

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

October 25, 2022

Alan Kensek
Commissioner, ANC 1B05
2101 16th Street, N.W.
Washington, D.C. 20009

Re: Censure Special Committee and Appeals

Commissioner Kensek:

When an Advisory Neighborhood Commission (“ANC”) considers censuring a commissioner for conduct that did not just take place in an ANC meeting, the ANC must “take steps to assure itself that the allegations in question are true.”¹ You previously asked whether an ANC may assemble a fact-finding task force that consists only of commissioners. We explained that it could, as long as other requirements are followed. You have now asked us two follow-up questions:

(1) May an ANC censure a commissioner for conduct that would, if proven, fall within an administrative agency’s jurisdiction?

Generally yes, as long as the conduct also violates standards the ANC has duly adopted.

As past letters from the Office of the Attorney General have explained, an ANC’s power to censure commissioners flows from the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”).² Under the ANC Act, ANCs operate according to Robert’s Rules of Order to the extent “not otherwise provided.”³ As our past letters have explained, this means that an ANC has broad authority to censure commissioners as long as it follows the procedures in Robert’s Rules and any other requirements of applicable law. Most of our past guidance has been about this process. We have explained, for example, that, although any censure process must abide by the open-meetings requirements in the ANC Act,⁴ it must otherwise operate confidentially in keeping with Robert’s

¹ Letter to Comm’r Muhammad, Sept. 16, 2019, at 2. This letter and others we cite are available from <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (last visited Oct. 25, 2022).

² Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

³ D.C. Official Code § 1-309.11(e)(3).

⁴ *See* Letter to Comm’r Patel, Aug. 31, 2021 (discussing D.C. Official Code §§ 1-207.38 and 1-309.11(g)).

Rules, since allegations underlying a censure bear directly on a commissioner's reputation,⁵ and must otherwise be fair to the commission facing censure.⁶ We generally have not confronted the question of what conduct can form the basis of an ANC censure.

In our view, Robert's Rules permits an ANC to censure a commissioner for conduct that is properly prohibited by an ANC even if that conduct also violates a statute or regulation enforced by an administrative agency, but an ANC should not seek to censure a commissioner specifically for a violation of that statute or regulation.

Under Robert's Rules, censure is a form of discipline for a violation of conduct requirements that the ANC has properly established.⁷ The lawful scope of these requirements is limited. As we recently explained, an ANC can set requirements for commissioner conduct in meetings, and for how commissioners use ANC property, but it cannot go further than that,⁸ since ANCs are not regulatory bodies and commissioners are not employees subject to the ANC's general direction and control.⁹ But if a commissioner is alleged to have violated a standard of conduct that the ANC has properly adopted, the ANC may seek to censure the commissioner for that violation even if the conduct at issue also falls under the purview of a regulatory agency. Nothing in Robert's Rules, the ANC Act, or any other law prohibits this.

At the same time, that situation should be handled with great care, in a way that is fair to the commissioner and respects the jurisdiction of the relevant agency and the integrity of its proceedings. For example, we would advise against seeking to censure a commissioner specifically for an alleged violation of law that an administrative agency enforces, since such violations are properly assessed by the enforcing agency, not by the ANC. Moreover, if an administrative agency has formally and publicly reached factual determinations relevant to the censure allegations, the ANC should acknowledge those determinations and take them carefully into account.

(2) May a commissioner appeal a censure decision?

A commissioner facing potential censure may raise objections to censure proceedings, but those objections are subject to internal ANC procedures. As we explained in a 2017 letter, objections to censure proceedings must be raised through a point of order in the context of an ANC meeting.¹⁰ The appropriate timing for that point of order depends on the nature of the violation. Some

⁵ See Robert's Rules of Order Newly Revised ("Robert's Rules") § 61 (12th ed. 2020); Letter to Commissioner Delle Donne, Nov. 29, 2017, at 2.

⁶ See Letter to Comm'r Kensek, Oct. 18, 2022, at 2.

⁷ See Robert's Rules §§ 61:1 and 61:2.

⁸ Letter to Comm'r Campbell, May 17, 2022, at 2.

⁹ *Id.* at 3. An ANC likewise cannot punish a commissioner for expression that is protected by the First Amendment. *Id.* at 4. Nor may it prohibit conduct by means other than bylaws that either adopt or reference standards of conduct. As we explained in a 2021 letter, "anything that actually governs the operations of an ANC is a bylaw and must be adopted and disseminated to the public as one." Letter to Comm'r Goodman, Aug. 5, 2021, at 1.

¹⁰ See Letter to Comm'r Delle Donne, Nov. 29, 2017, at 3 and n.17.

violations may be raised immediately, whereas violations of ANC bylaws or District law may be raised at any time.¹¹

Please let us know if you have further questions on this matter.

Sincerely,

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(AL-22-704 B)

¹¹ *See id.*