

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

June 16, 2004

Dorothy Douglas
Commissioner, ANC 7D
4401 Minnesota Ave., NE
Washington, DC 20019

Re: Notification of government actions concerning single member districts; procedure for meetings; accepting gifts

Dear Commissioner Douglas,

This responds to your May 12, 2004 letter wherein you expressed dissatisfaction with the Department of Transportation and other agencies with regard to proper notification of plans and proposed property projects in single member district (SMD) 7D3, as well as with the procedures and actions taken within your ANC. I have addressed your grievances below.

In your letter, you state that District government agencies have failed properly to notify you of plans and projects in your SMD. Notice of such plans is governed by sections 13(b) and (c) of the Advisory 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 June 27, 2000, D.C. Law 13-135, D.C. Official Code §1-309.10 (b) and (c) (collectively the Advisory Neighborhood Commissions Act). Subsection (b) states:

Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single member district affected by said actions, and to each affected Ward Councilmember, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. In cases in which the 30-day written notice requirement is not satisfied, notification of such proposed government action or actions to the Commissioner representing the affected single member district shall be made by mail. The Register shall be

made available, without cost, to each Commission. A central record of all such notices shall be held by the Office of Advisory Neighborhood Commissions.

Notice must be given for decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation, which affect that Commission area. *See* D.C. Official Code § 1-309.10 (a) and (b) (2003 Supp.). Notice must also be given to each affected Commission “before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems.” *See* D.C. Official Code § 1-309.10(c)(1) (2003 Supp.).

Every proposed government decision affecting neighborhood planning and development for which a prior hearing is required by law is sufficiently significant to require written notice to an affected ANC. Kopff v. District of Columbia ABC Bd., 381 A.2d 1372, 1381 (D.C. 1977).

If you have not received thirty (30) days notice of any such government actions affecting your SMD, you would be correct in asserting that you have received improper notice.

It is unclear, however, whether you are alleging that you have not received proper notice of applicable government actions or if the alleged failure of notice instead pertains to ANC meetings at which property projects are being presented. Notice of ANC meetings is governed by D.C. Official Code § 1-309.11(c) (2003 Supp.), which provides:

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.

Any official actions taken at meetings for which proper notice was not given are invalid. *See* Letter to Wanda Stevens-Harris, ANC 6A, January 2, 2003 (attached hereto). You also assert that Commissioner Christine Tolson, the ANC 7D Chairperson, has continually made decisions that affect your SMD, without your knowledge, and that she

withholds information of proposed government actions and plans. First, you provide no details concerning the specific actions and plans to which you claim to have been denied information. Second, it is not Commissioner Tolson's role to advise you of city activities affecting your SMD. As discussed above, notice of proposed actions comes from the District government, while notice of ANC meetings is the responsibility of the ANC Commissioner.

Next, you allege that Commissioner Tolson conducts meetings without a quorum. D.C. Official Code § 1-309.11 (2003 Supp.) governs quorum requirements at ANC meetings, and states that a Commission must have a quorum in order to take official actions. Official actions include adopting such items as the minutes of a previous meeting, a treasurer's report, a quarterly financial report, or written recommendations regarding proposed District government action. *Id.*¹

You next state that Commissioner Sheila Washington, the ANC 7D Secretary, takes inaccurate minutes during meetings. D.C. Official Code § 1-309.11(e)(1) (2003 Supp.) states: "The secretary shall ensure that appropriate minutes of Commission meetings are kept and that appropriate notice of Commission meetings is provided in accordance with subsection (c) of this section." Your supporting documents reveal that Commissioner Washington reads the minutes of each meeting at the subsequent meeting, and that the minutes are then approved by the Commission. It appears that at the time of this approval, your ANC verifies that accurate minutes have been read. You provide no specificity or support that the minutes are inaccurate.

You also state that Commissioner Tolson sends letters of support "that have not been voted on or approved by commissioners." Presumably, you are referring to the letters addressed to Councilmember David Catania and Mr. Paul Quander, Jr., which you included in your supporting documents. Though you allege that Commissioner Tolson misrepresented your views, or those of ANC 7D, in some way, you again fail to provide any specificity. We remind you that whether or not you agree with the ANC's views and ultimate position on a matter is not relevant if other requirements for official action are met (i.e., quorum, notice, etc.).

Next, you state that "votes of elections of office are being held and submitted for people who are not being [sic] present at that time." It is unclear whether you are alleging that elections are being held without a candidate present or that votes by absent Commissioners are being considered in elections for which the vote-caster is not present. In either case, please refer to the local by-laws of your ANC regarding elections, as the Advisory Neighborhood Commissions Act does not address these questions. *See* D.C. Official Code § 1-309.11(d)(1)(C) (2003 Supp.).

Finally, you state that Commissioner Tolson accepts gifts from companies that affect your SMD. D.C. Official Code § 1-1106.01(c) (2003 Supp.) states:

¹ The only proper official action that may be taken at a meeting without a quorum is the adoption of a motion to adjourn. *See* Letter to Dorothy Miller, ANC2A, April 17, 1996 (attached hereto).

No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official action or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as required, except for political contributions publicly reported pursuant to § 1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

To prove a violation, you must establish that Commissioner Tolson accepted a thing of value that created a reasonable inference that her vote was influenced. *See* Letter to Carolyn Johns-Gray, ANC 6C-08, March 27, 1991 (attached hereto). You may also check the local by-laws of your ANC to see if they address this issue.

The Office of the Attorney General takes no position with regard to any of the allegations you set forth in your May 12, 2004 letter, which have not been described with any specificity. Under these circumstances, our role is to advise you on what we believe to be the relevant law on the issues that you present.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

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RJS/dps

Attachments (3)

(AL-04-305)