

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

December 17, 2004

Mark P. Ryan, D.D.S.  
1330 New Hampshire Avenue, N.W.  
Unit B-3  
Washington, D.C. 20036

Re: Whether an Adopted Motion Containing Non-Binding Contingencies Lapses When a New Commission Takes Office

Dear Commissioner Ryan:

We have completed our review of your request for legal guidance, received by this Office on November 26, 2004. You ask whether a motion, duly approved by a Commission, authorizing the Commission to seek a voluntary agreement with a neighborhood business constitutes unfinished business and lapses when a new commission takes Office and no agreement has been finalized. For the reasons that follow, we conclude that this does not constitute unfinished business and therefore the motion does not lapse.

You state that a motion to authorize the ANC's ABC committee to pursue a voluntary agreement with the Au Pied Bistro restaurant in Georgetown, was passed on June 30, 2004. That motion, as contained in the minutes of that meeting, provides:

ABC Matters

Au Pied Bistro: Au Pied Bistro is a new restaurant opening at 2815 M Street. This represents a substantial Change in the license. Commissioner Starrels moved (Lever second) for the following which passed by a vote of 5-1 (Ryan dissenting):

ANC 2E is protesting the license of Au Pied Bistro as it infringes on the peace, order and quiet of the immediate neighborhood. We have every intention of working out a voluntary agreement with the establishment at which time we will be in position to drop the protest.

Minutes for the Public Meeting of Advisory Neighborhood Commission ANC2E, June 29, 2004 (attached hereto). You advise that, to date, no voluntary agreement has been obtained and the ANC will adjourn for its current two year term on November 30, 2004 – the date of its last meeting. Your contention is that the present chair of the ANC’s ABC Committee has no power to negotiate an agreement after November 30, 2004, and that the incoming ANC may take up the matter as a new item, if at all, when the new term begins in January 2005. This conclusion is predicated on your belief that under applicable procedural law, the motion constitutes “unfinished business” and therefore “falls to the floor” at the end of the ANC term. We disagree.

The term “unfinished business” comes from Robert’s Rules of Order (Roberts Rules), Newly Revised (10<sup>th</sup> Ed.), which you state is controlling to this analysis. You are correct that Robert’s Rules apply in that both the ANC Act<sup>1</sup> and ANC 2E’s own Bylaws require its application where the statute and Bylaws are otherwise silent. Here, neither speak to this particular issue and so Robert’s Rules apply.

Robert’s Rules define unfinished business narrowly as “questions that have come over from the previous meeting . . . as a result of that meeting’s having adjourned without completing its order of business and without scheduling an adjourned meeting to complete it.” *Robert’s Rules* at 346. Examples include questions that were pending when the previous meeting adjourned and questions that were due to come up at a previous meeting but did not. *Id.* at 347.

Here, there is no pending question before the ANC that might constitute unfinished business, let alone one that has been put-off to another meeting. Instead, there is a motion, duly passed, establishing that the ANC “is protesting the license of Au Pied Bistro.” It notes an intention to pursue a “voluntary agreement” with the restaurant, “after which time [the ANC] will be in a position to drop its protest.” Notably, it does not require the ANC to actually drop its protest and does not require the ANC to pursue a voluntary agreement. Until either of those eventualities occur (and they might never occur) and further action is taken to affirmatively withdraw the protest, the ANC’s posture of protest remains. In our view, this is a completed action. Unlike a matter that has been tabled or postponed, there is nothing further that the ANC must address. Consequently, any authority of the ANC’s ABC Committee to negotiate a voluntary agreement with Au Pied Bistro, to the extent such authority derives from the adopted motion, continues as well.<sup>2</sup>

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<sup>1</sup> Advisory Neighborhood 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 (collectively, the ANC Act), effective June 27, 2000, D.C. Law 13-135, D.C. Official Code § 1-309.11(e)(3)(2004 Supp.), states: “Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order.”

<sup>2</sup> Such authority, however, appears ambiguous and limited at best. First, as noted above, the ANC would not strictly be required to drop its protest merely because a voluntary agreement had been reached – affirmative Commission action would be necessary. Also, any such voluntary agreement would have to be ratified by the entire Commission as an official action prior to it becoming effective. Finally, issues of timeliness have probably divested the committee of authority to negotiate an agreement simply on the basis of mootness (*i.e.*, the ABC Board may have already made a decision).

Because we find that the motion does not constitute unfinished business, we do not reach the question of what effect, if any, the end of an ANC term has on unfinished business.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

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RJS/dps

Attachment: Minutes of June 29, 2004 ANC 2E Meeting

(AL-04-699)