

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

April 29, 2022

Schannette Grant
Interim Executive Director
Office of Advisory Neighborhood Commissions
1350 Pennsylvania Ave., N.W., Ste. 11
Washington, D.C. 20004

Re: Vacancy Election in Double-Member ANC

Director Grant:

You asked us about a novel situation. In ANC 2D, a two-member Advisory Neighborhood Commission (“ANC”), one of the seats has become vacant more than six months before an election and multiple eligible neighborhood residents seek the position. You ask whether that position can lawfully be filled. It can and must be filled – and since the Board of Elections certified the vacancy on April 22, 2022,¹ it must be filled within 90 days of that date.

To answer your question, we apply normal rules of statutory interpretation. We read the governing statute – the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)² – “according to its terms,” *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020), giving “effect, if possible, to every clause and word.” *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 111 (2012). We interpret undefined language in the Act according to its ordinary meaning. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021); *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1140 (2018). And we take account of the broader statutory context, since the “words of a statute must be read in their context and with a view to their place in the statutory scheme.” *Davis v. Mich. Dep’t of the Treasury*, 489 U.S. 803, 809 (1989); *In Re Edmonds*, 96 A.3d 683, 687 (D.C. 2014).

Section 8(d) of the ANC Act requires that this vacancy be filled. It says that, “[w]henver a vacancy exists in the office of a Commissioner” more than six months before a general election, that vacancy “shall be filled.”³ It also describes how that takes place. When the Board declares

¹ See 69 DCR 3902 (Apr. 22, 2022) (certifying the vacancy).

² Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.06(d)).

³ D.C. Official Code § 1-309.06(d)(1) (emphasis added); *see id.* § 1-309.06(d)(3) (“Within 90 days of the date that the Board declares a vacancy, the members of the Advisory Neighborhood Commission where the vacancy exists shall fill the vacancy pursuant to paragraph (6) of this subsection”) (emphasis added); *Anglers Conservation*

an ANC seat vacant, as it has here, the ANC has 90 days to fill the vacancy.⁴ The Board makes petitions available to eligible voters in the relevant single-member district, and any eligible voter interested in filling the position submits a petition signed by at least 25 other voters.⁵ Once the Board reviews the petitions, it sends the ANC a list of qualifying candidates.⁶

If that list contains just one name, the contest is over; the Board certifies that candidate as filling the vacancy.⁷ But if that list has more than one name on it, the ANC “shall give notice at a public meeting that at the next regularly scheduled or special meeting there shall be an open vote of the qualified registered electors of the affected single-member district to elect a Commissioner.”⁸ Accordingly, if the Board of Elections sends ANC 2D a list of more than one qualified candidate, ANC 2D’s sole sitting Commissioner must, in a public ANC meeting, perform the ministerial duty of announcing that, as the ANC Act requires, the vacancy will be filled at the meeting following. The Commissioner must then adjourn the meeting, since, as long as one of the ANC’s two seats is vacant, no quorum can be declared and no official action taken.⁹

Next comes the meeting with the open vote. In that meeting, registered qualified voters vote, and the results are read aloud by “the Chairperson of the Advisory Neighborhood Commission, or alternatively, by such Commissioners as the Chairperson shall designate.”¹⁰ If the office of Chairperson is vacant, the results are read by the “Commissioner presiding over the meeting.”¹¹ By necessity, ANC 2D’s lone Commissioner must be the one to preside over the meeting.

The ANC’s last step, “[a]fter [the] vacancy has been filled,” is to send the Board of Elections a resolution, “signed by 2 officers of the Advisory Neighborhood Commission,” that identifies the election winner and asks the Board to declare the vacancy filled.¹² At first glance, this step may appear to be an insurmountable one, since, however many offices a single Commissioner may hold, that Commissioner is still just one person and therefore is just one “officer” in the ordinary sense of that word.¹³ But the answer turns out to be straightforward: have the winner sworn in

Network v. Pritzker, 809 F.3d 664, 671 (D.C. 2016) (“Ordinarily, legislation using ‘shall’ indicates a mandatory duty”).

⁴ See D.C. Official Code § 1-309.06(d)(3).

⁵ *Id.* § 1-309.06(d)(6)(C).

⁶ *Id.*

⁷ *Id.* § 1-309.06(d)(6)(D).

⁸ *Id.* § 1-309.06(d)(6)(E).

⁹ See *id.* § 1-309.11(b)(1) (The ANC may not “declare a quorum and take official action” unless “a majority of the single-member districts have Commissioners on the Commission”); see, e.g., Letter to Comm’r Jordan, Feb. 4, 2003, at 2 (quoting earlier advice). That letter, the 1996 letter it references, and the 1996 letter we cite later, are all available from our Office’s online ANC letter collection (<https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs>) (last visited Apr. 29, 2022).

¹⁰ D.C. Official Code § 1-309.06(d)(6)(E).

¹¹ *Id.*

¹² *Id.* § 1-309.06(d)(6)(F).

¹³ See *Officer*, Black’s Law Dictionary (An “officer” is “someone who holds an office of trust, authority, or command,” and in public affairs, refers specifically to “a person holding public office”).

once the election results are announced.¹⁴ Once the winner is sworn in, he or she is a full Commissioner, with the right to vote in ANC meetings and assume the role of a second officer through means consistent with the ANC’s bylaws.

This is the same solution we offered in 1996 to an ANC that faced a similar dilemma. There, the question was whether a 6-member ANC could muster a majority to send a winner-declaring resolution to the Board.¹⁵ When the election took place, 4 of those 6 seats were filled.¹⁶ But the day after the election, a Commissioner resigned, leaving the ANC with 3 Commissioners and thus unable to reach a quorum.¹⁷ We observed, however, that the ANC Act did not prevent (as it does not today) the election winner from being sworn in “at any time after the casting of the ballots and the announcement of the results of the election.”¹⁸ And we noted that swearing someone in does not require a quorum or even a public ANC meeting.¹⁹ Once the new Commissioner is sworn in, we said, the ANC could again reach a quorum to conduct meetings and transact official business, including asking the Board to declare the vacancy filled.²⁰ ANC 2D may – indeed, must – do the same.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: Joshua A. Turner
JOSHUA A. TURNER
Assistant Attorney General
Legal Counsel Division

(AL-22-259)

¹⁴ See D.C. Official Code § 1-501 (describing the oath or affirmation required of “[a]ll civil officers in the District”). The text of the ANC Act points toward this option since it notes that notice to the Board of Elections takes place “[a]fter a vacancy has been filled.” *Id.* § 1-309.06(d)(6)(F) (emphasis added).

¹⁵ See Letter to Comm’r Fleming, July 29, 1996.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.*