

# Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



*Overturned advice  
on 3/31/98  
see file  
AL-98-08*

IN REPLY REFER TO:

OLC:LNG:lng  
(AC-96-232)

May 17, 1996

Ellen Broderick  
1614 Montague street, N.W.  
Washington, D.C. 20011

Re: What is the proper procedure for the election  
of a person to fill a vacancy in an Advisory  
Neighborhood Commission single Member District?

Dear Ms. Broderick:

This is in reply to your May 8, 1996 letter to the corporation Counsel in which you ask several questions concerning the proper procedures for the election to be conducted on June 4, 1996 by Advisory Neighborhood Commission (ANC) 4-A to fill the vacancy in single-member district 07 in that ANC. You have informed Leo Gorman of this Office by telephone that you are a registered voter residing in single-Member District 4A07 and that you plan to vote in this election.

The election procedure to be followed by ANC 4-A is governed by section 8(d) (6) (E) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-257(d) (6) (E) (1996 Supp.), as added by section 2 of the Advisory Neighborhood Commissions Act of 1975, effective October 26, 1995, D.C. Law 11-66. section 8(d) (6) (E) provides as follows:

(E) If the Board [of Elections and Ethics] transmits a list of qualified candidates containing more than 1 name, the affected area Advisory Neighborhood Commission shall give notice at a public meeting that at the next regularly scheduled meeting there shall be an open vote of the members of the affected single-member district to elect the new commissioner. All registered qualified electors shall display their voter identification card, or alternatively, be listed on the voter registration list (provided by the Board) as a voter in the affected single-member district. The ballots shall be counted by at least two impartial vote counters. The results shall be read aloud by the Chair of the Advisory Neighborhood

Commission, or alternatively, by such commissioners as the Chair shall designate.

One of your questions relates to absentee ballots. The above-quoted language does not authorize voting by absentee ballot. The language requiring each prospective voter to "display" his or her voter identification card" indicates that the Council's intent was that if an SMD 4A07 voter wishes to vote in this election, he or she must appear in person at the ANC 4-A meeting on June 4, 1996. Therefore, I conclude that section 8(d)(6)(E) of the Advisory Neighborhood Commissions Act of 1975, as amended, does not permit voting by absentee ballot.

In another question, you ask: "Who supervises the overall conduct of this election process, to assure secrecy and integrity of the ballot?" Since the statute quoted above does not expressly provide otherwise, the person who supervises the election process is the ANC 4-A officer who is slated to chair the June 4, 1996 public meeting. That person is ANC 4-A's chairperson or, in his absence, the vice-chairperson. See section 14(e) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-263(e) (1992).

Your use of the phrase "secrecy...of the ballot" in this question raises the issue of what the Council meant by its use of the phrase "open vote" in the above-quoted statute. While the written legislative history of Bill 11-113 (the bill that became D.C. Law 11-66) contains a number of references to the phrase "open vote" or some variation thereof, there is no explanation of what anyone thought this phrase was intended to mean. The sentence "The ballots shall be counted by at least two impartial vote counters" indicates that the Council intended that the voters make their choice between or among competing candidates by marking a ballot, *i.e.*, a piece of paper. Absent conclusive evidence to the contrary (and there is none), we are reluctant to conclude that the Council intended the phrase "open vote" to mean that each ballot must contain the name of the voter, and that how that voter voted must be made public upon request.<sup>1</sup> Rather, we construe the phrase "open vote" to mean that the ballot box shall be located in a place where it can be observed by all persons who are present at the meeting, and that the counting of the ballots shall take place in full view of the persons present at the meeting, with each counter announcing aloud the name of the candidate selected as the counter examines

---

By letter dated April 28, 1988 to Valerie Costelloe, this Office opined that, under the law then governing the filling of a vacancy, the commissioners of an ANC could not vote by secret ballot to select a person to fill a single-member-district vacancy. That letter stressed the difference between publicly elected officials exercising power as a publicly elected officials and "the time-honored right of secrecy enjoyed by a private citizen voting in political elections...". Letter, at 3.

each ballot. Otherwise, the chairman of ANC 4-A should take appropriate steps to ensure that how a voter votes remains the private business of that voter.

You ask: "Who will certify voter eligibility at the polling place?" It is the responsibility of the chairman of ANC 4-A to determine who will certify the eligibility of persons to vote in this election. In this regard, it is relevant to note that a voter's voter registration card lists the voter's SMD on the front side, and contains the voter's signature on the back side. This Office has orally advised the chairperson of ANC 4-A that to insure that a person who presents a voter registration card is in fact the person whose name appears on the card, the person should be asked to provide some additional identification, preferably a piece of identification with the voter's photograph on it, such as a D.C. driver's license. A person who presents a voter registration card could, if necessary, be required to provide a sample of his or her signature which could then be compared with the signature on the back side of the voter registration card. The voter registration card bears the date of birth of the voter. Comparing this date of birth with the physical appearance of the person or a date of birth shown on another piece of identification can assist the verification process. Under the above-quoted statutory provision, the prospective voter is not required to display his or her voter registration card in order to be eligible to vote. If the prospective voter can adequately identify himself or herself by presenting some other form of identification, such as a driver's license, and that person is listed on the voter registration list provided to ANC 4-A by the D.C. Board of Elections and Ethics, then that person should ordinarily be permitted to vote. Finally, the voter registration list will be checked for each prospective voter to ensure that no person is permitted to vote unless his or her name is shown on this list.

*Opinion  
Revised  
in  
2/21/12*

You ask: "Are observers, with an 'on the spot' challenge method, allowed?" This is a subject that is not addressed by either the statute or the regulations of the Board of Elections and Ethics. If a person who is present at the meeting has relevant information pertaining to the eligibility of a prospective voter, that person may present that information to the chairman of ANC 4-A for his consideration in making the eligibility determination. In a situation where an issue of eligibility cannot be satisfactorily resolved on the spot, the chairman may permit the person to vote subject to later disqualification. If it turns out that the person's vote was not crucial to the outcome of the election, then the question of the person's qualification to vote would be moot.

Finally, you ask: "Who from the Mayor's office" or from the Legislative branch that has oversight duty, will certify or authenticate the result?" Neither the statute nor any regulation requires that an executive branch or legislative branch official be present at the meeting for the purpose of certifying or authenti-

eating the results of the balloting. In regard to the procedures to be followed after the ballots have been counted and the results have been announced by the chairman of the ANC, sections *B(d)* (6) (F) and (G) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-257(d) (6) (F) and (G) (1996 Supp.), provide as follows:

- (F) After a vacancy has been filled pursuant to this subsection, the affected area Advisory Neighborhood Commission shall transmit to the Board [of Elections and Ethics] a resolution signed by the Chairman and Secretary of the Advisory Neighborhood Commission that states the winner of the Advisory Neighborhood commissioner SMD election and requests that the Board declare the vacancy filled. The resolution shall also be sent to the following:
- (i) The council of the District of Columbia;
  - (ii) The Mayor; and
  - (iii) The person appointed or elected by the Commission.
- (G) The Board shall certify the filling of the vacancy by publication in the District of Columbia Register.

If you have any further questions in this regard, you may contact Leo Gorman of this Office who may be reached by telephone at 727-3400.

Sincerely,



Karen L. Cooper  
Director  
Office of Legal Counsel

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

Betty King  
Director  
Office of the Ombudsman

Ayo Bryant  
Director  
Office of Diversity and  
Special Services

Alice P. Miller, Esquire  
General Counsel  
Board of Elections and Ethics

Joseph H. Hairston  
Chairman  
Advisory Neighborhood Commission 4-A