

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
(AL-97-381)

July 15, 1997

Leroy J. Thorpe, Jr.
Commissioner
Advisory Neighborhood Commission 2-C
1544 Marion street, N.W. # 302
Washington, D.C. 20001

Re: Complaints against Advisory Neighborhood
Commission 2-C

Dear Commissioner Thorpe:

This is in response to your June 30, 1997 letter in which you make a number of complaints regarding Advisory Neighborhood Commission (ANC) 2-C.

In your first complaint, you state that ANC 2-C attempted to hold a meeting on June 18, 1997. You state that you went to this meeting, but left the meeting prior to the roll call. With only 3 commissioners remaining at the meeting, there was no quorum. (ANC 2-C has six single-member districts; thus 4 commissioners must be present to have a quorum.) You state that after you left the meeting, ANC 2-C Chairperson Lawrence Thomas recessed the meeting and called for a meeting the next day, June 19, 1997. You state that you were never notified of the June 19, 1997 meeting. You describe the June 18, 1997 meeting as a "not notified" meeting, which I understand you to mean was a meeting as to which proper notice was not given.

section 14(c) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(c) (1992), requires that notice of an ANC public meeting be given to each commissioner of an ANC and to the public. If adequate notice is not given, 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. See enclosed copy of our April 17, 1996 letter of advice to Commissioner Dorothy Miller of ANC 2-A.

You next complain that ANC 2-C has not held an election of officers for 1997. Section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(e) (1992), requires that

each ANC "shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, Secretary, and treasurer." (Emphasis added.) This is a mandatory duty. The only excuses for not electing officers in January of each year are: (1) the inability to establish a quorum, or (2) a situation where this is a tie vote that cannot be broken. For example, in an ANC that has an even number of single-member districts, such as ANC 2-C, there could be a 3 to 3 deadlocked vote as to which commissioner should serve as the chairperson for the current year. In the event of such a deadlocked vote, the person who held the office the previous year (if still a commissioner) would hold over in office (if willing to do so), until the impasse can be resolved.

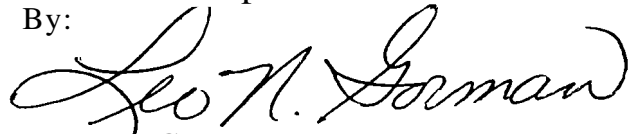
Your third complaint is that there is no treasurer's report at each public meeting. In this regard, you cite section 16(C) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(c) (1992). Neither that section, nor any other section of the Advisory Neighborhood Commissions Act of 1975, requires the treasurer of an ANC to make a treasurer's report at each public meeting of an ANC. Such a requirement may be included in an ANC's bylaws if it is determined to be desirable by the ANC, but there is no such statutory requirement. The only statutory provision relating to a report required to be prepared by the treasurer is section 16(j) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(j) (1992), which requires the treasurer to prepare a "quarterly financial report" which, after it is approved by the ANC, is filed with the D.C. Auditor.

Fourthly, you complain that ANC 2-C has "constantly violated" your right to "have access to the ANC 2C Commission office." Section 16(p) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(p) (1992), provides that "[a]ny Commissioner within an individual Commission shall have equal access to the Commission office in order to carry out Commission duties and responsibilities." This is a legal right that is enforceable in a court of law. As a last resort, if all reasonable attempts to achieve voluntary compliance with this provision prove unsuccessful, a legal action for declaratory and injunctive relief may be filed in the Superior Court of the District against those ANC 2-C commissioners who are denying you equal access to the commission office. The failure to obey a court order directing that you be afforded equal access to the ANC 2-C office would put the person or persons failing to obey the order in contempt of court. And to deal with a contempt of court of this nature (i.e., civil contempt), the court can order the person or persons in contempt of court to be arrested and imprisoned until the court's order is obeyed. If such a legal action is necessary to vindicate your right to equal access to the ANC 2-C office, you should contact Mr. Luis Rumbaut of the Enforcement Division of this Office, at 727-3500, for assistance.

Finally, you ask for an investigation of the financial transactions of ANC 2-C. You should direct this request to the D.C. Auditor, Anthony Cooper, suite 210,415 12th street, N.W., Washington D.C. 20001, tel. 727-3600. Pursuant to section 16(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-264(d) (1997 Supp.), the D.C. Auditor "may audit the financial accounts of a Commission, at the discretion of the Auditor, upon the request by a member of the Council or a Commissioner of the Commission for which an audit is requested." (Emphasis added.)

Sincerely,

Jo Anne Robinson
Interim Corporation Counsel
By:



Leo N. Gorman
Assistant Corporation Counsel
Office of Legal Counsel

Enclosure

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

William P. Vazquez
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor

Lawrence Thomas
Chairperson
Advisory Neighborhood Commission 2-C