

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



**ATTORNEY GENERAL
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Legal Counsel Division

May 25, 2023

Jim Malec
Chairperson, ANC 2A
2301 N St., N.W.
Washington, D.C. 20037

Re: Effect of an ANC Chairperson’s Resignation

Commissioner Malec:

You asked whether a Vice-Chairperson of an Advisory Neighborhood Commission (“ANC”) automatically becomes the Chairperson if the current Chairperson resigns. There has been some confusion over this question since, under Robert’s Rules of Order, if the president of an association (the rough equivalent of an ANC Chairperson) resigns, the vice president of the association becomes the president.¹ But Robert’s Rules of Order apply to ANC operations only “[w]hen not otherwise provided,”² and the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)³ provides otherwise. Section 14(e)(1A) of the ANC Act (D.C. Official Code § 1-309.11(e)(1A)) makes clear what the Vice-Chairperson does when a Chairperson resigns: the Vice-Chairperson “fulfill[s] the obligations of the Chairperson” until the ANC selects a new Chairperson.

Section 14(e)(1A) (which we will call “paragraph (1A)” for the remainder of this letter) establishes the duties of the Chairperson and Vice-Chairperson (as well as the Secretary and Treasurer). The Chairperson “shall serve as convener of the Commission and shall chair the Commission meetings.”⁴ The Vice-Chairperson, in turn, “shall fulfill the obligations of the Chairperson upon the absence, death, incapacitation, or resignation of the Chairperson.”⁵ This language traces back to 1975, when section 2 of the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975⁶ added a new section 14(e) to the ANC Act. This new section 14(e) provided that an ANC Chairperson “shall serve as the convener of the Commission and shall chair the Commission meetings” and that the Vice-Chairperson “shall fulfill the obligations of the

¹ Robert’s Rules of Order Newly Revised 47:28 (12th ed. 2020).

² D.C. Official Code § 1-309.11(e)(3).

³ Effective Oct. 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.*).

⁴ D.C. Official Code § 1-309.11(e)(1A)(A).

⁵ *Id.* § 1-309.11(e)(1A)(B).

⁶ Effective Mar. 26, 1976 (D.C. Law 1-58; 22 DCR 5460).

chairperson in his absence.”⁷ This original language did not explicitly say what happens when a Chairperson not only is absent from a single meeting (or multiple) but resigns outright.

That changed when the Council adopted the Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 (“Omnibus Act”).⁸ The Omnibus Act broke up section 14(e), moving the Chairperson and Vice-Chairperson language to its current home in paragraph (1A).⁹ It kept the original description of the Chairperson’s duties, and it provided that the Vice-Chairperson “shall fulfill the obligations of the Chairperson upon the absence, death, incapacitation, or resignation of the Chairperson.” It thus made clear that what is true in the Chairperson’s “absence” is likewise true if the Chairperson resigns: the Vice-Chairperson’s role is to fulfill the Chairperson’s obligations.¹⁰

Fulfilling the obligations of a Chairperson does not mean becoming the Chairperson. When a Vice-Chairperson “fulfill[s] the obligations” of an absent Chairperson to convene and chair an ANC meeting, the Vice-Chairperson does not become the Chairperson. What is true in the Chairperson’s absence is likewise true if the Chairperson resigns. The Vice-Chairperson assumes the responsibilities of the resigned Chairperson but does not assume that office. This also makes it easier for the ANC to decide how it wishes to address the vacancy. An ANC can elect the Vice-Chairperson as its new Chairperson, or, if it wishes to select someone else as Chairperson, it can do so without needing to first remove its elected Vice-Chairperson from that position.

This distinction between fulfilling the obligations of an office and ascending to that office is significant enough that it once prompted a constitutional amendment. Originally, the Constitution required that in the case of the President’s removal from office, “or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said office, the Same shall devolve on the Vice President.”¹¹ In 1841, “President William Henry Harrison died after only a month in office,” and the question arose whether Vice President John Tyler was “merely the vice president acting as president,” or whether he “was in law and in fact the president of the United States”¹² – a question that hinged on whether what “devolve[d] on the Vice President” (“the Same”) was just the President’s “powers and duties” or whether it was the “office” itself.¹³ The Twenty-Fifth Amendment resolved this ambiguity. The Amendment states that, if the President is removed from office, dies, or resigns, “the Vice President shall become President,” whereas, if the President was merely *unable* to serve, the President’s “powers and duties shall be discharged by the Vice President as acting President.”¹⁴

⁷ According to the committee report, this provision “describe[d] the officers to be required” and made clear that “[m]eetings will be convened by the Chairperson or the Vice-Chairperson in his absence.” Report of the Special Comm. on Advisory Neighborhood Comm’ns on Bill 1-193, the Duties and Responsibilities of the Advisory Neighborhood Commissions Act of 1975, Nov. 19, 1975, at 9.

⁸ Effective Apr. 7, 2017 (D.C. Law 21-269; 64 DCR 2162).

⁹ See Omnibus Act § 2(f)(5)(B).

¹⁰ See *FCC v. AT&T, Inc.*, 562 U.S. 397, 408 (2011) (“identical words and phrases within the same statute should normally be given the same meaning”).

¹¹ U.S. Const. art. II, sec. 1.

¹² Akhil Reed Amar, *America’s Constitution: A Biography* 448 (Random House Trade Paperbacks 2005).

¹³ See Akhil Reed Amar, *Applications and Implications of the Twenty-Fifth Amendment*, 47 *Hous. L. Rev.* 1, 18 (2010).

¹⁴ U.S. Const. amend. XXV, sec. 1 and 3; see *America’s Constitution*, *supra*, at 449.

Just as the Vice President assumes the “powers and duties” of a President unable to serve, but does not actually become the President, so too an ANC Vice-Chairperson “fulfill[s] the obligations” of a resigned Chairperson but does not thereby ascend to the office of Chairperson.

Sincerely,

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