

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:

July 14,2000

Barbara Zartman
ANC Commissioner
ANC2E
1642 Thirty-fifth Street, N.W.
Washington, D.C. 20007-2334
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- Fran Goldstein
ANC Commissioner
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3928 Highwood Court, N.W.
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Mark Ryan, DDS
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William Starrels
ANC Commissioner
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1045 31st Street, N.W., Unit #502
Washington, D.C. 20007
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Re: Open Meetings Law

Dear Commissioners Zartman, Goldstein, Ryan, and Starrels:

This responds to the June 12,2000 letter from Commissioner Zartman and the July 3, 2000 letter from Commissioners Goldstein, Ryan, and Starrels (the "Goldstein letter"). The letters discuss the application of the open meetings law, found in section 742 of the District of Columbia Home Rule Act, approved December 24, 1973, Public Law 93-198,87 Stat. 777, D.C. Code § 1-

1504(a), to a meeting of ANC Commissioners on June 6, 2000, and request advice from this Office.

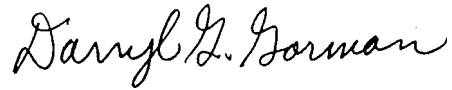
All parties agree that at least four ANC 2E Commissioners met prior to a June 6, 2000 public ANC 2E meeting and that no notice was given to other commissioners or the public. Commissioner Zartman alleges that at the private meeting the commissioners present "jointly edited an omnibus motion calling for adoption of the campus plan [of Georgetown University] as presented and agreed to support the final product". The Goldstein letter alleges that the private meeting, which took place at a restaurant, was for a quick dinner prior to the public meeting and that "[d]uring the course of this meal, Mr. Schultz [the fourth commissioner present], who was ill, expressed concern regarding his ability to present a motion he drafted to approve the Campus Plan. He asked if anyone of us would be comfortable doing it for him. Mr. Starrels[] reviewed Art's motion and agreed to present the motion should he have the opportunity." The Goldstein letter further alleges that "no quorum was convened and no prior determination or voting was conducted at this June 6th informal dinner gathering...." All parties agree that there was a properly noticed public ANC 2E meeting on June 6, 2000 at which the issue of the campus plan was presented before all eight ANC Commissioners. At the public meeting there was testimony from the community both in favor of the campus plan as written, and in favor of changing it. After the public comments were concluded, Commissioner Starrels presented a resolution, which was seconded, and there followed a discussion among the ANC Commissioners as to the need for amendments to the campus plan. The motion was reread and a vote was taken; the motion passed by a 5-3 vote. The Goldstein letter alleges that Commissioner Zartman attended the June 13, 2000 meeting of the Board of Zoning Commissioners and testified that "the official motion was illegal and under investigation by Corporation Counsel".

Commissioner Zartman contacted Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division, on June 8, 2000 for oral advice regarding the applicability of the open meetings requirements to the situation she presented. Ms. Elseth, relying on a February 26, 1997 letter from this Office to ANC Commissioner Jonda McFarlane ("1997 letter") that discussed the general application of the open meetings law, advised Commissioner Zartman that the private meeting violated the open meetings law if, as Ms. Zartman alleged, a quorum of ANC Commissioners met privately and agreed on the outcome of the resolution. Ms. Elseth faxed a copy of the 1997 letter to Commissioner Zartman that day. Subsequently Commissioner Zartman faxed a letter to Ms. Elseth, dated June 12, 2000, providing additional information and seeking a written clarification of the applicability of the open meetings law as interpreted by the 1997 letter.

Upon further research, I conclude that the private meeting of June 6, 2000 did not violate the open meetings law because the decision reached regarding the campus plan at the private meeting, if any, was not the "official action" of the ANC, nor was it treated as such, since there was a properly noticed public meeting of the ANC at which the matter of the campus plan was considered, debated, and voted on. The private meeting appears to fall into the "deliberative process" exception to the public meetings requirement, which protects the pre-decisional deliberations of governmental bodies from disclosure. *See, e.g., Jordan v. District of Columbia*, 362 A.2d 114 (D.C. 1975); *Dupont Circle Citizens Association v. D.C. Board of Zoning Adjustment*, 364 A.2d 610 (D.C. App. 1976).

If you have any further questions with regard to this matter, please contact Annette Elseth at 724-5537 or me at 724-5493.

Sincerely,

A handwritten signature in cursive script that reads "Darryl G. Gorman".

Darryl G. Gorman
Senior Deputy Corporation Counsel for
Government Operations

DGG/abe
(AL-OO-357)

cc: Jerrily R. Kress
Director
Office of Zoning

Sheila Cross Reid
Chair
Board of Zoning Adjustment