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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 1, 2004

Helen T. McFadden, Esquire
Attorney, Williamsburg County School District
P. O. Box 1114
Kingstree, South Carolina 29556

Dear Ms. McFadden:

In a letter to this office you requested a parliamentary opinion regarding an issue that recently came before the Williamsburg County School Board of Trustees' meeting. You indicated that the question arises from a tie vote on a motion to renew the Superintendent's contract in a meeting in November, 2003. On March 1, 2004 another motion to renew the contract was proposed and tabled. The issue is whether reconsideration is the appropriate manner to bring the question before the Board. You indicated that the Board relies upon Roberts' Rules of Order. The question at issue is whether the matter is to be treated as a point for reconsideration pursuant to Rule 36 or a renewal of a motion pursuant to Rule 38 of Roberts' Rules of Order.

I agree with your conclusion that reconsideration is not the appropriate analysis for the question at issue. You pointed out that there have been meetings of the Board since November 10, 2003. As set forth by Rule 36 of Roberts' Rules of Order, a motion to reconsider "...can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day." I agree with your analysis that because no motion has determined the matter, the same motion or any other topic can be made by any member at any meeting for which there is notice. As you point out, and based upon my review of Rule 38 of Roberts' Rules of Order, the matter would be in the form of renewal of a motion. Rule 38 provides that

When an original main motion or an amendment has been adopted, or rejected, or a main motion has been postponed indefinitely, or an objection to its consideration has been sustained, it, or practically the same motion, cannot be again brought before the assembly at the same session, except by a motion to reconsider or to rescind the vote. But it may be introduced again at any future session.

Support for the construction of the matter as the renewal of a motion is found in a decision by the Michigan Court of Appeals in White v. First United Baptist Church, 2002 WL 1575243 (July 16, 2002) where an allegation had been made that there had been a violation of Rule 36 by a "reconsideration" at an October 2, 1999 regular meeting of a decision not to terminate an

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individual's employment which was made on a vote taken at a July 25, 1999 regular meeting. The Court ruled that

The vote on October 2 was not a "reconsideration" in the technical sense governed by Section 36. Rather, it was a vote on a previously rejected motion governed by...Section 38, and proper under that section because the church conducts its business meetings more often than quarterly, and a regular business meeting intervened between the first and second votes.

The Court ruled that Roberts' Rules of Order were not violated by the renewal of the rejected motion.

The same situation as was present in the Michigan case would appear to exist here as well. Because there was a tie vote as to the motion to extend the superintendent's contract, such motion was effectively rejected. See Op. Atty. Gen. dated January 3, 1973 (a tie vote takes no action). Rule 36 would have been applicable to revisit this motion on the same day as its rejection. However, inasmuch as a considerable amount of time elapsed before the issue again arose, Rule 36 became inapplicable. Instead, Rule 38 represented the operative Rule.

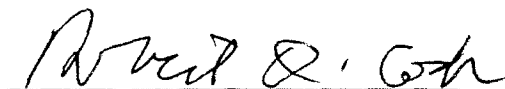
Consistent with such, a motion to reconsider would not be an appropriate motion in your situation in that as you pointed out in your letter, the Board is not in a position for such a motion due to the passage of time between meetings. Of course, an administrative agency, such as a school board, must follow its own rules adopted by it. See, Op. Atty. Gen. May 8, 2003, citing Triska v. DHEC, 292 S.C. 190, 355 S.E.2d 531 (1987). Thus, in our opinion, Rule 36 of Roberts' Rules of Order is simply inapplicable here. Cf. Ackerman v. 3-V Chemical, Inc., 349 S.C. 212, 562 S.E.2d 613 (2002) (motion for reconsideration untimely where Rule 59(a)(2), SCRCR not complied with). Moreover, as pointed out in a prior opinion of this office dated May 19, 1982, reconsideration is not generally favored. Instead, the matter can be considered as the renewal of a motion.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General