is sworn in.

If the ANC fails to act on the appointment within the required 90 days, it must nevertheless pursue the matter with diligence. Based on experience with other ANCs, I must note that failure to act timely can jeopardize the ANC's public credibility. If the Commission's failure continues, the candidate or the citizenry may seek judicial remedy.

Sincerely,



James E. Nathanson
Chair, Committee on
Government Operations

cc: Board of Elections
Corporation Counsel
Chairman, ANC 6-B