

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:  
OLC:LNG:lng  
(AL-97-098)

February 26, 1997

Jonda McFarlane  
Commissioner  
Advisory Neighborhood Commission 2-E  
3265 S street, N.W.  
Washington, D.C. 20007

Re: What matters may be decided at a non-public meeting of an Advisory Neighborhood Commission?

Dear Commissioner McFarlane:

This is in reply to your February 20, 1997 letter requesting written advice from this Office concerning what decisions an Advisory Neighborhood Commission (ANC) may and may not make at a meeting that is not open to the public. In this letter I will attempt in part to summarize my comments at the meeting I had with you and several other commissioners of ANC 2-E on February 7th of this year at the John A. Wilson Building.

As you are aware, section 14(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-262(g) (1992), makes subsection (a) of the District's "Sunshine Law" applicable to ANCs. The District's Sunshine Law originated as section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 23, 1973, Pub. L. 93-198, 87 stat. 831. It is codified in the D.C. Code at D.C. Code § 1-1504 (1992). Subsection (a) of the Sunshine Law 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.

Previously, this Office has issued written guidance to other agencies of the District government on the meaning of this language, and I have provided you with copies of such guidance. In

that guidance, this Office has stated that a board or commission that is subject to the Sunshine Law may meet in a non-public meeting, but may not at such a meeting formally vote on or informally decide a matter that is required to be voted on at a public meeting. Nor at such a non-public meeting may a board or commission decide formally or informally sub-issues that are substantive in nature and that must be decided in order to decide the ultimate issue. This letter will focus on the meaning of "official action" as that term is used in the District's Sunshine Law, for it is only when a board or commission takes "official action" that it must do so at a meeting that is open to the public.

The District's Sunshine Law does not define the term "official action." However, other jurisdictions have similar sunshine laws that define this term. One such jurisdiction is Pennsylvania, where the term "official action" is defined to mean:

- (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
- (2) The establishment of policy by an agency.
- (3) The decisions on agency business made by an agency.
- (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

See 65 Pennsylvania statutes § 273, as quoted in Morning Call, Inc. v. Board of School Directors, 642 A.2d 619, 622 (Pa.Cmwlth. 1994).

This definition provides useful guidance in understanding the meaning of the term "official action" in the District's Sunshine Law. In the context of ANCs, these categories suggest that in most cases official action by an ANC means action that is substantive in nature and that requires the formal concurrence of a majority of the commissioners of an ANC. Examples of official action of an

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In some circumstances, actions that are properly described as procedural in nature may nevertheless fall into the category of official action. For example, the decision to adjourn a public ANC meeting is an official action even though it is purely procedural in nature. The official nature of such an action derives from the fact that it is an action that takes place at a public meeting and normally requires the concurrence of a majority of a quorum of the commissioners. On the other hand, a decision to adjourn a non-public meeting of commission members is not an official action within the meaning of the District's Sunshine Law.

ANC are: (1) the election of commission officers<sup>2</sup>; the adoption of written recommendations on a proposed District government action; (3) the approval of such things as the minutes of a prior pUBLIC meeting, a treasurer's report, or a quarterly financial report; (4) (5) the adoption of an annual budget; (6) the determination to hire a staff employee and the terms of employment; and (7) the determination to make a grant to a qualified grant recipient.

On the other hand, there are ANC determinations that do not constitute official action under the District's Sunshine Law because they do not establish any policy or commit the ANC to any particular course of action that is of a substantive nature and are generally not regarded as the kinds of determinations that require the concurrence of a majority of the ANC. Examples of such determinations are the establishment of the agenda items to be taken up at the next pUBLIC meeting of the ANC and determinations related to that agenda, such as decisions regarding the invitation of persons to make presentations at the public meeting.<sup>3</sup> Since such determinations are often (and properly) made between regular public meetings through informal telephonic communications, ANC commissioners, may, if they choose, meet in person at a non-public meeting to discuss and decide such matters.

If you have a question regarding whether a particular decision is or is not an "official action" as that term is used in the District's Sunshine Law, please do not hesitate to contact me.

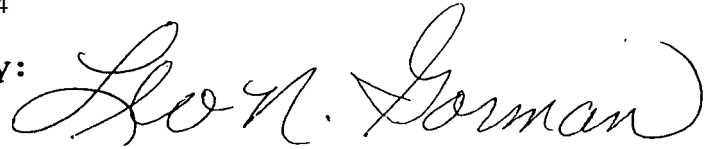
Sincerely,  
Jo Anne Robinson  
Interim Corporation Counsel, D.C.

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<sup>2</sup> This Office has opined that the District's Sunshine Law precludes the use of the secret ballot method for the election of commission officers. See advice to Betty Ann Kane, dated January 31, 1990, and advice to Susan Emerson, dated April 22, 1991.

<sup>3</sup> The pUBLIC meeting notice given to the commissioners of an ANC and to the residents of the commission area must, at a minimum, set forth the time and place of the pUBLIC meeting. While not required to make such notice valid, this Office has advised that the notice should, if possible, set forth those items on the meeting's agenda that are of pUBLIC interest. setting the agenda, giving the public notice of the agenda in a timely manner, and conducting a successful public meeting in regard to that agenda obviously requires some planning. The planning decisions that need to be made to conduct a successful pUBLIC meeting are not decisions that constitute official action within the meaning of that term in the District's Sunshine Law. Accordingly, such decisions can be made at a meeting that is not open to the pUBLIC.

By:



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

The Honorable Jack Evans  
Councilmember, Ward 2  
Council of the District of Columbia

Ayo Bryant  
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