1974 WL 27834 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 27, 1974

***1 Re: Opinion Request.**

Kelly F. Sier, Esquire
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Dear Kelly:
I have had a law clerk, assigned to your opinion request dated February 12, 1974, since that time. I have also personally researched this matter and placed a great many hours into the question you posed. I apologize for the delay in answering your request, however I do feel that this is the most comply issue involving municipal law that I have encountered since I have been with this Office.

In answer to your questions in the order they were presented, it is felt that the effect of a tie vote generally results in unfinished business. Richard vs. Woning Board, R.T., Stafford Smith vs. Board of Woning ?? adjustments, N.J., 112 Fla. 840, Decennial Oigest. The unfinished business as such does not result in any action being taken by the City Council. It is generally held that the by-laws of the governing authority would control in the instance of a tie vote, in absence of such by-laws a tie vote is not conclusive either affirmatively or negatively.

Your second question relating to the failure of the Council to act within sixty (60) days results in two sub-questions. (1) Has Council failed to act; (2) Was the tie vote a rejection of the request and if so an action, or was it a non-action?

It is felt that the tie vote results in no action, and as such this would be just an action on the same amendment request. Since a public hearing has already been held, it is felt that no additional public hearing is guaranteed, however such would be within the discretion of the Council.

If a tie vote is viewed as a rejection, which there is some authority to support, and as such an 'action', there can be no further action for one (1) year and accordingly no more public hearings as of this time.

Your third question states 'if another public hearing is held, can protest petitions be accepted which would alter the voting requirements for the passage of the amendment request?'

This generally depends upon whether this is viewed as a de novo hearing (in which petitions could definitely be submitted) or merely a first hearing of the original request. If it is regarded as a new hearing, then there will be opportunity to submit petitions, however if it is regarded as a first hearing of the original request then no new petitions would be allowed.

This question is somewhat inconclusive, as its answer depends upon the determination male as to the posture of the hearing. It is generally felt that this would not be a new hearing however a first hearing of the original request, and no new petitions could be submitted.

You asked an additional question, as to whether the request would have to be submitted in ordinance firm. The answer to this question is indicated to be yes. In is stated in 37 m. Jur. 835, a municipal ordinance can not be amended or appealed by a mere resolution . . . as this would result in repeated confusion. See Section 47-1106, Section 47-1105, and Section 47-1106 (1973).

***2** This has been, a most complex area of law and any opinion rendered by this Office must be couched in the most precautionary terms. As the area of law is so unsettled and there is such an absence of legal precedence to follow, this opinion cannot be a formal opinion of this Office, but must be merely advisory and most subject to judicial determination.

It would be our recommendation that you seek a declaratory judgment action on this question for that is the only manner in which a conclusive determination can be reached.

I trust this has been sufficient in answering the questions which you posed. If I may be of any further assistance, please do not hesitate to call or write.
Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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