

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



January 14, 1994

IN REPLY REFER TO:

L&O:LNG:lng
(94-017-L)

x. ref. 91-164-L

stephen W. Coleman
Commissioner
Advisory Neighborhood Commission 1-C
1732 Euclid street, N.W.
Washington, D.C. 20009

Re: Mayan Advisory Neighborhood Commission elect
its chairperson and vice chairperson by secret
ballot?

Dear Commissioner Coleman:

This is in reply to your January 6, 1994 letter to Leo Gorman of this Office in which you seek advice concerning whether an Advisory Neighborhood Commission (ANC) may elect its officers by secret ballot.

You state that at its January 5, 1994 public meeting, the Commissioners of ANC 1-C elected a secretary and a treasurer by voice vote, and, despite your objection, elected a chairperson and a vice chairperson by "secret paper ballot, with only the vote counts announced to the public...." William Arrington, the incumbent chairperson, was reelected, and Hazel Adams Shango was elected to the office of vice chairperson. Edward Jackson served as vice chairperson during 1993.

By letter dated April 22, 1991, this Office advised ANC 4-D that the use of the secret ballot method of voting to elect ANC officers violates the "Sunshine Act," namely § 742(a) of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code §1-1504(a) (1992), which is made applicable to ANCs by § 14(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-263(g) (1992). A copy of this letter is enclosed. (See also comment at p.44 of the 1993-95 ANC Manual.)

Thus, assuming the correctness of your factual assertions, the elections of the secretary and the treasurer were legally proper, but the elections of the chairperson and the vice chairperson were not. ANC 1-C should, therefore, promptly conduct new elections for

the offices of chairperson and vice chairperson at its regular February public meeting, or sooner at a properly-noticed, special public meeting.

On January 9, 1992, this Office advised ANC 2-E by letter (copy enclosed) that in the event of a tie vote for an ANC office, the incumbent, if any, would continue to serve, *i.e.*, hold over in office, until the tie is resolved. In so opining, we cited 3 Mcquillin Municipal corporations § 12-110 (3rd ed. 1990). There, it is stated in pertinent part that the "rule as to holding over may be applied even to incumbents whose election was illegal." Thus, as regards the office of chairperson, William Arrington, the incumbent in that position, may continue to serve until the new, proper election is held. As regards the office of vice chairperson, however, Hazel Adams Shango may not continue to serve until the new, proper election for that position is held because she is not the incumbent. Rather, Edward Jackson, the incumbent, holds over in the office of vice chairperson until his successor is properly elected.¹

Sincerely,



Garland Pinkston, Jr.
Deputy corporation Counsel
Legal Counsel Division

Enclosures

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

Regena Thomas
Director
Office of Constituent Services

otis H. Troupe
District of Columbia Auditor

William Arrington
Chairperson, ANC 1-C

If ANC 1-C's by-laws provide for the election of chairman and vice chairman by secret ballot, then the by-laws should be amended so that they are consistent with the requirements of the "Sunshine Act."