1984 WL 249954 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 6, 1984

***1** John T. Gentry, Esquire
City Attorney
City of Easley
Post Office Box 481
Pickens, South Carolina 29671

Dear Mr. Gentry:
Attorney General Medlock has referred your letter of July 17, 1984, to me for response. You have asked whether a matter under consideration by the City Council of Easley which did not receive a favorable vote upon first reading should be placed on the agenda for second reading. Basically, your opinion was that since the vote taken resulted in rejection on the first reading, it could not receive two favorable readings; hence, a second reading would be moot. We concur with your opinion.

The Easley Planning Commission, after hearings, recommended a rezoning classification from 'R-10' to 'apartments.' On first reading before the Easley City Council, Council voted to reject the Planning Commission's recommendation. The question thus raised is: is the matter to be placed on the agenda for second reading or, since it was not received favorably on first reading, is the matter ended?

The procedure for enacting ordinances by municipalities is provided by Section 5-7-270, Code of Laws of South Carolina (1976), as follows:
Every proposed ordinance shall be introduced in writing and in the form required for final adoption. Each municipality shall by ordinance establish its own rules and procedures as to adoption of ordinances. No ordinance shall have the force of law until it shall have been read two times on two separate days with at least six days between each reading.

It is not known whether the City of Easley has adopted an ordinance expanding these requirements; from your letter it appears that the City follows only this statute for enactment of ordinances, so that fact will be assumed.

In considering a similar question in interpreting Article III, Section 18 of the state Constitution, we were unable to locate any authority dealing with the reading of a bill three times vis a vis the results of voting. See Op. Atty. Gen. dated May 22, 1984 (copy enclosed). Based on the prior opinion and authority cited therein, it would appear that, for an ordinance to have 'the force of law,' two favorable readings by City Council would be required. As a practical matter and as you suggested, a second reading by Council would accomplish nothing where the first vote was unfavorable; the matter would be moot and the zoning classification would remain the same. Due to the lack of authority on this question, this answer cannot be free from doubt. Legislative clarification might be beneficial.

An analogous situation is presented at the federal level, in that a bill must be read three times in each house in the legislative process before becoming an act. Rule XXI(1) of the House of Representatives states that
[b]ills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be: Shall the bill be engrossed and read a third time? and, if decided in the affirmative, it shall be read the third time by title, and the question shall then be put upon its passage.

***2** Jefferson's Manual and Rules of the House of Representatives, H.R. Doc. No. 271, 97th Cong., 2d Sess., 546 (1983) (copy enclosed). The two readings required by Section 5-7-270 of the Code may be compared to the second and third readings described in Rule XXI, supra. Thus, the first reading of a proposed ordinance must receive a favorable vote to receive the second reading and then to have a vote taken upon passage of the ordinance.

You also suggested that once the proposed ordinance has received an unfavorable first reading, the only way the matter could be resurrected would be for a council member who previously voted on the prevailing (unfavorable) side to move to reconsider the vote whereby it was rejected. If such motion passed, the matter would then be considered ab initio. Again, the authority on this point is not abundant and is best addressed in Robert's Rules of Order Newly Revised, § 36 (1970), a copy of which section is enclosed for your convenience. A motion to reconsider, made by one on the prevailing side, would be the proper manner in which to proceed. And since two favorable readings are required, the matter would be considered ab initio.

We hope that we have satisfactorily responded to your inquiry. Please advise if additional information or clarification is needed.
Sincerely,

Patricia D. Petway
Assistant Attorney General

1984 WL 249954 (S.C.A.G.)

**End of Document**