

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
JUDICIARY SQUARE
441 FOURTH ST., N.W.
WASHINGTON, D. C. 20001



IN REPLY REFER TO:
OLC:LNG:lng
(AC-96-376)

July 29, 1996

Robert H. Fleming
Chairman
Advisory Neighborhood Commission 1-E
P.O. Box 43529
Washington, D.C. 20010

Re: Maya person who is elected to fill a mid-term vacancy on an Advisory Neighborhood Commission be sworn in immediately after the results of the election are announced?

Dear Mr. Fleming:

This is in reply to your July 11, 1996 letter to Leo Gorman of this Office in which you seek advice concerning a "dilemma" facing Advisory Neighborhood Commission (ANC) 1-E.

You state in your letter that on July 9, 1996, a special election was held by ANC 1-E to fill a vacancy on the commission, and that Jacques Rondeau was the person elected. Mr. Rondeau's election would have brought the number of persons serving as commissioners of ANC 1-E to 5 out of a total number of 6 positions. However, you state that on July 10, 1996, you received a letter of resignation from Commissioner Stanley Allen, thus reducing the commission to 3 members plus the newly-elected, but not-sworn-in Mr. Rondeau. The applicable statutory law, namely section 8(d) (6) (F) of the Advisory Neighborhood Commissions Act of 1975 ("act"), D.C. Code § 1-257(d) (6) (F) (1996 Supp.), requires that, with respect to Mr. Rondeau's election, ANC 1-E "shall transmit to the Board [of Elections and Ethics] a resolution signed by the Chairman and Secretary of the Advisory Neighborhood Commission that states the winner of the Advisory Neighborhood Commissioner SMD election and requests that the Board declare the vacancy filled." The act further provides that, upon receipt of this resolution, the Board of Elections and Ethics "shall certify the filling of the vacancy by publication in the District of Columbia Register." See § 8(d) (6) (G) of the act, D.C. Code § 1-257(d) (6) (G) (1996 supp.). Your perceived dilemma lies in the circumstance that, with only 3 current commissioners, ANC 1-E lacks a sufficient number of commissioners

(i.e., 4 commissioners) to constitute a quorum to hold a public meeting at which official action may be taken to adopt the resolution that is required to be transmitted to the Board of Elections and Ethics.

While I agree with your conclusion that ANC 1-E cannot properly adopt the resolution in question unless it does so at a properly-noticed public meeting at which is present a quorum, i.e., at least 4 members of the commission, I am nevertheless of the view that there is no dilemma because the applicable statutory law does not prohibit Mr. Rondeau's being sworn in at any time after the casting of the ballots and the announcement of the results of the election. stated otherwise, Mr. Rondeau's swearing in and his commencement of the duties of office as an ANC commissioner need not await the adoption of the above-described resolution or the publication of the results of the election in the D.C. Register. Thus, the solution to the "dilemma" is to have Mr. Rondeau sworn into office. (The administration to Mr. Rondeau of the oath of office need not occur at an ANC pUBLIC meeting. And, in the event it does occur at a public meeting, there is no requirement that a quorum be present at the time Mr. Rondeau takes the oath of office.) Once Mr. Rondeau has been sworn in, ANC 1-E will have 4 commissioners and then can satisfy its minimum quorum requirement of 4 commissioners present at a meeting at which official action is taken.¹ with 4 commissioners present at a pUBLIC meeting, ANC 1-E will then be able to adopt the resolution in question and forward it to the Board of Elections and Ethics.² In this regard, it is relevant to note that since only the affirmative votes of a majority of a

This Office has written a ~~number~~ number of letters of advice to ANCs on the sUBJECT of quorum requirements. Enclosed for your information and guidance are copies of letters dated November 18, 1994, June 15, 1995, and August 2, 1995. Summarized, these letters state that, with one exception, an ANC cannot take official action at a pUBLIC meeting unless there is physically present at such meeting a majority of the total "number of commissioner positions on that ANC, regardless of whether one or more of those positions is vacant at any given time. Thus, for a 6-commissioner ANC, such as ANC 1-E, the minimum quorum number is 4 and will always be 4 so long as the total number of commissioner positions in ANC 1-E is 6. An ANC may not in its bylaws provide generally for a quorum number that is less than a majority of the full number of commission positions. The only exception to the general quorum rule is that an ANC may adopt written recommendations on a proposed government action by a vote of a majority of the commissioners actually serving in office. This exception is based on our interpretation of statutory language set forth in § 13(d) of the act, D.C. Code § 1-261(d) (1992), which relates solely to this type of official ANC action.

² The statute also requires that a copy of the resolution be sent to the Council of the District of Columbia, the Mayor, and the person appointed or elected to fill the SMD vacancy.

quorum are needed to adopt the resolution, Mr. Rondeau need not vote on the adoption of the resolution in order to have it pass, so long as the other 3 commissioners vote to approve the resolution.

I hope this advice will be helpful to you. If you have any questions, you may call Leo Gorman of this Office who may be reached at 727-3400. As you are aware, in developing this response Mr. Gorman has spoken by telephone with you and, at your request, with ANC I-E Commissioner Stephen Mudd. At Mr. Mudd's request, I am sending a copy of this letter to him.

sincerely,
Charles F.C. Ruff
Corporation Counsel
By:


Karen L. Cooper
Director
Office of Legal Counsel

Enclosures

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

Alice P. Miller, Esquire
General Counsel
Board of Elections and Ethics

Betty King
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and
Special services

Lavonna Johnson
Director
Office of Constituent services

Stephen Mudd
Commissioner, ANC I-E