

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
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WASHINGTON, D. C. 20001



IN REPLY REFER TO:
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(AL-97-360)

July 28, 1997

R. Calvin Lockridge
Commissioner
Advisory Neighborhood Commission 8-C
121 Raleigh Street, S.E.
Washington, D.C. 20032

Re: Advisory Neighborhood Commission quorum requirements

Dear Commissioner Lockridge:

This is in reply to your June 19, 1997 letter in which you ask that I review the correctness of the advice rendered by this Office in a January 16, 1997 letter addressed to Barbara Kemp, a commissioner of Advisory Neighborhood Commission ("ANC") a-c, concerning the quorum requirements applicable to ANCs. In connection with the requested review, you have submitted a copy of ANC a-c's bylaws and have asked me to review the legal sufficiency of certain provisions of those bylaws.

In this Office's January 16, 1997 letter to Barbara Kemp, the following quorum advice was given:

"... [I]n the context of an ANC with eight single-member districts [such as ANC a-c), for all purposes except one, the... quorum number is five, *i.e.*, a majority of the total number of positions in the ANC, whether actually filled by incumbents or not. The one exception is the adoption of written recommendations on a proposed District government action under section 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992). For this purpose, the quorum requirement is satisfied if "a majority of the elected representatives of the Commission is present." *Id.* (Emphasis added.)¹

¹ This Office has interpreted the sentence "No official action may be taken by a Commission unless a majority of the elected representatives of the Commission is present" in section 13(d) of the Advisory Neighborhood Commissions Act of 1975 to apply only to the

This advice was based on the common law quorum rule as stated in 4 McQuillin, Municipal corporations ("McQuillin") §§ 13.27 and 13.27.15 (3rd ed. 1992), copies of which are enclosed. At § 13.27, McQuillin states that when the body consists of a definite number of members, the common law quorum rule is that to have a quorum at a meeting of the body, "there must be [present] a major part of the whole number of members composing it, and not merely a major part of its existing members." And at § 13.27.15, McQuillin states that "[i]n determining the legal quorum of a municipal governing body, ordinarily the whole membership of the body is to be counted. Where vacancies occur, the whole number entitled to membership must be counted and not merely the remaining members." Thus, with the one exception noted above, since an ANC is a body with a definite number of single member districts, for an ANC to establish a quorum at a public meeting there must be present at such meeting a number of commissioners that is at least equal to a majority of the total number of commissioner positions in that ANC. Because the total number of single-member districts in ANC 8-C is eight, the minimum quorum number for ANC 8-C is five. Once a quorum is established, the general rule is that "the vote of a majority of those present (there being a quorum) is all that is requisite for...the doing of any act which the body has power to do." Id.

You state in your letter that, while you agree with this common law rule, you believe that an ANC has a legal right to establish a different quorum rule in its bylaws. In this regard, the above-cited section of McQuillin states the following:

•••Where the law is silent on the sUbject[,] the common law rule will prevail and cannot be changed by the council, as by fixing the quorum necessary for the transaction of its business at two-thirds of the members elected. Neither can it be changed by a municipal board by rule. [Footnotes omitted.]

In this same regard, the following is stated in Traino v. McCoy, 455 A.2d 602, 607 (N.J. Super.L. 1982):

By common law, a majority of a board•••constitutes a quorum. This rule can be changed only by general law or charter, not by internal rule, even when the body in question is given general rule making powers.

Thus, since a bylaw is nothing more than an "internal rule," an ANC does not have a legal authority to alter the common law quorum rule by adopting a quorum provision in its bylaws that is different from the common law quorum rule. The Council of the

kind of ANC official action authorized in that sUbsection. See enclosed copy of the June 15, 1995 letter of advice to Sara Maddux, then chairperson of ANC 2-A. I agree with that interpretation.

District of Columbia may, of course, enact a statute that changes the common law quorum rule as it applies to ANCs.

In sum, I conclude that the advice that was rendered by this Office in the January 16, 1997 letter to ANC 8-C Commissioner Barbara Kemp in regard to ANC quorum requirements is correct.

with regard to ANC 8-C's bylaws, section IV of Article IV of the bylaws provides: "A quorum for the election (of officers] shall be a majority of the Commissioners." This is an improper bylaw to the extent that it would permit an election of officers to take place at an ANC 8-C public meeting at which fewer than five commissioners of ANC 8-C are present. section Veal of Article V of ANC 8-C's bylaws provides:

No official action may be taken by the Commission unless the vote is carried by a majority of the Commissioners present. A quorum consists of a majority of the Commissioners. Once established the quorum remains, regardless of the subsequent departure of one or more members.

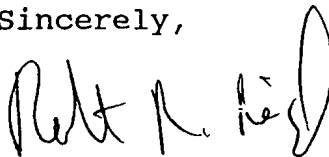
The first sentence of this section is legally unobjectionable. The second sentence of this section is legally objectionable to the extent that it would permit the establishment of a quorum at a public meeting at which fewer than five of ANC 8-C's commissioners are present. The third sentence of this section is also legally objectionable because the fundamental corollary rule of the quorum rule relates to the necessity for the continuing presence at the meeting of that minimum number of members of a body needed to constitute a quorum in order for the body to continue properly to transact official business. stated otherwise, if, during the course of a meeting a quorum is lost by the departure of a member whose presence is necessary to satisfy the quorum requirement, the body cannot thereafter legally transact official business unless and until such time as a quorum is reestablished. If a quorum cannot be reestablished, the only "official action" the body can properly take is to adjourn the meeting. See enclosed copy of the August 2, 1995 letter of advice to Commissioner Maria Tyler of ANC 2-A. Carried to its logical conclusion, under the third sentence of section Veal of Article V of ANC 8-C's bylaws, every commissioner of ANC 8-C except one could walk out of a public meeting, and the lone remaining commissioner could, by himself or herself, continue to take official action. Such a result is inconsistent with the common law quorum requirement. As explained above, an ANC has no authority to establish in its bylaws a quorum requirement different from the quorum requirement prescribed by law, whether such quorum requirement be based upon a statutory provision or upon the common law.

The other provisions in the copy of ANC 8-C's bylaws that you asked me to review appear to be legally unobjectionable, so long as

they are interpreted in a manner that is consistent with the quorum requirement applicable to ANC 8-C as explained herein.

If you have any questions concerning this advice, you may contact Mr. Wayne C. Witkowski, the Director of the Corporation Counsel's Office of Legal Counsel, at 727-3400.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Rigsby". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert R. Rigsby
Acting Principal Deputy
Corporation Counsel

Enclosures

cc: The Honorable Kathleen Patterson
Chairperson
Committee on Government Operations
Council of the District of Columbia

William Vazquez
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and Special Services

Anthony Cooper
D.C. Auditor

Barbara Kemp
Commissioner, ANC 8-C