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(92-009-1.) (LCD-6012)

January 23, 1992

Vannie Taylor, III
Vice Chairperson, ANC 4-B
7826 Eastern Avenue, N.W. LL16
Washington, D.C. 20012

Re: Maya quorum temporarily lost be restored?
May nominations for new officers be opened
and closed at a meeting that is not open to
the public?

Dear Mr. Taylor:

This is response to your January 10, 1992 letter in which you seek the advice of this Office "concerning the legality of actions taken at the Executive Committee Meeting of Neighborhood Advisory Commission CANC) 4B on Wednesday, January 8, 1992."

You state that at the beginning of the meeting, nine of the twelve ANC 4-B commissioners were present. A dispute arose as to whether the election of officers was to be an item on the agenda of the meeting. You state that you then arrived at the meeting and "confirmed that election of officers was to be the major agenda item" at the meeting. At this time, ten of the twelve commissioners were present. After more discussion of the election question, four of the commissioners, including the chairperson, left the meeting, leaving six commissioners present. Subsequently, a commissioner who had not previously been present arrived at the meeting. You further state in your letter that the seven commissioners then present decided "to continue the meeting, with the Vice Chairperson presiding," and thereafter new ANC 4-B officers were "elected." In a January 16, 1992 telephone conversation with Leo Gorman of this Office, you informed Mr. Gorman that, in fact, new officers were not elected at this meeting, but were only nominated, and that the election of officers will take place at the next ANC 4-B public meeting scheduled for January 23, 1992.

I shall first address the quorum requirements applicable to ANCs, and then address whether the nomination of officers at the January 8, 1992 non-public meeting was legally proper.

Quorum Requirements. Section 14(d) of the Advisory Neighborhood councils Act of 1975, D.C. Code § 1-262(d) (1991 Supp.), provides that "[e]ach Commission shall establish bylaws governing its operation and internal structure." Title V, section 13(a) of the by-laws of ANC 4-B provides that "[a] quorum shall consist of one more than half of the elected Commission members." Thus, a quorum for ANC 4-B is seven commissioners present at a meeting.

with regard to the necessity of a quorum, Robert's Rules of Order, Newly Revised, 1981 ed., states at § 39 (p. 295) the following:

"In the absence of a quorum, any business transacted (except for the procedural actions noted in the next paragraph) is null and void...."

The only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn, recess, or take measures to obtain a quorum.¹

Thus, if an ANC meeting starts with a quorum of commissioners present, and then there is a loss of a quorum, no further official business may be transacted at that meeting (other than the procedural actions indicated above) unless a quorum is reestablished. If a quorum is reestablished at that meeting, the ANC may continue to conduct official business.

Officer Nominations. The fact that a quorum of ANC 4-B's commissioners was present at the January 8, 1992 meeting at the time ANC 4-B nominated commissioners for officer positions is not, however, dispositive of the question of whether those nominations were legally proper. In your letter you describe the January 8, 1992 meeting as an "Executive Committee Meeting of Neighborhood Advisory Commission • 4B," which indicates that it was not a public meeting of the commission. In a January 17, 1992 telephone conversation with Mr. Gorman, you have confirmed that the ANC 4-B meeting that took place on January 8, 1992 was not a public meeting. Thus, the question presented is whether an ANC may nominate officers at a meeting of commissioners that is not open to the public, and then, at a subsequent public meeting, vote on those nominations without permitting additional nominations to be made at the public meeting. For the reasons stated below, I conclude that officer nominations must be permitted at an ANC public meeting.

¹ Robert's Rules of Order govern the procedures of ANCs in the absence of a statutory provision or by-law to the contrary. See § 14(e) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-262(e) (1991 Supp.).

At the outset, I note that the by-laws of ANC 4-B are silent on the subject of nominations for officer positions. section 14(g) of the Advisory Neighborhood Councils Act of 1975, D.C. Code § 1-262(g) (1987), provides that "[e]ach commission shall be subject to the provisions of section 742(a) of the District of Columbia Self-Government and Governmental Reorganization Act." section 742(a) of the Self-Government Act, D.C. Code § 1-1504(a) (1987), provides:

All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting. [Emphasis added.]

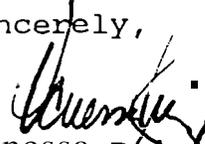
When an ANC conducts an officer nomination process at the conclusion of which no further nominations will be permitted, that action has a finality about it that makes it an "official action" of the ANC. Accordingly, any officer nomination process intended to be exclusive must take place at a public meeting.²

In sum, since the January 8, 1992 meeting was not a public meeting, ANC 4-B should reopen the nominating process at its public meeting scheduled for January 23, 1992.

² The conclusion that nominations for ANC officer positions must be permitted to be made at an ANC public meeting is also supported by Robert's Rules of Order, supra. In § 45 of Robert's Rules of Order there are listed five methods of nomination, two of which are appropriate for ANCs. These are nominations by committee and nominations from the floor (also called "open nominations"). If a nominating committee is appointed, the "report [of the committee] should always be formally presented at a regular meeting..." Id., at p. 365; emphasis added. "After the nominating committee has presented its report and before voting for the different offices takes place, the chair must call for further nominations from the floor." -Id., at p. 365; emphasis added. Thus, regardless of whether the method of taking nominations from the floor is used alone, or is used together with nominations presented by a nominating committee, commissioners must be given an opportunity to make nominations at a "regular meeting" of the commission. And in the context of the Advisory Neighborhood Councils Act of 1975, a "regular meeting" means a regularly scheduled public meeting. See §§ 14(b) and 14(c), D.C. Code §§ 1-262(b) and (c) (1987 and 1991 Supp.).

Finally, you will note that I have sent a copy of this letter to Amanda Hatcher Lyon, as chairperson of ANC 4-B. [Notwithstanding the language of Title III, § 8 of ANC 4-B's by-laws,] Ms. Lyon may continue to serve as the chairperson of ANC 4-B until her successor is elected. See enclosed copy of letter, dated January 9, 1992, from this Office to ANC 2-E chairperson Grace Bateman.

Sincerely,



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

Enclosure

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

The Honorable Charlene Drew Jarvis
Council of the District of Columbia

Warren Graves, Director
Office of Constituent Services

Amanda Hatcher Lyon,
Chairperson, ANC 4-B

3 The section provides that "[t]he term of office of all officers elected by the Commission shall expire on the 1st day of January of each year."