

**HAMILTON COUNTY ELECTION COMMISSION  
MINUTES OF MEETING  
May 13, 2009**

**Call to Order:**

Upon notice duly given, Chairman Walden called to order a regularly scheduled meeting of the Hamilton County Election Commission at 8:00 a.m. on May 13, 2009 at the office of the Hamilton County Election Commission, 700 River Terminal Road, Chattanooga, Tennessee.

**Prayer:** Commissioner Lewis

**Pledge of Allegiance:** Commissioner Bennett

**Present at Meeting:**

Commissioners Walden, Bennett, Lewis, and Anderson were present at the meeting. Attorney Chris Clem, and the staff of the Election Commission, as well as members of the media. Secretary Summers was not in attendance.

**Approval of Minutes**

**Commissioner Lewis** made a motion to approve the minutes.

**Commissioner Bennett** seconded. The minutes were unanimously approved.

**County Policy**

**Commissioner Lewis** stated that he has spoken to Rebecca Hunter in the HR department and asked her very specific questions then we went over the current personnel manual used here and there were some areas that she seemed concerned about and would change if we fell under the county HR department. I also looked at amending the document like Secretary Summers suggested. I feel like there are so many little things that need to be covered more in depth and the HR department does do. I think there is more possibility for litigation with the hiring and firing policy that we have currently vs what the county has. The way the county would do this process is they would receive the applicants who applied for any positions that are open, they would narrow it down to the top 10. Each of them will be graded on a scale. Then they would be passed on to the administrator. Now if there was a discrepancy between the top score and the bottom score and the administrator chose the bottom score then there would have to be a good reason for choosing the bottom score. So I think that just adds a safeguard. I am not saying you have done that, I think you have done a good job. I am talking about future administrations I think it is a good way of taking the politics out. Secretary Summers also has stated that he was concerned about the cost the tax payers may incur. There will not be any additional cost. The only time she said there has been any cost incurred was with the latest 911 merger system. The county did ask the 911 center to apply more funds to fund a position to do that.

**Chairman Walden** stated that was a great point. Having been on the 911 board for the past 10 yrs. The 911 board is funded by everyones phone bill. There is a .99 to a 1.00 charge on every line you have and they are self supporting. Our funding comes from the county and that would answer the cost question.

**Commissioner Anderson** asked if the county would do basic job announcements positions here and they would guarantee EEOC?

**Commissioner Lewis** stated yes that is correct. He further stated that In the future every position in this place could be a political appointee. Because as of now they do not have to follow the guidelines of the HR Dept. There could be the arguments that yes this is not an arm of county government, but it still falls under the tax payers of Hamilton County, therefore I feel like they should follow the same rules. They will do salary surveys if needed to make sure they are up to where they need to be. Rebecca explained to me how this was done. They do it by going to comparable searches with both private and public sectors. She showed me where they had to realign one to catch up to the average.

**Commissioner Anderson** It would only be going under the county EEOC party guideline because with a workforce this size you would have significance in party selection, it's all going to become a larger job family that will become applicable.

**Commissioner Lewis** Stated that on the appeal process that would go through the HR appeal process that is currently with the county. The two positive points I see are **1.** They get the appeal process but under the current handbook they do not. The handbook does not require an appeal process. **2.** It brings an independent mind outside the Election Commission evaluating the situation and therefore politics is taken out of the situation if it is a politically motivated reason for firing. It is just a good way an independent look at the situation, is the employee at fault or the administration at fault? It just makes good business sense to me to be in place under the HR they will do the annual review and if anything comes up negative you would have to sign off on it. As of now a file can be kept without your knowledge.

**Commissioner Anderson** even though you say you don't want (inaudible) are you extending property rights?

**Chairman Walden** asked what kind of rights?

**Commissioner Anderson** stated property rights. When you set up specific procedures that have to be complied with, then those persons have a property right in those positions. Some of the litigation have indicated that personnel manual and procedures (inaudible).

**Commissioner Lewis** stated that you do not do that with county government.

**Commissioner Anderson** stated that chancery court is assuming jurisdiction over some kind of personnel actions so they have to have a legal basis, and it would seem to be the things you just described.

**Commissioner Lewis** and that is why I'm saying we should fall under the county HR

**Commissioner Anderson** okay that is property right.

**Commissioner Bennett** stated he was not taking a position one way or the other on if it is a property right. I disagree, I think this is the proper way to go, if there is a problem with property rights you can take it up with HR department.

**Commissioner Anderson** stated that he didn't say it was a property right you'll be taking that up with the court if it is.

**Commissioner Bennett** stated that you just went on record and said it was a property right, and I disagree.

**Commissioner Anderson** stated that anytime you codify something and say folks have procedures that have to be complied with which in this case is establishing due process rights.

**Commissioner Bennett** stated that is your view and I disagree.

**Commissioner Anderson** stated okay

**Commissioner Lewis** stated that he would like to make a motion that we do move the election commission under the county HR policy and eliminate the current policy that we are under.

**Commissioner Bennett** seconded.

Commissioner Bennett said he would like to read into the record Mr. Summers email (SEE ATTACHED)

**Chairman Walden** stated that there was a motion and a second.

The motion was approved.

**Attorney Clem** and **Commissioner Bennett** stated they wanted to commend Mr. Lewis for doing all the hard work on the policy procedures.

**Chairman Walden** stated that they had City Council Certificates to sign from the last election.

**Administrator Knowles** stated that we have 900 students that have been registered from High schools and colleges. He further stated that we are in the proces of purging the records and this is the year we are to do so since it is an off year

### **Frank DePinto Recall Petition**

**Chris Clem** stated that the law could be clearer. It is not as clear as it should be and that is partly due to the state statue and partly due to the city charter. The state code does set out a procedure for what you do with all petitions and recalls. You can have a petition that is not a recall. It's all handled under T.C.A. 2-5-151 and if you read that it sets out a procedure and all cities and counties have to follow it. They are not allowed to deviate from it. They do allow Cities and Counties to deviate in two specific areas one being under any petion or recall it sets out a 15% of registered voters but it says if a city or county wants to vary that they can; and apparently the city charter does vary it. I believe they are allowed to vary it because they are given special permission to do so, and they are also allowed to vary the deadline for gathering the signatures of 75 days when you authorize the petition. I don't see in the City Charter where they have just that they are allowed to and just havent. Where the issue comes up is the state code does say 2 elections are necessary and the question on the petition must be voted on and that seems to me you have to vote on the question and if it passes then you have a second election regarding that question. Looking at the city charter section 318 a fair reading of that does set up to say once you get the petition a recall is automatic. I just don't think the charter is allowed to do that and if you look at the last sentence of the charter they have a catch all said method of removal shall be cumlitive and additional to the method here to for the existing law. I think it is just a catch all phrase to say if we messed up go with the state law. I feel it should be two elections and I have spoken with Mike Mann and Phil Noblett in the city and Mark Goins and Beth Henry Robinson from the state and they all feel as well that it should be two elections. However, they had mentioned that in the past counties with a similar charter as chattanooga to save money have gone with one election and I don't have specific times and locations and I don't know if it were recall petitions. But no one objected and the state allowed it to go forward with one election. The state, the city and I believe it should

be two elections. Mr. DePinto will have to have his petition filled out properly within 75 days of you approving it and if he gets the required number of signatures it would go on the ballot

shall you recall Ron littlefield for the Mayor of City of Chattanooga?.

Under the State code it would be about 15% of 100,000 or 15,000 valid signatures. However the city charter can raise or lower and I think they did reduce it and it is gonna be closer to 9,000. It is obviously safer to get the 15,000.

**Chairman Walden** asked are we allowed to have 9,000 the lower amount and we don't recognize that if there is one election there has to be two elections?

**Chris Clem** I don't think you have to worry about the number of signatures right now, I think we need to determine or approve his petition so we can issue it so he can start the 75 day process of gathering signatures. Once he is close to the 9,000 or 15,000 signatures we can approve that.

**Chairman Walden** asked when we approve his petition shouldn't we tell him how many signatures he needs?

**Chris Clem** stated that I think we should give him some advice on that, and I have done so. I believe he can go under the city charter on that because I believe the state code specifically states the city charter can reduce the number if they choose to and I believe our city charter has done so. Someone can always contest it and it is always obviously safer to get the 15,000. But in my opinion a judge in Hamilton County would probably rule in his favor that it was a sufficient number if he had 9,000.

**Frank DePinto** stated that he had worked with Mr. Clem last week and has two options for the petition.

**Chairman Walden** asked attorney Clem which petition in his opinion should we choose?

**Attorney Clem** stated the shorter petition is good if there is only one election, but I think in my opinion you have to have two elections. The second one is longer has a recall question on it. I think the second one we could approve and we should take the yes no off the question. I just think it would be to confusing to the voters. The key things you need on the petition are your first sentence, the question you want on the ballot and the complaint.

**Chairman Walden** stated that it was Mr. DePinto's choice on which petition he wanted to submit.

**Frank DePinto** stated that wanted the board to vote on the second petition after the yes, no was taken off.

**Commissioner Lewis** made a motion to accept the recall petition that was presented as long as the yes no has been stricken from it. **Commissioner Bennett** seconded and the motion was unanimously approved.

**Frank DePinto** asked when the 75 days would begin?

**Charlotte Mullis-Morgan** stated that they would begin today.

**Chairman Walden** stated that the 75 days from today will be July 27<sup>th</sup>

#### Legal Matters:

**Attorney Clem** stated there are none as of now.

Administrator Knowles stated that there were 900 registered voters from High School & College students, and we are doing a massive purge that hasdnt been done since 2004.

**Commissioner Bennett** made a motion to adjourn the meeting.

**Commissioner Lewis** seconded and the meeting was adjourned

**Next Meeting:** Wednesday June 10, 2009 @8:00 a.m.

**APPROVED:**

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Jerry Summers Secretary

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Michael S. Walden Chairman

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J.B. Bennett Commissioner

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Jeff Lewis Commissioner

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James Anderson Commissioner