

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:

November 10, 1998

Commissioner Gregory J. Ferrell
ANC 6A
618 19th Street, NE
Washington, DC 20002

Prepared by:LCD:ABE
(AL-98-465)

Commissioner Daniel Pernell
ANC 6A
1142 4th Street, NE
Washington, DC 20002

Commissioner Marvin Fields
ANC 6A
604 12th Street, NE
Washington, DC 20002

Commissioner Veronica Raglin
ANC 6A
408 21st Street, NE
Washington, DC 20002

Re: Use of Phone Polls to Conduct Official ANC business

Dear Commissioners:

This letter responds to your October 27th inquiry as to whether it is permissible for commissioners to vote on matters before ANC 6A by telephone poll, without being present at a meeting. The issue arose because of your receipt of a letter from a fellow commissioner which reads in pertinent part as follows:

"Partly as a result of our having failed to achieve a quorum at the scheduled June, July, September, and two October monthly meetings, the Executive Committee requests that you respond to a telephone vote on the seven items listed below, to give us time to focus on other matters of substance at the

November 7th meeting. Please feel free to discuss these issues with me or your fellow Commissioners before you vote (or abstain). But we must receive your votes by Monday November 2! To cast your vote call ...and leave a message with your vote on each item if I am not in. If you prefer to cast a written set of votes, feel free to do so, including your name, and deliver or mail to me...."

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". The statute neither prohibits nor permits voting *in absentia*, i.e. voting other than by being present at a meeting. §44 of Robert's Rules of Order 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."

Therefore, ANC 6A may not permit commissioners to vote *in absentia*, by telephone, written vote or otherwise, unless such votes are specifically permitted in the by-laws. Furthermore, a commissioner voting *in absentia* is not counted as a commissioner who is present at the meeting for purposes of establishing a quorum under D.C. Code §1-262(b). Therefore, even if the by-laws permit *in absentia* voting, such procedure may only be used in conjunction with a meeting at which there is a quorum based on the number of commissioners who are physically present.

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