

FILE

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



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(91-556-L) (LCD-S667)

January 9, 1992

Grace Bateman
Chairperson, ANC 2-E
1041 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Re: The effect of a tie vote in an election
of ANC officers

Dear Ms. Bateman:

This is in reply to your letter to the corporation Counsel, dated December 5, 1991, in which you request the advice of this Office concerning whether, in the event of a tie vote in an election of Advisory Neighborhood Commission (ANC) officers, the incumbent officers may hold over until their successors are elected. By letter, dated January 7, 1991, I replied that, as the duly elected chairperson of ANC 2-E, you were authorized to call a meeting and conduct the 1992 election of officers of ANC 2-E. Further, I encouraged you and the other commissioners of ANC 2-E to attempt to reach a workable resolution of the situation, but indicated that if the election resulted in a tie vote, I would respond to your request for a legal opinion as to the effect of that vote.

In a January 8, 1992 letter to me, you state that at the meeting of ANC 2-E on the evening of January 7, 1992, you conducted an election for the office of chairperson, but that none of the three nominees for that office received a majority of the votes cast. At that point, three of the commissioners left the meeting, "stating that they did not believe that... [you] had the authority to continue to Chair the meeting or conduct any other Commission business." (Letter, p. 1.) with only three commissioners remaining at the meeting, ANC 2-E lacked a quorum and therefore could not conduct elections for the offices of vice-chairperson, secretary, and treasurer. Accordingly, in your January 8, 1991 letter, you renew your request for a legal opinion of this Office as to whether you and the other officers who served in 1991 may hold over and continue to serve in 1992 until successors are elected. For the reasons stated below, I am of the opinion that you and ANC 2-E's other incumbent officers

may hold over and may continue to serve until successors are elected.

Section 14(e) of the Advisory Neighborhood Councils Act of 1975, as added by § 2 of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-58, D.C. Code § 1-262(e) (1987), provides in pertinent part that "[e]ach Commission shall elect from among its members a chairperson, a vice-chairperson, a secretary, a treasurer and such other officers as may be necessary from among the Commission members in January of each year..." Thus, every ANC must hold an election of officers each January. Under Article IV of the By-Laws of ANC 2-E, a simple majority of a quorum of the members of the Commission is needed to elect an officer. Since ANC 2-E has six commissioners, there is a possibility, realized in this instance, that a commissioner nominated to be an officer may not receive a simple majority of the votes cast. And ANC 2-E's By-Laws do not provide a mechanism for resolving tie votes. Compare D.C. Code §§ 1-258 and 1-1314 (1987), which provide for the casting of lots before the Board of Elections and Ethics in the case of a tie-vote for single-member district candidates.

In 3 McQuillin Municipal Corporations § 12-110 (3rd ed. '1990), the following is stated:

In the absence of express provision and unless the legislative intent to the contrary is manifest, in the United States municipal officers hold over until their successors are provided. Thus, failure to appoint or elect a successor at the end of a defined period does not usually cause a vacancy where the officer is to hold until a successor is elected or appointed and qualified. Therefore, the time an officer holds over the designated period is as much his or her term of office as that which precedes the date at which the new election or appointment should be held or made. This rule as to holding over may be applied even to incumbents whose election was illegal.

This doctrine is true even though there is no express provision of law to that effect. The policy finds its fundamental basis in consideration of public convenience and necessity, is broad enough to cover subordinates, and has been comprehensively stated: "Unless there is some clearly expressed and positive prohibition, which by its terms operates as an ouster, the person filling the office should continue to discharge those duties until a successor is qualified, no matter whether the office is created by the constitution, by an act of the general assembly, or by municipal ordinance." [Citations omitted.]

See also, 63A Am. Jur. 2d Public Officials and Employees, §§ 166-169 (1984); and 3 Op.C.C.D.C. 504, 506-507 (1978), quoting Grooms v. LaVale Zoning Board, 340 A.2d 385, 391 (Md. 1975), where the Court stated:

It has long been recognized in this state, as elsewhere, that the public interest requires, in the absence of any provisions to the contrary, that public offices should be filled at all times, without interruption. [Citations omitted.] In accord with this principle...an elected or appointed officer may remain in office at the expiration of his term and is entitled to exercise the powers of the office until his successor qualifies, whether or not the statute creating the office so provides.

Thus, absent a clearly expressed legislative intent to the contrary, there is a presumption that the legislature intends that a municipal officer be permitted to remain in office until a successor qualifies. The rationale of this rule of law is fully applicable to ANC officers. The offices of chairperson, vice-chairperson, secretary, and treasurer of an ANC are statutorily-created public offices, and the persons serving in these offices are charged with carrying out statutorily-defined public duties. Without such officers, an ANC could not function, and the citizens of the ANC would be left without a means officially to communicate their recommendations to District government agencies.¹ There is no statutory provision prohibiting these ANC officers from holding over until their successors are chosen. Therefore, it must be presumed that, in enacting § 14(e) of the Advisory Neighborhood Councils Act of 1975, the Council of the District of Columbia intended to retain the general rule which the Office of the Corporation Counsel has consistently followed, namely, that elected and appointed officers may hold over until their successors are elected or appointed.

By letter to the Corporation Counsel, dated December 30, 1991, ANC 2-E Commissioner Westy McDermid contends that when ANC

¹ For example, under § 14(e) of the Advisory Neighborhood Council's Act of 1975, D.C. Code § 1-262(e), the chairperson of an ANC is charged with the duty of convening and chairing public meetings at which the ANC votes on recommendations relating to proposed actions of the District government. Without a person serving in the position of chairperson, no ANC public meeting could be convened. Likewise, without a chairperson or a treasurer, an ANC would be incapable of complying with the statutory provisions relating to the handling of public funds. See § 16 of the Advisory Neighborhood Councils Act of 1975, as amended by D.C. Law 8-203, effective March 6, 1991, D.C. Code § 1-264 (1991 supp.).

2-E's By-Laws are read in conjunction with Robert's Rules of Order, it must be concluded that an ANC 2-E officer is not permitted to hold over under any circumstances. Section 14(e) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-262(e), provides in part that "[w]here not otherwise provided, the procedures of the commission shall be governed by Robert's Rules of Order" (emphasis added). In § 55 of the Newly Revised Robert's Rules of Order (1981 ed.), at page 482, the following is stated in relation to by-law provisions governing terms of officers:

To ensure the continued services of officers in the event, for example, of public emergency or of difficulty in obtaining a nominee for an office, it is well to provide that officers "shall hold office for a term of ... year(s) or...until their successors are elected." The unqualified wording "for a term of...years(s)" should be avoided, because at the end of that time there would be no officers' if new ones had not been elected.

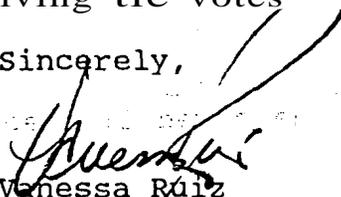
Article IV, section 7 of ANC 2-E's By-Laws provides for an unqualified term of office, to wit: "[t]erms of officers shall commence immediately upon election and shall be for one year." Since ANC 2-E's By-Laws do not expressly provide for holding over, Commissioner McDermid argues, its officers are prohibited from doing so.

There are two answers to this contention. First, entitlement to office is a substantive question, not a procedural one. In some instances, it may be necessary to resolve procedural issues in order to resolve this substantive question. For example, was the election of officers conducted in accordance with Robert's Rules of Order? However, § 14(e) of the Advisory Neighborhood Councils Act of 1975 does not purport to make Robert's Rules of Order dispositive of substantive questions. Second, even if that act did not limit reliance on Robert's Rules of Order to procedural questions, the above-quoted language from § 55 of Robert's Rules of Order states a principle relating to officers of deliberative assemblies in general, and is not addressing the situation of public officers. See Robert's Rules of Order, § 1. As stated above, the rule applicable to public officers is precisely the opposite. Because the Council of the District of Columbia is presumed to have intended that ANC officers may continue to perform their official duties until their successors qualify, an ANC by-law that provided to the contrary would be invalid because it would be inconsistent with § 14(e) of

the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-262(e).2

In conclusion, the answer to your question is that because of the tie vote in the election for the office of chairperson at ANC 2-E's January 7, 1992 meeting, you may hold over as chairperson of ANC 2-E and continue to perform the functions of that office until your successor is elected. ANC 2-E should proceed promptly to hold an election for the three other officer positions, and should hold another election for the office of chairperson at any subsequent time in 1992 when it appears that the impasse that occurred on January 7, 1992 can be resolved. In view of the fact that ANC 2-E has an even number of commissioners, it would be advisable for ANC 2-E "to amend its by-laws by adding a procedure for resolving tie votes officers.

Sincerely,


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

cc: Honorable James E. Nathanson
 Warren Graves
 otis H. Troupe

2 In this regard, it is relevant to note that Article IX, section 3 of ANC 2-E's By-Laws provides that "[t]hese By-Laws shall be consistent with all Congressional and District legislation and other applicable laws regarding ANC's and any inconsistencies are to be held null and void."