

HAMILTON COUNTY ELECTION COMMISSION
MINUTES OF MEETING
July 28, 2008

Call to Order:

Upon notice duly given, Chairperson Eddington called to order a regularly scheduled meeting of the Hamilton County Election Commission at 8:43 a.m. on July 28th, 2008 at 700 River Terminal Road, Chattanooga, Tennessee.

Moment of Silence:

Pledge of Allegiance: Charlotte Polk

Present at Meeting:

Chairperson Eddington, Commissioner's Bennett, Walden, Polk and Rowe were present at the meeting along with attorney Jerry Summers, the staff of the Election Commission as well as members of the community and media.

Minutes:

Commissioner Walden made a motion to approve the minutes from the meetings of June 23rd, 2008. Commissioner Bennett seconded, and the minutes were unanimously approved.

New Business:

Administrator Knowles:

The Administrator stated that Nursing Home Voting was 276. We visited 29 different homes. Early Voting as of Saturday is 3,030 which is very light. He further stated that the opening and closing of the Election Day hours of 8:00 a.m. to 8:00 p.m. needed to be approved. Commissioner Walden asked if the hours were the same as they always were and Administrator Knowles stated that they were.

Commissioner Walden made a motion to approve the hours, Secretary Bennett seconded and the motion passed.

Administrator Knowles further stated that the re-run of the ballots was \$39,439 plus freight, He was not sure that the freight was because he didn't have the charges in front of him. He said that he had spoken with Louis Wright in the county and that he didn't see any major problems with it, to just run it through the budget like always, and if we needed more money we could get it. I don't see us going back for more money.

Commissioner Walden: Is that the two re-runs?

Administrator Knowles: "Yes."

Administrator Knowles: He stated that Shannon DeFriesse had been reassigned. The reason she wasn't disciplined more, the State Coordinator also missed these two reruns. I felt like in all fairness to her family, that she shouldn't be fired.

Commissioner Walden: When you reassigned her what about her, is she doing the same job that she was doing?

Administrator Knowles: No sir, she has nothing to do ballot outlay or computer room work, but she is responsible for making manuals, blue books, address books related paper work that goes to the pct., back up to Becky Bumgardner, answer phones and make CD's for candidates, work the front counter, and reports.

Commissioner Bennett: What remedial steps are being taken to check the ballots now?

Administrator Knowles: We have three people, Scott Allen, Nate Foster, and Steve Gaston checking the ballots now, without Shannon involved.

Chairperson Eddington: I don't see that we have to take a vote on that. You stated that it is solved and as far as I am concerned, there is no need to discuss it.

Attorney Summers: "Madam Chairman, Under T.C.A. 212-2-01, Duties of the Election Administrator. One of the duties of the Administrator is the preparation of the annual operating budget and submission of same to the Election Commission and upon approval of the County Election Commission and presentation to the County Commission and other legislative body."

Chairperson Eddington: "It's in the book and we don't have to worry about it any more. Is there anything else?"

Administrator Knowles: "That's all I have".

Commissioner Walden: "We submitted a budget that nobody at this table has seen. Correct?"

Chairperson Eddington: "No, we saw it".

Commissioner Rowe: "We saw it after it was submitted to the County Commission."

Attorney Summers: "Sometimes because of time, maybe not having a meeting and so forth. I think everybody was mailed a copy."

Commissioner Knowles: "We mailed a copy out last week."

Attorney Summers: "Maybe because we did not have a meeting at that time, we got the cart before the horse. The Commissioners have always been informed about what the budget is."

Commissioner Walden: "I was out of town last week, I haven't seen the budget."

Commissioner Rowe: "It's really not official until we approve it."

Attorney Summers: "It's not official until Mr. Knowles submits it to you and it should be approved by you and then submitted to the County Commission. Mr. Rowe, I will

tell you that sometimes.. there have been times that there have been issues both here and at the level of county government. I think it has always been done, but sometimes not as orderly as it should. Our budgets have always been pretty well accepted because the staff and Commission have always operated within the budget. We have been fortunate that our litigation expenses have been low. We have not had the voter challenges that have been made around the country. It is a trial lawyers dream. We have not had that type of litigation and always stayed within the budget on that particular item. We have always, if possible, been able to pass that expense on to the state coordinator, but one of these days we may get hit with the big Kuhuna.”

Commissioner Rowe: “Again, I don’t want to sound too critical, Lewis Wright was very complimentary about the Election Commission and the way they have handled the budget in the past and expressed a lot of confidence and the way they have operated within the boundaries set. They expressed a strong willingness to work with us if there is a need at any time in the future.”

Commissioner Walden: “And that’s also mandated that they are required to fund the operation.”

Mr. Knowles: “We have a very cordial relationship.”

Commissioner Walden: “We have a good operation.”

Chairperson Eddington: “We will continue to operate by the Tennessee election laws and the page that Mr. Summers told you about a minute ago that T.C.A. 2-12-201 for submission of the budget. Thank you very much. Is there anything else we need to discuss or any new business?”

Commissioner Knowles: “I would like to report that our website has 42,192 hits this week.”

Chairperson Eddington: “Good. While we are on the budget, anyone who has not submitted their receipts or reimbursement for the seminar trip in Nashville, please see Charlotte for reimbursement or if you have receipts please show them to her.”

LEGAL MATTERS: Rob Healy

Attorney Summers: “Madam Chairman and members of the Commission; several months ago I was approached by a legal representative for Mr. Robert Healy who expressed some interest in running for Mayor for the city of Chattanooga. Before we get into that I want to throw out a few legal tidbits since we have fairly new Commissioners since the last election. The Election Commission has a duty not to put a candidate s name on the ballot if they know that the candidate is unqualified for the office which he or she seeks. The candidate. The Commission has a duty to investigate when it receives information that the candidate does not meet the requisite qualifications for election to public office. The county Election Commission may not place on the ballot the name of a candidate who does not meet the residency requirements. That basically says it. Mr. Healy, age wise is qualified. He is not disenfranchised because of any prior conviction. I talked to legal counsel for him back

in May and I told him that “You need to make a request.” We talked on and I have kept Mr. Knowles informed and what happens is there is some ambiguity in the City Charter. I spoke with Mr. Nelson and Chattanooga is a home rule city which means the charter can be amended by ordinance and adopted by city council and approved by voters in a referendum. This case also is derived out of historical case Brown v. Board of Education. This came out in 1989 in an opinion by I believe Judge Edgar. That was the qualifications that they adopted in that settlement after the case was tried it proposed that “ *No person shall be elected to the office of Mayor unless he or she has been a resident of the city of Chattanooga for at least one year prior to his or her election*”. Mr. Healy moved into the city on February 23, 2008 in his letter to me of June 3rd. *SEE ATTACHED*

In his letter to me he stated:

“Although I have been a resident of Hamilton County for most of my life, I have been a resident of the city of Chattanooga since February 23rd, 2008. As a result, I will have been a resident of the city for more than one year prior to the mayoral election date of March 3rd of 2009. After reading the city charter, my interpretation I will be required to certify my qualifying papers and on the day of the election I will have been a resident of the city of Chattanooga for at least one year. However, I understand that there may be an ambiguity in the city charter regarding the residency requirements. Therefore, I respectfully request the Hamilton County Election Commission and the city attorney’s office make the following determination. Does eligibility for the office of Mayor require one to be a resident of the city for one year prior to the election or for one year prior to the date for filing qualifying papers with the Election Commission?”

Now the City Commission adopted that it had to be one year to the date for filing qualifying papers with the Election Commission. As I understand there was some ambiguity as far as... Brook Thompson wrote a letter to Randy Nelson on June 20, 2008. *SEE ATTACHED* Going further, I wrote Bud back a letter on July 15th which you should have. *SEE ATTACHED* which basically says that Chattanooga is a Home Rule committee and states in part: *there appears to be a legislative intent that the language contained by ordinance 9432 covering age requirements at the time that he or she qualifies to run for office was intended to remain in full force and effect.*” I spoke with Brook Thompson as late as Friday and he said “*if there is a city charter, to wit: this ordinance that’s in question which would disallow Mr. Healy candidacy; if it is a reasonable interpretation, it stands.*” This Commission has always encouraged persons to participate in the electoral process but there have been occasions when we had to say no if a person is not qualified. All Mr. Healy has done is ask for an advisory opinion. Until he files a qualifying petition, I don’t think we have to make a decision. If he qualifies, then you will have to make a decision. One of the situations is the cost of the city of Chattanooga elections. I have asked Charlotte to produce the last three or four and in the March 1, 2005 election cost 99,398.50 and the April 12th run off cost 90,815.97. if we don’t take the city’s advice then possibly we would have to pay for the cost of the election which would be substantially more than the previous elections. If you make the decision that he cannot run then he can file a declaratory judgment. If you make the decision that he can run then you will have to make your decision. If he qualifies, then you will have to make a decision”.

Commissioner Walden: “In the county, when you qualify to run as county Mayor, what is the time frame? Is that one year from the election date or is that one year from the qualifying date? And for a state race its one year from the election. Is that correct?”

Right now on the city website we have a conflict that says two things. One in the provision but then on the website it says from the time of the election”.

Attorney Summers: “You may get into a factual situation but the question is did Mr. Healy know about that. Did he rely upon that? If he did then you have one possible answer”.

Commissioner Walden: “Where it was one year from the qualifying date, was that out on public record on the website as well?”

Attorney Summers: “Well yes, the opinion, Brown v. City of Chattanooga is a famous decision”.

Commissioner Walden: One the website it said one year from the time of the election, could he have found that it was one year from the qualifying equally as easy as the website”?

Attorney Summers: “Mike, it’s a little more complicated than that because he had legal counsel and eventually his legal counsel found out the ambiguity. Now the question is if Mr. Healy approached his legal counsel about running... could he have moved into the city in December? If he relied on what the website said and didn’t move until February. There are kind of factual questions here, like any court case that can change the outcome”.

Commissioner Walden: “Until we find out how we voted on the Bob Corker issue several years ago, I think it is almost the same. I think we voted that time it was the one year. If that’s the case I think that sets a precedent”.

Commissioner Walden: “.The statute lists the criteria in a state race, except this one being home rule and for whatever reason it was set up that way, that you have to be more make it a little bit more stringent”.

Commissioner Walden: “Rather than one year from election, it was fifteen months from election”.

Commissioner Walden: “Yes. I don’t think you have to vote on it right now”.

Commissioner Walden: “I agree. I just wanted to understand. So the state law would oversee the county? So the county couldn’t pass its own ordinance”?

Attorney Summers: “Well it could pass an ordinance. The county is considered in some ways, a separate entity. You are talking about something we don’t have to deal with”.

Commissioner Walden: “Yes, I’m just wondering how long the qualifying time the county has as opposed to the city. Why there would be any difference”?

Attorney Summers: “The city is a home rule entity. That’s the main difference. You are throwing me some legal issues that are theoretical and I don’t have to deal with now. If they become actual I will give you any information I can get”.

Chairperson Eddington: “As it stands right now, this discussion. There is nothing we have to do right now”.

Attorney Summers: “No Mam, as I stated, it is a consensus that the city attorney has given an opinion that the city ordinance is correct and therefore valid and therefore Mr. Haley is ineligible to run. The State Coordinator of Elections has told me that at this point he feels that he is ineligible and based on the fact that my opinion is that I concur at this point. Now remember that at this point we are only private attorneys. Randy Nelson advises the city of Chattanooga, his employer. Brook Thompson’s opinions are merely opinions. When anything comes up I have always followed the practice that I would consult with him or Beth Henry Robinson and most of time I have differed with them. I am only an attorney and you are my bosses. Mr. Knowles hired me with your approval. I have always tried to give the advice that I think is in the best interest of this Commission as long as it does not adversely infringe upon the Constitution. At that point, on its face, even though I’m not very happy about putting on my private hat the fact that there was a clerical mistake and someone may have been led to believe that they were possible eligible to run creates concern. I’ll be very honest with you. But until the factual basis is developed I concur with Mr. Thompson and Mr. Nelson. Mr. Nelson kind of hedges a little bit and I don’t mean to be disrespectful to him. He points out the ambiguity very candidly. Mr. Thompson I think their practice is unless there is some obvious defect, they think the statute stands and at this point, I concur with them. The Chancellor may differ with all three of us but that’s the issue”.

Chairperson Eddington: “Then we ask to get a motion to put this off and bring it back up at the next Meeting”.

Attorney Summers: “I don’t think you need a motion, if he should attempt to qualify then obviously we will have to address it and bring it up before you again”.

Administrator Knowles: “If he turns in the papers should we discuss with him his rights before the election and after”.

Attorney Summers: “I suggest that you call me if that occurs. Just simply say that we don’t feel that you are qualified under the city charter at this time and we will note that

you have filed it and we certainly would not do anything to prevent that. We will say that we filed it and we will schedule a meeting to decide”.

Commissioner Bennett: “Madam Chairman I would like to point out that I agree. It’s premature at this time. We don’t have his papers before us and until he puts his papers in front of us we don’t have an issue before us. However I think it is important for everyone to know without disclosing my thoughts or my thought processes on how I might vote because I don’t have all cause I don’t have all the facts in front of me but I think it is clear that it would behoove Mr. Healy to straighten this out in court because obviously we will follow whatever a court tells us to do and I think Mr.. Healy would be well advised to start that process so we can get this issue cleared up”.

Commissioner Walden: “Has the city taken any steps to correct (inaudible) on their website to get this cleared up”?

Commissioner Bennett: “Unfortunately, it has not. As of yesterday the website is their charter is still saying that the qualifications for Mayor is still one year prior to the election”. *SEE ATTACHED-(City of Chattanooga Charter)*

Commissioner Walden: “Since I have been on the Election Commission, I cannot remember every voting one time not to allow someone to be able to run. Even when the the candidates were not able to complete the application to run, we voted to let them run”.

Attorney Summers: “Well, we didn’t let that young man who wanted to run who was in college. You might not have been on the Commission at that time”.

Commissioner Walden: “I was not on the Commission at that time. Since I have been on the commission, sometimes they did not understand how to get qualified to run and then put it back on the Commission that we should have told them every step to take. We gave them a packet and if it was done wrong, and it was done wrong, we still voted for them to vote. The citizens always get it right”.

ADJOURNMENT:

Chairperson Eddington: stated that if there were no further matters to discuss, this meeting stands adjourned.

NEXT MEETING

There was no meeting scheduled at this time.

APPROVED:

JB Bennett, Secretary

Dorothy Eddington Chairperson

Sharlotte Polk Commissioner

Joe Rowe Commissioner

Michael S. Walden Commissioner