

1980 WL 120997 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 11, 1980

*1 Mr. Joe B. Lanford
City Manager
City of Rock Hill
Rock Hill, South Carolina 29730

Dear Mr. Lanford:

In response to your request for an opinion from this Office concerning certain actions taken by the Rock Hill City Council, my opinion is that the Council's action in reconsidering a previous vote upon a requested zoning ordinance amendment is authorized as hereinafter discussed.

As I understand the facts, on November 10, 1980, the Council voted to approve a request for a zoning ordinance variance but not by the required three-fourths vote and so the request was denied. At its next meeting on November 24, 1980, the Council unanimously voted to reconsider its previous vote on the request and set its December 15, 1980, meeting as the date upon which to consider anew the original request.

The first question is whether or not the Council is authorized to reconsider a vote previously taken and, if so, whether or not it properly did so in this case. [Section 5-7-250\(b\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, authorizes each city council 'to determine its own rules and order of business . . .'. Pursuant to this statutory authority, the Council promulgated Section 2-9 of the Code of the City of Rock Hill as follows:

All questions of order shall be decided by the Mayor without debate, subject to appeal to the Council.

Once the motion to reconsider was made, entertained by the mayor and unanimously voted upon by the Council, this provision of the Code of the City of Rock Hill was met. That is, by entertaining the motion to reconsider, the mayor decided the point of order and, by its unanimous vote to carry the motion, the Council was appealed to. Accordingly, the question (or point) of order on the motion to reconsider was properly resolved under the Council's own rules.

Moreover, the customary rules of parliamentary procedure whether according to Robert's Rules of Order or Jefferson's Manual support the Council's action, *i.e.*, a motion to reconsider must be made by a member who voted with the prevailing side ((here, one of the two who originally opposed the request inasmuch as the opposing vote prevailed) at the same or the next succeeding meeting after the original vote was taken (here, the November 24, 1980, Council meeting was the next succeeding meeting after the original denial of the request at the November 10, 1980, Council meeting). *See, Robert's Rules of Order Newly Revised*, § 36 'Reconsideration' at 265 *et seq.* (1970); *Jefferson's Manual*, SECTION XLIII-RECONSIDERATION §§ 513 *et seq.* (1963). In addition, the rules of both houses of of South Carolina General Assembly support the Council's action. *See*, 1980 South Carolina Legislative Manual, Rules of the Senate, Rule 12 at 168; *id.*, Rules of the House, Rule 8.14 at 211.

Nevertheless, a problem arises from the language of Section 350.08 of the Rock Hill Zoning Code which, as I understand it, prohibits the Council from considering a proposed amendment thereto 'for a period of twelve months from the final determination of the prior request by the City Council.' The question becomes, then, whether or not the Council made a 'final determination' when it initially denied the request on November 10, 1980, in view of its subsequent decision to reconsider that action on November 24, 1980. The same rules of parliamentary procedure establish that all action that depends upon the result of the vote proposed to be reconsidered is suspended until the re-consideration is completed; consequently, the Council's

original denial of the request on November 10, 1980, is suspended until the Council votes again on the same question and cannot be considered 'final.' See, Robert's Rules of Order Newly Revised, § 36 'Reconsideration' at 270 et seq. Moreover, there is a serious question as to whether or not Section 350.08 applies herein inasmuch as the Council is not considering a 'prior' request but, instead, is reconsidering the original (and only) request.

*2 For the foregoing reasons, my opinion is that the Rock Hill County Council has followed a proper procedure in voting to reconsider its original action on the zoning ordinance amendment and is free to reconsider that vote at its December 15, 1980, meeting.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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