

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

**In Re Single Member District
4B02 Special Election**

**Administrative Hearing
Docket No. 02-014**

MEMORANDUM OPINION AND ORDER

This matter came to be heard by the Board on Wednesday, April 3, 2002 at 10:30 a.m. pursuant to a request for a hearing submitted by District of Columbia Council member Adrian Fenty dated March 28, 2002 pursuant to D.C. Mun. Regs. Tit. 3 §406.6. Mr. Fenty expressed concern that the special election held on February 28 2002 to fill the vacancy for Single Member District 4B02 was preliminarily invalidated because it was not held within ninety (90) days of the posting of the “notice of vacancy.” For the reasons stated in this opinion, we hold that although the special election was held after the ninety day period, invalidating said election would frustrate the purpose of the statutes proscribing filling vacancies.

BACKGROUND

The Advisory Neighborhood Commission (“ANC”) single member district (“SMD) 4B02 has endured the greater part of this term without ANC representation. The account begins with the resignation of Advisory Neighborhood Commissioner SMD 4B02 Cecily Patterson in June of 2001. On June 29, 2002, the Board received Ms. Patterson’s June 27th letter of resignation. The Board certified the vacancy by publishing it in the July 16 2001 District of Columbia Register.

Paul Montague and Margot Coles submitted nominating petitions; however, Mr. Montague submitted a challenge to Ms. Coles' residency after the challenge period for defects in a nominating petition had expired. The election was held on October 25, 2001—which was in excess of the ninety days provided in D.C. Code § 1-309.06(d)(3). Although Ms. Coles won that election, she never responded to the residency inquiry; consequently, the Registrar of voters determined that Ms. Coles was not qualified to serve as an ANC member and declared a vacancy so that another special election could be conducted. The Board certified the vacancy by publishing it in the register on November 19, 2001.

Michael Sindram, Rebecca Smallwood, and Bonnie Moss, submitted nominating petitions for the office of SMD 4B02. Petitioner Michael Sindram contested the petitions of Rebecca Smallwood and Bonnie Moss for numerous reasons on December 19, 2001. The Board heard the challenges on January 3, 2002 and rendered a decision on January 4, 2002. The Board transmitted a list of qualified candidates on January 14, 2002. To be in compliance with the 90-day provision of § 1-309.06(d)(3), the ANC would have had to schedule a special meeting to announce the election for their January 24, 2002 meeting. Instead the ANC notified residents at its January meeting of the election occurring at the February meeting. Seventy-five voters participated from SMD 4B02, with Ms. Smallwood garnering 71 votes and Mr. Sindram receiving 4 votes¹. There has been no complaint of abuse or fraud in the instant case, only a complaint lodged by Mr. Paul Montague that the election occurred outside of the ninety-day time period allotted for filling a vacancy.

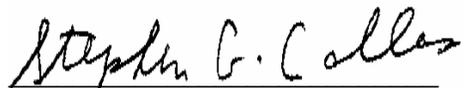
¹ Ms. Bonnie Moss subsequently withdrew her candidacy.

DISCUSSION

This case turns on the interpretation of the code provisions used to fill vacancies. These provisions have the basic purpose of filling a vacant seat in the most expedient way possible. The Board must consider the overall purpose of the rule it enforces to ensure said purpose is met. Strict adherence to the ninety-day time period would not serve the purpose of the statute because the citizens of 4B02 would be left without representation. The same sort of situation presented itself in *Dankman v. D.C. Bd. Of Elections & Ethics*, 443 A.2d 507 (D.C. 1981). In *Dankman*, “[p]etitioner *Dankman* maintained that the Board improperly disregarded one of its own regulations in finding that the status of some of the petition circulators as apparently non-qualified electors invalidated the otherwise admittedly valid signatures which they had obtained.” *Id.* at 512. The court found that a formulaic steadfast adherence to regulations may sometimes lead to results that frustrate the regulations’ objective purpose. “We find that the Board’s interpretation—which served to qualify the rule into oblivion—was plainly erroneous and restricted rather than implemented the basic purpose of the Initiative Act. That purpose, in the final analysis, is to permit the electorate to vote on appropriate issues.” *Id.* at 514-15. Accordingly, in light of the relatively short time granted to the ANC to give notice and conduct an election to fill the vacancy, the Board holds that such election be deemed valid as filling the ANC vacancy as soon as possible.

It is HEREBY ORDERED

April 15, 2002
Date


Stephen G. Callas, Acting Chairman
Board of Elections and Ethics

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was delivered via hand delivery this 15th day of April 2002 to Council member Adrian Fenty, 1350 Pennsylvania Avenue NW 20004, and Paul Montague, 222 Aspen Street, NW, Washington, DC 20012.

Rudolph McGann