

Government of the District of Columbia

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IN REPLY REFER TO:
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(AL-96-469)

September 24, 1996

Dorothy Miller
Commissioner
Advisory Neighborhood Commission 2-A
2440 Virginia Avenue, N.W.
Washington, D.C. 20037

Re: Notice of Advisory Neighborhood Commission meetings

Dear Commissioner Miller:

This is in reply to your September 20, 1996 letter in which you seek the advice of this Office regarding the requirement of notice by an Advisory Neighborhood Commission (ANC) to its commissioners and to the public of its meetings.

As this Office stated in its April 17, 1996 letter to you, if an ANC fails to comply with the meeting notice requirement of section 14(c) of the Advisory Neighborhood Commissioner Act of 1975, D.C. Code § 1-262(c) (1992), "the meeting is not a public meeting within the intent of the Advisory Neighborhood Commissions Act of 1975, and no official action may validly be taken at such a meeting." Therefore, if ANC 2-A's September 18, 1996 meeting was not properly noticed, no official action taken at that meeting can be legally valid.' A vote by an ANC cannot override the requirements of the statutory law applicable to ANCs. Thus, if an ANC has failed to give the statutorily required notice of one of its meetings, it cannot legally vote to dispense with the notice requirement. Moreover, since the question of whether an ANC meeting has been properly noticed is ultimately a question of law, an ANC

I do not opine on the question of whether the September 18, 1996 ANC 2-A meeting was or was not properly noticed. You state in your letter that "[t]he ANC-2A meeting of September 18, 1996 failed to meet the statutory [notice] requirement of this law." This is a conclusory statement. Since your letter does not state any facts as to what was or was not done by ANC 2-A in regard to notifying its commissioners and the public of the September 18, 1996 meeting, there is no basis upon which an opinion can be rendered as to whether proper notice was given in regard to this meeting.

cannot finally decide such a question simply by taking a vote. In short, a vote by an ANC cannot cure defective notice in regard to an ANC meeting.

You ask: "What course of action is necessary to invalidate any action taken by the ANC-2A Commission at the September 18, 1996 meeting?" written recommendations submitted by an ANC to a government agency are required to be given "great weight" by the agency under section 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992); if such recommendations have been adopted by the ANC at a properly noticed public meeting and have been forwarded in a timely manner to the agency.² Thus, if the agency determines that the ANC meeting at which the written recommendations were adopted was not properly noticed, it is not required to give "great weight" to such recommendations. Likewise, if the D.C. Auditor determines that an ANC's quarterly financial report was adopted at an ANC meeting that was not properly noticed, the Auditor can not treat that report as a valid report under section 16(j) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(j) (1992). These are examples of the kinds of consequences that can flow from an ANC's taking official action at a public meeting that has not been properly noticed. A course of action that may be taken to invalidate official actions taken at an ANC public meeting that has not been properly noticed is to obtain a judicial declaration in a court of competent jurisdiction.

You next seek as advice as to the hierarchy of law applicable to ANCs. The hierarchy is as follows: statutory law, applicable common law, ANC bylaws, and finally, Robert's Rules of Order. Thus, an ANC's bylaws must be consistent with applicable statutory law and applicable common law principles.

Your final question relates to the content of an ANC meeting notice. In our September 17, 1996 letter to you in this regard, we stated that at a minimum the notice must state the date, time, and place of the meeting. We also stated that while a brief description on the meeting notice of the principal agenda items to be taken up at the meeting is recommended, it is not legally required. You disagree with this conclusion, contending that the District's "Sunshine Act" and the last sentence of section 14(b) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(b) (1992), require that more than the date, time, and place of an ANC meeting must appear on a meeting notice.

Section 14(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(g) (1992), makes the first subsection of the "Sunshine Act" applicable to ANCs. The Sunshine Act is section 742 of the District of Columbia Self-Government and Govern-

² See Kopff v. District of Columbia ABC Board, 381 A.2d 1372, 1384-1385 (D.C. 1977).

mental Reorganization Act, approved December 24, 1973, 87 stat. 831, D.C. Code § 1-1504 (1992). The first sUBsection of the Sunshine Act, D.C. Code § 1-1504(a) (1992), provides as follows:

All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, 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.

There is no mention in the above-quoted language of notice to the pUBLIC. Therefore, this language cannot be interpreted as requiring any particular form of notice.

The last sentence of section 14(b) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(b) (1992), provides as follows: "Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions." Because the word "shall" is used, this is a mandatory duty of ANCs. Nevertheless the statutory language does not mandate any particular method of compliance. Thus, the dissemination of information about an ANC's meetings, positions, and actions may be made by flyers distributed in the single-member districts of" an ANC, an ANC newsletter, regular articles in one or more community newspapers, or through the use of other media, such as radio and television, if available. Certainly, a description of the agenda items on an ANC meeting notice is an appropriate way to disseminate information to the pUBLIC about an upcoming ANC meeting. However, it is not the only way such information may be disseminated. Accordingly, we adhere to our previous advice that, while an ANC meeting notice need not contain a description of agenda items in order to be a valid notice, it is recommended that, if possible, such a notice set forth, in concise and summary form, the agenda items that will be taken up at the meeting to which the notice relates.

Sincerely,
Charles F.C. Ruff
corporation Counsel

By:



Leo N. Gorman
Assistant corporation Counsel
Office of Legal Counsel

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

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