

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

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IN REPLY REFER TO:  
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November 18, 1994

Robert R. Riddle  
Commissioner  
Advisory Neighborhood Commission 2-F  
1101 L street, N.W. # 807  
Washington, D.C. 20005

Re: In a six-member Advisory Neighborhood commission, does the quorum for the transaction of business drop from four to three if one of the six single-member district seats is vacant?

What is the result of a tie vote for two candidates for an officer position?

Dear Commissioner Riddle:

This is in reply to your November 11, 1994 letter requesting the written advice of this Office concerning: (1) the effect of a vacancy in Advisory Neighborhood Commission (ANe) 2-F on the number of commissioners who must be present at a meeting to establish a quorum for the transaction of business, and (2) the result of a tie vote for two candidates for an officer position.

You state in your letter:

In early September of this year I phoned the Corporation Counsel office regarding requirement for a quorum. This Commission has six seats, but one was vacant. I was told that a quorum, even in [the] event of a vacancy on the Commission, would still require [that] four of the six commissioners be present.

Assuming for the purposes of this advice that there exists a vacancy on ANC 2-F,<sup>1</sup> I conclude that the telephone advice you

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On November 14, 1994, you informed me in person that Commissioner Merle L. Sykes (ANC 2F06) resigned in July of this year, and that Evelyn Williams Lindsey was elected on September 13,

received from this Office in early September of this year is correct, for the following reasons.

There is no statutory provision that expressly addresses the quorum requirement vis-a-vis ANC's. The general common law quorum rule is that "in the absence of applicable statutory provision to the contrary, a majority of a definite body, consisting of a definite number, when duly met, constitute a quorum for the transaction of business, and the vote of a majority of those present (there being a quorum) is all that is requisite for the adoption or passage of an ordinance or bylaw or motion, or the doing of any other act which the body has power to do." 4 McQuillin, *Municipal Corporations* § 13.27 (3rd ed. 1992). A computation corollary to this general common law quorum rule is that, "[w]here vacancies occur, the whole number entitled to membership must be counted and not merely the remaining members." *Id.*, at § 13.27.15. Since an ANC is a definite body consisting of a definite number of commissioners, these common law rules are applicable. In the case of ANC 2-F, this means that so long as ANC 2-F has six single-member district seats, its quorum number is four, regardless of whether one or more of those seats is vacant at any given time.<sup>2</sup>

In your letter you cite an ANC 2-F bylaw which provides that in computing whether a majority of the commissioners are present for the purpose of taking official action, "commissioners who have

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1994, to fill this vacated seat. You also informed me that Evelyn Williams Lindsey had not attended any ANC 2-F meetings since her election, and that, on October 6, 1994, the chairman of ANC 2-F declared her seat vacant until she attends a meeting. Neither the chairman of an ANC nor the ANC has the authority to declare a seat vacant for failure of one of its members to attend ANC meetings. In any event, the answer to your quorum question is the same regardless of whether or not the ANC 2F06 seat is vacant.

<sup>2</sup> In a February 16, 1994 memorandum of advice to Regena Thomas, then Director of the Office of Constituent Services, this Office opined that a quorum of an ANC is a majority of those persons actually serving as commissioners. We have now concluded that that advice is erroneous. Carried to its logical conclusion, that advice means that an ANC could transact business even if a majority of the total number of its single-member district seats were vacant, so long as a majority of the remaining commissioners were present at a meeting. Under the common law, however, a commission, such as an ANC, cannot transact business unless a majority of the full number of its membership positions are occupied by serving members. 4 McQuillin, *Municipal Corporations* § 13.30 (3rd ed. 1992). Thus, for example, if ANC 2-F were to lose three of its commissioners through death or resignation, it could no longer transact business. If it lost two of its members, it could still transact business, but all four remaining members would have to be present at a meeting to satisfy the quorum requirement.

resigned, [or] moved, or vacant seats on the Commission" shall not be included. The common law quorum rules cited above "can be changed only by general law or charter, not by internal rule, even when the body in question is given general rule making powers." Traino v. McCoy, 187 N.J. Super. 638, 455 A.2d 602, 607 (1982). Therefore, the ANC.2-F bylaw in question is invalid because ANC 2-F has no authority to adopt a bylaw that conflicts with applicable rules of common law.

In your second question, you ask what is the result of a tie vote in an election for one or more of the officer positions of an ANC. This question was addressed in our January 9, 1992 letter of advice (a copy of which you have) to Grace Bateman, then chairperson of ANC 2-E. That advice was that, if there is a tie vote, the incumbent officer continues to serve (if he or she is willing) until there is a proper election of his or her successor. To resolve such a tie vote, an ANC may adopt a bylaw authorizing the casting of lots, or some other similar method, to determine a winner. Compare D.C. Code §§ 1-258 and 1-1314(c) (1992), which direct the casting of lots before the Board of Elections and Ethics to resolve a tie vote between candidates for the same single-member district who receive the same number of votes.

Sincerely,



Leo N. Gorman, Chief  
Regulatory Affairs section  
Legal Counsel Division

cc: The Honorable Harold Brazil  
Chairman, Government Operations committee  
Council of the District of Columbia

Adam Dennis, Director  
Office of Constituent Services

Russell A. Smith  
D.C. Auditor

Jim Brandon, Chairman  
ANC 2-F

Evelyn Williams Lindsey  
ANC 2F06