

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

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March 7, 2003

Ms. Beverly W. Goode
Advisory Neighborhood Commission 7C
4651 Nannie Helen Burroughs Ave., N.E.
Washington, D.C. 20019

Re: Election of Officers by Secret Ballot

Dear Ms. Goode:

This responds to your letter dated February 4, 2003. In your letter, you ask for advice from the Office of Corporation Counsel as to whether the election of the chairman of ANC 7C by secret ballot is lawful.

Specifically, you stated in your letter that ANC Commissioner Ronald Newman of ANC 7A was invited by ANC 7C Chairwoman Mary Gaffney to "oversee and be in charge of the election." Commissioner Newman then conducted the election. According to your letter, first, Commissioner Newman reviewed what the role of chairman of an ANC requires. Then he took nominations from the floor and passed out paper to each commissioner so that he or she could vote by secret ballot.

By letters dated April 22, 1991 and January 14, 1994, the Office of Corporation Counsel has maintained that the use of the secret ballot method of voting to elect ANC officers violates the "Sunshine Act," namely section 724 of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Official Code § 1-207.42 (2001), which is made applicable to ANCs by section 14(g) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective July 27, 2000, D.C. Law 13-135, § 3(d), D.C. Official Code § 1-309.11(g) (2001).

The open meetings provision mandates that when an ANC takes an "official action," it must do so at a meeting that is open to the public. The election of officers by an ANC is an official action of the ANC, and therefore, must take place at a public meeting. The

intent is that the public shall have the opportunity to observe not only the discussion on a proposed ANC official action, but also how each member of the ANC votes on that proposed action. Thus, secret ballot voting is inconsistent with the intent of the Sunshine Act.

Assuming the allegations in the letter are correct, the election of the chairman by secret ballot was not legally proper, and ANC 7C should promptly conduct a new election at its regularly scheduled meeting, or sooner at a properly-noticed special public meeting, in compliance with the open meetings provision of the Self-Government Act, D.C. Code § 1-207.42 (2001).

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

Sincerely,

ARABELLA W. TEAL
Interim Corporation Counsel



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

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(AL-03-110)