

M E M O R A N D U M

November 5, 1992

TO: C. Stephen Poteat, Director
Upcounty Government Services Center

VIA: Joyce R. Stern *Joyce R. Stern*
County Attorney

FROM: Marc P. Hansen *Marc Hansen*
Senior Assistant County Attorney

RE: Request for Advice Concerning Applicability of Section 2-148, Removal for Absenteeism

On May 7, 1985, the County Council adopted Resolution No. 10-1279 which officially established the Upcounty Citizens Advisory Board (Board). The background section of the Resolution recommended that the Board be large enough so that the membership could be divided into area committees as necessary.

The By-laws of the Board (rev. June 1992) provides in Article IX, Section 2, that "Each Board member, except the Chair, shall be an active member of at least one committee." Section 5 provides that each committee must meet at least 6 times per year and make regular reports to the Board. Article VIII, Section 1, requires that an issue first be addressed by a committee before being presented to the entire Board.

The standard News Release seeking applicants for Board membership states that the full Board generally meets once each month and that members are expected, in addition, to serve on at least one Board committee. The News Release specifies that, "Each committee meets approximately once every month on its own schedule."

The Board has established a Planning and Development Issues Committee, a Social Issues Committee, and a Fiscal Issues Committee. Some committees meet more often than others during the year. It is apparent that the committee system established by the Board plays an important part in the orderly conduct of the Board's affairs.

Section 2-148(c)(1), Montgomery County Code (1984), provides:

Unless the law provides another method to remove members, a member of a committee who is absent from 25% or more of the scheduled meetings or hearings during any 6 month period has resigned from the committee. Scheduled meetings or hearings mean meetings or hearings for which at least 7 days advance notice was given.¹

You have asked if, in calculating the 25% threshold, only regular, full Board meetings should be counted or if committee meetings should be counted as well.

From a general perspective, requiring attendance at subcommittee meetings raises significant policy issues: For example, subcommittee assignments are sometimes involuntary; therefore, an applicant may be required to commit significantly more time on committee work than originally contemplated when the member applied for membership on the main committee. Furthermore, one subcommittee may require more time than another subcommittee. Thus, certain committee members may be required to commit more time than other committee members. Resolution of these type of policy questions are normally made through the legislative process. Section 2-148(c)(1), however, is silent with respect to whether the absentee threshold applies to subcommittees. The legislative history of Section 2-149(c)(1) is silent on this matter as well.

The general rule is that statutes authorizing removal of an appointed official should be read narrowly. The reason is that the removal of a public officer is generally seen as a drastic remedy. McQuillin, Mun. Corps., Section 12.229 (3rd Ed.); 63A Am. Jur. 2d, Public Officers and Employees, Section 231. In the face of the Council's silence on this important matter, we are unwilling to expand by implication the meaning of Section 2-148(c)(1) to require a member to attend subcommittee meetings on peril of removal for absenteeism.

¹Article V, Section 4 of the Board By-laws restates in identical language Section 2-148(c)(1).

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Accordingly, we believe that committee meetings of the Board may not be included in computing the absentee threshold under Section 2-148(c)(1). We trust this memorandum has been responsive to your inquiry. If you have further questions, please do not hesitate to contact us.

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cc: Jane Lawton, Special Assistant, County Executive
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