

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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August 29, 1994

IN REPLY REFER TO:

LCD:RAS:LNG:ae

(RL-94-259)

(Misc 94-39)

The Honorable Harold Brazil
Chairman
Committee on Government operations
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Whether Mr. Vannie Taylor was properly removed
from office as chairman of ANC 4-B

Dear Chairman Brazil:

This is in reply to your August 5, 1994 letter requesting the advice of this Office concerning whether Mr. Vannie Taylor was properly removed from office as the chairman of Advisory Neighborhood Commission (ANC) 4-B.

On July 28, 1994, at a regularly scheduled public meeting, a majority of the current membership of ANC 4-B voted to rescind the election of Vannie Taylor as chairman of ANC 4-B, and thereafter voted to elect Mr. Anthony Muhammad to serve in that position.¹ By letter, dated July 30, 1993, to ANC 1-A (copy enclosed) ("Letter"), this Office rendered advice concerning the removal of ANC officers. There, it was noted that the statutory law governing ANCs does not expressly address the subject of removal of ANC officers, and that, absent provisions to the contrary in an ANC's bylaws, the removal of officers is governed by Robert's Rules of Order. See Letter at page 2, and the last sentence of § 14(e) of the Advisory Neighborhood Commissions Act of 1975 ("act"), D.C. Code § 1-262(e) (1992). ANC 4-B's bylaws do not expressly address the subject of removal of officers. Therefore, Robert's Rules of Order governs in regard to the procedure ANC 4-B is required to follow in order to remove its chairman from office.

There are 10 single-member districts in ANC 4-B. As a result of the resignation of the commissioner representing single-member district 4B03, the number of current commissioners is 9.

On this subject, Robert's Rules of Order states:

Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be deposed from office for cause--that is, misconduct or neglect of duty in office--as follows:

If the bylaws provide that officers shall serve "for years or until their successors are elected," the election of the officer in question can be rescinded and a successor can thereafter be elected for the remainder of the term. The vote required for removing the offender from office in such a case is the same as for any other motion to Rescind....

If, however, the bylaws provide that officers shall serve only a fixed term, such as "for two years" (which is not a recommended wording...), or if they provide that officers shall serve "for years and until their successors are elected," an officer can be deposed from office only by following the procedures for dealing with offenses by members outside a meeting; that is, an investigating committee must be appointed, it must prefer charges, and a formal trial must be held.

Robert's Rules of Order, Newly Revised (1990 ed.), § 60, at page 657; emphasis original.

Article III, section 7 of the bylaws of ANC 4-B is entitled "Term of Office," and provides: "The term of office of all officers elected by the Commission shall expire on the 2nd day of January of each year." In view of the statutory requirement that each commission is required to conduct an election of officers in January of each year (see the first sentence of §14(e) of the act, D.C. Code § 1-262(e) (1992)), this section of ANC 4-B's bylaws, in substance, provides that officers shall serve a fixed term of one year. Accordingly, since ANC 4-B's bylaws do not provide otherwise concerning the removal of officers, ANC 4-B must follow the procedures that are applicable "for dealing with offenses by members outside a meeting; that is, an investigating committee must be appointed, it must prefer charges, and a formal trial must be held." Robert's Rules of Order, supra.² In purporting to remove Mr. Taylor from

² In our July 30, 1993 advice to ANC I-A, we concluded that the motion-to-rescind procedure was the appropriate procedure to be followed by that ANC to remove an officer. There, we noted that ANC 1-A's bylaws provided in pertinent part that "officers are elected to serve for one year or until their successors are elected...". (Letter, page 2; emphasis added.) While the chairman of ANC 1-A represented to this Office that ANC I-A had agreed to

office as chairman of ANC 4-B on July 28, 1994, the commissioners of ANC 4-B did not follow these procedures.

For these reasons, I conclude that the removal of the chairperson of ANC 4-B from office on July 28, 1994, was not in compliance with applicable law.³ Since Mr. Taylor's removal from the office of chairman was improper, he is entitled to reassume that office until such time as an investigating committee prefers charges against him and the ANC holds a formal trial; the person elected to replace Mr. Taylor, namely Commissioner Anthony Muhammad, has no legal authority to continue acting as chairman of ANC 4-B. As we stated in our advice to ANC 1-A (Letter at page 4, note 4), this conclusion does not mean that acts taken by Mr. Muhammad, as chairman of ANC 4-B, subsequent to July 28, 1994, are invalid. Mr. Muhammad had de facto authority to act, and therefore his actions are valid. See 3 McQuillin, Municipal Corporations §§ 12.102 and 12.106 (3rd ed. 1990).

Finally, as stated in the quotation from Robert's Rules of Order, a bylaw providing that officers shall serve only a fixed term of office is "not a recommended wording." While we agree with the view that ANC officers should have the benefit of some due process procedural protections before being removed from office (i.e., notice of the charges and a reasonable opportunity to answer

govern itself by the current ANC Manual rather than by the bylaws it had adopted in 1992, the ANC Manual provides no guidance on this question; it does not provide for a term of office for ANC officers in any of the word formulations found in the above-cited quotation from Robert's Rules of Order. Rather, it merely repeats the statutory language found in the first sentence of § 14(e) of the act, D.C. Code § 1-262(e) (1992). See § 404 of Chapter 4 of the 1993-1995 ANC Manual.

³ Even if the motion-to-rescind procedure were applicable to the removal of an ANC 4-B officer, it does not appear that what occurred at ANC 4-B's July 28, 1994 meeting was in compliance with that procedure. By letter dated June 6, 1994, ANC 4-B Commissioner Alice W. Gilmore requested the advice of this Office concerning a number of alleged acts of misconduct by Mr. Taylor. By letter dated July 12, 1994, this Office responded that some of the allegations, if true, would constitute violations of law or otherwise would be grounds for removal of the chairman from that office. In our July 30, 1993 advice to ANC 1-A, we emphasized that in order to remove an officer for misconduct or neglect of duties, there had to be agreement at a public meeting, Le., a vote by a majority of the commission, that one or more specific charges of misconduct or neglect or duty were true. See Letter at pages 3 and 4. The draft minutes of ANC 4-B's July 28, 1994 meeting do not indicate that any vote on any specific charge or charges against Mr. Taylor preceded the motion and vote to rescind his election as chairman.

the charges prior to removal), as a matter of policy, ANCs should avoid adopting bylaws that result in a requirement for a formal trial in order to remove an officer who has engaged in misconduct or has neglected official duties. Thus, we recommend that the by-laws of all ANCs include a provision that states: "Officers shall serve for one year or until their successors are elected."

Sincerely,


Vanessa Ruiz
Corporation Counsel

Enclosure

cc: All ANC 4-B Commissioners

Adam Dennis
Director
Office of Constituent services

Russell A smith
D.C. Auditor