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ATTORNEY GENERAL

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Thomas M. Boulware, Esquire  
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19 Jefferson Street  
Barnwell, South Carolina 29812

Dear Mr. Boulware:

On behalf of the City of Barnwell, and referring to section 5-7-260 of the South Carolina Code (2004), you have submitted the following question: "when must a municipality act by resolution and when may it act by a simple motion?"

Section 5-7-260 of the South Carolina Code provides:

In addition to other acts required by law to be done by ordinance, those acts of the municipal council shall be by ordinances which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any municipal department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations;
- (3) Adopt budgets, levy taxes, except as otherwise provided with respect to the property tax levied by adoption of a budget, pursuant to public notice;
- (4) Grant, renew or extend franchises;
- (5) Authorize the borrowing of money;
- (6) Sell or lease or contract to sell or lease any lands of the municipality; and
- (7) Amend or repeal any ordinance described in items (1) through (6) above.

In matters other than those referred to in this section council may act either by ordinance or resolution.

(Emphasis added).

Interestingly, the ordinary meaning of the term “resolution” does not necessarily require a writing. *Black’s Law Dictionary* provides that a resolution is “[a] main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body).”<sup>1</sup> It characterizes the same as “a highly formal kind of main motion, often containing a preamble, and one or more resolving clauses in the form, ‘Resolved, That . . . .’” In its second definition of the term, *Black’s* provides that a resolution is a “[f]ormal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment.” Only in its third definition of a resolution does *Black’s* refer to a writing, defining the same as “[a] document containing such an expression or authorization.” Thus, absent some further statutory restriction, the term “resolution” may refer either to a motion or to a document memorializing the same.

This understanding is reflected in several South Carolina statutes. For example, where a written resolution is required the General Assembly has made such requirement express. See S.C. Code Ann. § 4-9-30(5)(a)(i) (1986 & Supp. 2011) (“Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election . . . .”). In the absence of an express statutory requirement for such formality, the Assembly appears to defer to the bylaws or local laws of the relevant jurisdiction. E.g., S.C. Code Ann. § 6-21-170 (2004) (“The powers conferred by this chapter . . . may be exercised by resolution . . . . Such resolution may be adopted in accordance with the required or customary procedure of such body . . . and no such resolution shall be subject to the provisions of any law relating to the adoption of ordinances by cities . . . .”); *id.* § 6-25-60(C) (2004 & Supp. 2011) (“Any action taken by the joint system . . . may be authorized by resolution . . . and each resolution shall take effect immediately and need not be published or posted. Except as is otherwise provided in this chapter or in the bylaws of the joint system, a majority of the votes which the commissioners present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution.”).

Our Supreme Court’s treatment of a motion in *Central Realty Corp. v. Allison* is instructive, and we quote it at length:

While the zoning ordinance contains no such amendment, the transcript of record shows that at a special meeting of the City Council held March 17, 1948, a motion which may be deemed a resolution was adopted to the effect ‘that in the future when property is rezoned, the City Clerk and Treasurer be instructed to notify all property owners . . . .’ And the resolution was amended so as also to provide that the ‘Secretary of the Zoning Commission notify those affected by the contemplated change in the Zoning Ordinance.’

....

. . . [I]t is contended . . . that under the resolution adopted March 17, 1948, hereinbefore mentioned, published notice was not sufficient, but that there should have been some specific notice given to all property owners by the Secretary of the Zoning Commission, which was not done in this case. We do not think, however, that the resolution is effective for this purpose. . . .

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<sup>1</sup> *Black’s* defines a main motion as “[a] motion that brings business before a meeting.”

. . . [A]s a matter of law, we are of the opinion that at all events such a resolution cannot be considered as anything more than merely directory, and certainly could not be given mandatory effect. Indeed, it seems to be well settled that a 'resolution is not a law, and in substance there is no difference between a resolution, order, and motion.' 37 Am. Jur. 755; 43 C.J. 519; and 62 C.J.S. Municipal Corporations, § 412, 787.

The following statement of the law as contained in 37 Am. Jur. 835, appears to be well supported by the authorities generally: 'Ordinarily, a municipal ordinance cannot be amended or repealed by a mere resolution. To accomplish that result a new ordinance must be passed. Some jurisdictions, moreover, have held that the same formalities necessary to the enactment of an ordinance must be observed in its repeal or amendment.'

To permit the previous ordinance here . . . to be amended or repealed by the indefinite motion or resolution above referred to would result, we believe, in repeated confusion. . . .

218 S.C. 435, 441-42, 445-46, 63 S.E.2d 153, 156, 157-58 (1951) (original emphasis omitted and emphasis added). As this discussion makes clear, our Supreme Court has viewed the term "resolution" as interchangeable with the term "motion." It is against this backdrop that section 5-7-260 was adopted. Thus, it is our opinion that section 5-7-260 does not restrict the method by which acts other than those enumerated may be accomplished. Rather, unless other law requires specific formalities for the adoption of a resolution, it appears council is free to "determine its own rules and order of business." See S.C. Code Ann. § 5-7-250.

In sum, while section 5-7-260 of the South Carolina Code provides that acts other than those enumerated may be "either by ordinance or resolution," it leaves substantial discretion in city council as to the form that a resolution should take. The South Carolina Supreme Court has determined that a resolution is not different in substance from a simple motion.

Very truly yours,



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REVIEWED AND APPROVED BY:



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