

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

September 16, 1998

Prepared by:LCD:ABE
(AL-98-392)

Commissioner Michael Carter
ANC 3F

By Fax: 686-7237

Re: Ability of commissioners to vote by proxy.

Dear Mr. Carter:

This letter responds to your inquiry by telephone on September 14, 1998, as to whether it is permissible for commissioners to vote on matters before the ANC by "proxy", without being present at the meeting. You stated that ANC 3F has 7 seats, one of which is vacant. Usually one commissioner is absent at each meeting. The issue arose because one of your commissioners has been interested in a particular project/issue but is unable to attend the meeting on the date when the decision is scheduled to be made in regards to that issue. The commissioner expressed a desire to vote "by proxy" because he/she will not be able to be present, but wishes to vote in favor of the matter. You inquired of Brian Flowers, Codification Counsel of the General Counsel's office, as to whether such a "proxy" vote was permissible. Mr. Flowers indicated that it would be permissible if the by-laws of the ANC allowed it.

In my research I have determined that the issue you present is not actually one of "proxy" voting. "A proxy is a power of attorney given by one person to another to vote in his stead." §44 Robert's Rules of Order. Your situation does not appear to fit into that definition. The commissioner does not seek to allow someone else to vote for him; in reality what your commissioner seeks to do is to vote in absentia. The only statutory authority in regards to voting by commissioners is found in D.C. Code §1-262(d), which requires each ANC to establish by-laws on voting procedures. The statute further states that "[w]here not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order". In this case the statute neither prohibits nor permits voting in absentia. In Dupont Circle Citizens Association v. DC Board of Zoning Adjustment, 364 A.2d 610 (D.C. Ct. of Appeals 1976) the court permitted voting in absentia (they called it proxy voting) by a member of the Board of

Zoning Adjustment because 1) there was no prohibition against it in the statute; 2) a quorum of members was present at the meeting; and 3) the Board had previously recognized the validity of in absentia votes. §44 of Robert's Rules of Order also permits in absentia voting, if it is provided for in the by-laws.

"It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a legal meeting. Exceptions to this rule must be expressly stated in the bylaws."

However, §44 states that proxy voting should not be allowed or required in "deliberative assemblies" because "proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and non-transferable."

In light of the common law and Robert's Rules of Order, I conclude that ANC 3F may not permit commissioners to vote by proxy but may permit commissioners to vote in absentia if the by-laws permit it. However, you should be aware that a commissioner voting in absentia will not be counted as a commissioner who is present at the meeting for purposes of a quorum under D.C. Code §1-262(b). An amendment to the by-laws permitting voting by commissioners in absentia must be approved in the same manner as an official ANC action. An amendment to the by-laws should generally state that:

A commissioner may vote in person or in absentia at any meeting of an ANC. A commissioner voting in absentia shall submit a vote in writing, executed by the commissioner, to the secretary or other officer of the ANC authorized to tabulate votes, before or at the time of the meeting wherein the vote is held. The in absentia vote is effective when so received by the tabulating official of the ANC. 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.

I hope that the above information answers your questions with regards to this issue. If you have any further questions, please do not hesitate to call me at 727-3400.

Sincerely,



Annette B. Elseth
Assistant Corporation Counsel
Legal Counsel Division