



STATE OF KANSAS

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Curt T. Schneider
Attorney General

February 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 63

The Honorable Wendell Lady
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Cities--Zoning Amendments--Procedure.

Synopsis: When a city governing body acts pursuant to *Robert's Rules of Order* in the consideration of an application for rezoning, when such application receives an affirmative vote of the governing body, but does not receive the affirmative votes of the majority required for passage, the question may be considered by the governing body at a subsequent meeting by renewal thereof pursuant to § 37, *Robert's Rules of Order, Newly Revised*.

* * *

Dear Representative Lady:

You advise that at a meeting of the Overland Park city council on January 16, 1978, an application by the Safeway Company for rezoning of property at 87th and Antioch was considered. Although a vote of 4-3 was recorded in favor of the zoning amendment, the motion did not prevail because six affirmative votes, or the votes of a majority of the ten-member council, are required for approval of a rezoning application.

At a subsequent meeting on January 30, 1978, the council voted to reopen the matter of the zoning application, through adoption of a motion to renew the question, pursuant to § 37 of *Robert's Rules of Order, Newly Revised* (Scott Foresman and Company, 1970). You advise that a number of persons have questioned the propriety or legality of that parliamentary procedure, and you request my

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opinion as to the legality of the action by the council to reopen consideration of the rezoning application.

I assume, for the purposes of this opinion, that *Robert's Rules of Order* are adopted as governing proceedings of the city governing body by council action. At § 37, *Robert's Rules of Order, Newly Revised*, the writer states thus:

"If a motion is made and disposed of without being adopted, and is later allowed to come before the assembly after being made again by any member in essentially the same connection, the motion is said to be renewed."

Of two general principles governing renewal, one is pertinent here, stated on page 286 thus:

"Any motion that is still applicable can be renewed at any later session, except where a specific rule prevents its renewal; and such an impediment to renewal at a later session normally can exist only when the first motion goes over to that session as not finally disposed of, in which case the question can then be reached through the first motion."

It is essential to the renewal of a motion that the same motion, one presenting virtually the same question, shall have been previously "disposed of without being adopted." If the motion has not finally been disposed of, no motion for renewal is necessary or, indeed, in order, because the main motion remains "within the control of the assembly," as the writer describes its posture in such a circumstance.

The central question here is whether the motion for approval of the rezoning application was finally disposed of on January 16, 1978. At p. 287 of § 37, the writer states thus:

"[A] main motion that was introduced but not adopted during one session can, except as noted in this paragraph, be renewed at any

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later session unless it has become absurd. Such exceptions occur only through one of the four processes by which, from one session to another, a main motion can remain 'within the control of the assembly' (that is, not finally disposed of), so that *the same* motion can be considered at the later session."
[Emphasis supplied.]

Although the motion to approve the zoning change received a vote of 4-3 in its favor at the January 16, 1978, meeting, the motion did not carry because it did not receive an affirmative vote of a majority of the entire membership. The motion thus failed, and at that point, there was nothing further to consider regarding the zoning change. The motion did not remain alive through any motion by which it was carried forward from that meeting to a future meeting, and the failure of the motion to achieve the affirmative votes of the required majority was as fatal to it as if it had received the negative votes of that majority. It was finally disposed of, in my judgment, at the January 16, 1978, meeting and I can find nothing in section 37 or elsewhere in, *Robert's Rules of Order, Newly Revised*, which renders a renewal of the question of approval of the zoning application improper at a subsequent meeting of the governing body.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj