

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:  
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(AL-97-193)

April 8, 1997

Commissioner Gary Imhoff  
Commissioner Tom Coumaris  
Commissioner Glenn J. Melcher  
Commissioner Jan Gray  
Advisory Neighborhood Commission 1-B  
P.O. Box 73710  
Washington, D.C. 20019-3710

Re: Mayan Advisory Neighborhood Commission suspend its bylaws? Is the election of an ANC commissioner to more than two consecutive terms as chairperson valid if the ANC's bylaws prohibit a commissioner from serving more than two consecutive terms in that office?

Dear Commissioners Imhoff, Coumaris, Melcher, and Gray:

This *is in* reply to your April 2, 1997 letter to Interim Corporation Counsel Jo Anne Robinson in which you seek the advice of this Office concerning whether an Advisory Neighborhood commission (ANC) may suspend its bylaws. You also seek advice concerning whether an ANC may properly elect as its chairperson a commissioner who has served at least the last two previous (one-year) terms as the chairperson of the ANC, where the bylaws of the ANC prohibit a commissioner from serving more than two consecutive terms in that office.

You state in your letter that on February 12, 1997, ANC 1-B held its first meeting of the year and elected Commissioner Mary Treadwell as its chairperson.! You further state that Commissioner Treadwell "has served at least the previous two consecutive terms as Chairperson of ANC 1B." You have provided this Office with a copy of ANC 1-B's bylaws. Article IV, section 11 of ANC 1-B's

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Section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1992), requires the election of ANC officers to be held "in January of each year..... The fact that ANC 1-B held its election of officers one month late does not render the election invalid.

bylaws provides: "No chairperson may serve more than two consecutive terms." You state that at the February 12th meeting, after the election of officers, ANC 1-B adopted a resolution which was recorded in the minutes of that meeting as follows:

In good faith, we are holding this organizing meeting fully recognizing that our Bylaws are outdated. There are proposed changes on the table that need time to be evaluated. We shall take until the next scheduled meeting {2nd Wednesday, March 12, 1997}. In this meeting and the interim, we choose to have for our rules and regulations/bylaws the DC Code - the "Manual" and Roberts Rules of Order.

You state that at the ANC 1-B meeting on March 12, 1997, a second resolution was passed. As introduced the resolution read: "We acknowledge that we are operating under the bylaws of the previous Commission until such time as they are amended." Finally, you note that the "bylaws of ANC 1B are silent as to whether they may be suspended. They do not contain any provision allowing or forbidding their suspension."

The resolution adopted by ANC 1-B on March 12th is irrelevant to the question of the status of ANC 1-B's bylaws. The language of the above-quoted February 12th resolution appears to have been intended to suspend ANC 1-B's bylaws for that meeting and for "the interim" and to substitute in place of ANC 1-B's bylaws the D.C. Code, the ANC Manual, and Robert's Rules of Order. This purported attempt by ANC 1-B to suspend its bylaws in their entirety was a legal nullity because an ANC may not operate without bylaws.

Section 14{d} of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262{d} {1992}, provides that "[e]ach Commission shall establish bylaws governing its operation and internal structure." {Emphasis added.} Thus, each ANC must have a set of bylaws at all times. For an ANC to suspend its bylaws in their entirety is inconsistent with this statutory requirement. Moreover, it is not legally permissible for an ANC to have as its bylaws the D.C. Code, the ANC Manual, and Robert's Rules of Order, even on a temporary basis. In this regard, sections 14{d} {1} and {2} of the Advisory Neighborhood Commissions Act of 1975, D.C. Code §§ 1-262 (d) {1} and {2} {1992}, provide in pertinent part:

{1} These bylaws shall include a statement of Commission responsibilities, voting procedures, the establishment of standing committees, the manner of selection of chairpersons and other officers, procedures for prompt review and action on committee recommendations and procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels. Said bylaws•••shall be a public document.

(2) An up-to-date copy of each Commissions's bylaws and all amendments thereto shall be filed with the Council of the District of Columbia within 30 days of any amendment to the bylaws. \* \* \*

(Emphasis added.) These provisions make clear that an ANC's bylaws must consist of a discreet document which is public and Which, with all current amendments thereto, must be filed with the Council of the District of Columbia.<sup>2</sup>

Further support for the conclusion that ANC 1-B's purported attempt to suspend its bylaws on February 12th was a legal nullity is provided by Robert's Rules of Order, Newly Revised, 9th ed. (1990). At § 25 on pages 261-261, the following is stated:

RULES THAT CANNOT BE SUSPENDED. Rules contained in the *bylaws* (or constitution) cannot be suspended - no matter how large the vote in favor of doing so or how inconvenient the rule in question may be - unless the particular *rUle* specifically provides for its own suspension, or unless the rule properly is in the nature of a rule of order as described on page 17.

(Italics in original.)

As noted above, ANC 1-B's bylaws are wholly silent with regard to their suspension, and Article IV, section 11 of ANC 1-B's bylaws, prohibiting a commissioner from serving more than two consecutive terms as chairperson, is not a "rule of order.,,3

Based on the foregoing, I conclude that ANC 1-B's bylaws were in effect on February 12, 1997 and are now in effect. Therefore, if commissioner Treadwell served as the chairperson of ANC 1-B in 1995 and 1996, she was ineligible to serve in that office in 1997 because of the prohibition set forth in Article IV, section 11 of ANC 1-B's bylaws. Accordingly, assuming Commissioner Treadwell served as the chairperson of ANC 1-B in 1995 and 1996, her election on February 12, 1997 to serve as chairperson in 1997 was illegal because it was in violation of ANC 1-B's bylaws.

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<sup>2</sup> As was noted in the March 12, 1997 letter from this Office to ANC 1-B Commissioner Tom Coumaris, an ANC's bylaws do not expire at the end of each year or at the end of each two-year election cycle. Rather, once adopted, an ANC's bylaws remain in effect until amended.

<sup>3</sup> A rule of order relates to the orderly transaction of business at a meeting. Therefore, Article IV, Section 11 of ANC 1-B's bylaws is not a rule of order.

In this regard, it is pertinent to mention that in our March 12, 1997 letter to Commissioner Coumaris, we noted that prior to March 6, 1991, section 14(e) of the Advisory Neighborhood Commissions Act of 1975 contained a provision prohibiting a commissioner from serving more than two consecutive terms as chairperson. That provision was repealed by the Council in the Advisory Neighborhood Commission Amendment Act of 1990, D.C. Law 8-203. We concluded, however, that that repeal did not have the effect of prohibiting ANC's from imposing a similar limitation through their bylaws. Thus, ANC 1-B may keep Section 11 of Article IV as part of its bylaws or, if it so chooses, may eliminate it through its bylaw amendment process. But so long as section 11 of Article IV remains part of ANC 1-B's bylaws, ANC 1-B is not free to proceed to elect a chairperson in disregard of it. See Service v. Dulles, 354 U.S. 363, 388 (1957) (even if agency is not required to adopt a particular regulation, if it does so, it must follow the regulation).

If you have any questions concerning this advice, you may contact me at 727-3400.

Sincerely,



Leo N. Gorman  
Assistant Corporation Counsel  
Office of Legal Counsel

cc: The Honorable Kathleen Patterson  
Chairperson, Committee on Government Operations  
Council of the District of Columbia

Willie Vazquez, Director  
Office of the ombudsman

Ayo Bryant, Director  
Office of Diversity and Special services

Anthony Cooper  
D.C. Auditor

Mary Treadwell  
Commissioner, ANC 1-B