

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE CORPORATION COUNSEL

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Office of Government Operations  
Legal Counsel Division

August 21, 2001

Marvin Fields  
Commissioner  
ANC6A  
604 12<sup>th</sup> Street, N.E.  
Washington, D.C. 20002

Re: Advisory Neighborhood Commission Special Meeting of July 5, 2001

Dear Commissioner Fields:

This responds to your letter dated July 17, 2001, received by fax on July 23, 2001. You request advice regarding the Advisory Neighborhood Commission (ANC) 6A special meeting held on July 5, 2001 to remove the Treasurer. You state that the Commissioners never received proper notice and that the e-mails received were confusing at best. You ask what is the legally correct procedure for removing an officer and for notifying members of the Commission of a special meeting to remove an officer.

Removal of an officer is governed by section 14(e)(2) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.11(e)(2), as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000 ("ANC Reform Act"), effective June 27, 2000, D.C. Law 13-135, as follows:

- (A) Removal of any officer shall be undertaken at a special Commission meeting.
- (B) A special Commission meeting to remove an officer shall be called if at least one-half of the elected Commissioners request in writing that the Chairperson take such action. After the request is made, the Chairperson shall schedule the meeting to take place within 30 days of receipt of the request.
- (C) The chairperson shall preside over the meeting unless the vote will affect the Chairperson's own position. In that case, the vice-chairperson shall act as the presiding officer.
- (D) Provided a quorum is present at the special Commission meeting called pursuant to subparagraph (B) of this paragraph, the vote of a majority of the Commissioners shall remove the officer from his or her office.

The June 21, 2001 letter you received from the Chairperson indicated that a motion was made at a regular ANC meeting to hold a special meeting to remove you from the position of Treasurer. The motion was passed unanimously by the 10 commissioners present. Despite the unanimous nature of the vote to hold a special meeting, the ANC Reform Act requires that a special meeting to remove an officer be triggered by a written request of at least half of the Commissioners. This Office has previously stated:

The general maxim of statutory construction applicable here is known in the law by the Latin phrase "expressio unius est exclusio alterius," *i.e.*, the mention of one thing implies the exclusion of another. This means that when the Council of the District of Columbia enacts a statute that mandates that a thing be done in a given manner, absent clear evidence to the contrary... it is presumed that the Council intended that the thing shall not be done in any other manner.

*See* the October 12, 2000 letter from Darryl G. Gorman, Senior Deputy Corporation Counsel, to David J. Bardin, Chair, ANC 3F. In light of the clear language of the ANC Reform Act requiring the procedure to remove an officer to begin by a written request, the passage of a motion to schedule a special meeting to remove an officer is not permitted. Therefore, the procedure that was utilized by ANC 6A to remove you from the position of Treasurer was flawed.

As to the notice given to the Commissioners, the requirement of notice to Commissioners is identical to the requirement of public notice. Notice of ANC meetings is governed by section 14(c) of the ANC Reform Act, D.C. Official Code § 1-309.11(c).

Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings must include, but is not limited to, at least 2 of the following:

- (1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;
- (2) Publication in a city or community newspaper;
- (3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and
- (4) In any other manner approved by the Commission.

(Emphasis added.) As to public notice of the special meeting, the Secretary of ANC 6A advises that public notice was done by e-mail to community leaders and posting a notice on the websites of various news organizations on June 28<sup>th</sup>, publication in the Common Denominator on July 2<sup>nd</sup>, and e-mailing to the ANC's group list on June 29<sup>th</sup>. The ANC Reform Act does not provide for

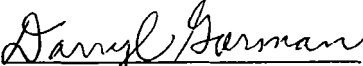
posting on news organization websites as a form of notice. Therefore, in order for posting to qualify as notice under the law, it would have to have been approved by the Commission as a form of notice. There is no indication that ANC 6A ever formally approved posting on websites as an alternative form of notice. Further, the publication in the Common Denominator on July 2<sup>nd</sup> clearly does not satisfy the requirement that notice be given at least 7 days in advance. Likewise, the e-mail to the group list on June 29<sup>th</sup> also does not meet the statutory requirement of 7 days notice of the meeting. The result of the ANC's failure to comply with the statutory requirement of two forms of notice seven days prior to the meeting is that no official action may be taken at the meeting. Therefore, any action taken by the ANC at the July 5, 2001 meeting is invalid.

In this case additional notice was given to Commissioners. You received a certified letter from the Chairperson dated June 21 informing you of the motion for a special meeting and seeking your resignation. This certified letter was not notice of the special meeting because it did not contain any information as to the date, time, and location of the meeting, or the agenda. The Secretary of ANC 6A advises that Commissioners were both telephoned and e-mailed on June 28<sup>th</sup> regarding the specifics of the special meeting on July 5<sup>th</sup>. ANC 6A's by-laws allow the giving of notice of special meetings to Commissioners by telephone at the discretion of the Chair. See ANC 6A By-laws, Article V., Section 4(b). You allege that the e-mails received on the 28<sup>th</sup> were confusing because they conflicted with the June 21<sup>st</sup> letter you had received giving you until the 5<sup>th</sup> to resign before a meeting would be scheduled. I do not find the notice of the meeting to be confusing. The ANC was not legally obligated to offer you the chance to resign. Nor was it legally obligated to wait until after the 5<sup>th</sup> to schedule the meeting, particularly when the ANC believed that the meeting was required to be held no later than the 5<sup>th</sup>. Therefore it appears that two forms of notice of the special meeting were properly given to you as a Commissioner. Unfortunately, the proper notice to the Commissioners in this case does not validate the special meeting because the meeting was improperly called and lacked public notice.

If you have any further questions with regard to this matter, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division at 724-5537.

Sincerely,

ROBERT R. RIGSBY  
Corporation Counsel

  
By: ~~DARRYL G. GORMAN~~  
Senior Deputy Corporation Counsel  
for Government Operations  
Legal Counsel Division

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<sup>1</sup> The June 28<sup>th</sup> e-mail was not part of the public group e-mailing, but was a separate e-mail just to ANC Commissioners.

DGG/abe  
(AL-O1-551)

cc: Gregory J. Ferrell  
Commissioner  
ANC6A  
61819<sup>th</sup> Street, N.E.  
Washington, D.C. 20002

Philip Edwards  
Commissioner  
ANC6A  
719 7<sup>th</sup> Street, N.E.  
Washington, D.C. 20002

Daniel Pernell  
Commissioner  
ANC6A  
1132 4<sup>th</sup> Street, N.E.  
Washington, D.C. 20002