

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

January 17, 2006

Dorothy Douglas
Chairperson, ANC 7D
4401 Minnesota Ave., NE
Washington, D.C. 20019

Re: Permissibility of Absentee Ballots by ANC Commissioners and Quorum Requirements

Dear Commissioner Douglas,

This responds to your January 12, 2006 letter in which you request an expedited legal interpretation concerning the permissibility of absentee ballots by ANC Commissioners and the impact of such absentee ballots on ANC meeting quorum requirements. Specifically, you ask whether absentee ballots may be counted toward the quorum requirement necessary for an ANC to take official action. The answer is no.

Initially posed as a telephone inquiry, you were referred to a previous letter issued by this Office on September 16, 1998, on this very subject. Letter to Michael Carter, ANC 3F, September 16, 1998 (1998 Letter). There, a Commissioner who was not able to attend a regular ANC meeting wished to vote "by proxy" on a matter of interest before the ANC. In concluding that voting "*in absentia*" was permissible, this Office distinguished between a vote *in absentia* on a particular issue and a general proxy, which we determined was not permissible. We also noted that the ability of a Commissioner to vote *in absentia* must be authorized by the ANC's by-laws. Finally, we noted that an absentee vote could not be counted as a Commissioner who is present at the meeting for purposes of a quorum.

In your letter you seek clarification of our previous interpretation in light of your ANC's (7D) by-laws, which you advise expressly permits the use of absentee ballots. We reaffirm our earlier interpretation.

Although an absentee ballot provision in an ANC's by-laws is a prerequisite for permitting absentee voting, it is not the only consideration. We expressly stated, for instance, that an absentee vote could not be considered for purposes of meeting the statutory quorum requirement for ANC meetings. That requirement, found at section 14(b)(1) 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 §1-309.11 (b)(1) (2005 Supp.) (collectively, the “ANC Act”), states that a Commission may declare a quorum and take official action only if a majority of single-member district Commissioners of the Commission is present. Though an ANC is permitted to adopt by-laws for its internal structure and operation (including voting procedures), this provision is self-limiting insofar as it requires consistency with the ANC Act’s other provisions. D.C. Official Code § 1-309.11 (d)(2). This would include the requirement that Commissioners be “present” at meetings.

The source of your confusion on this issue is unclear. You point out in your letter the following statement from the 1998 Letter and ask for its meaning: “A vote in absentia has the same effect as if the commissioner had voted in person, except that it shall not affect the declaration of a quorum.” In our view, this statement is self-explanatory and consistent with the statute. It completes a paragraph in which we suggested possible wording for an ANC model by-law that would permit absentee voting by ANC members, but still remain within the confines of the statutory requirement that a quorum be made up of members in attendance. The same is true with the other suggested by-law language you query, in which we stated: “The *in absentia* vote is effective when so received . . .” Neither of these two statements are meant to, nor could they, be read to supersede the quorum requirements of the statute.

Finally, we reaffirm our earlier distinction between a proxy and an absentee vote. Lest there be any misunderstanding, an impermissible proxy vote is one which would essentially give a Commissioner’s right to vote on an ANC matter to another individual, possibly to vote in that individual’s discretion. Such a grant would be inconsistent with the notion that an elected official’s office is nontransferable. *See e.g.*, § 45 Roberts Rules of Order. A permissible absentee ballot, on the other hand, would confer no such authority, but would instead permit an absent Commissioner’s written vote to be submitted and counted without having to appear in person, so long as other voting procedures (such as the quorum requirement) are met. If there is no quorum, for instance, there is no meeting and no vote is taken or recorded.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General

_____/s/_____

RJS/dps
(AL-06-020)