

HAMILTON COUNTY ELECTION COMMISSION
MINUTES OF MEETING
August 5, 2010

Call to Order:

Upon notice duly given, Commissioner Walden called to order a regularly scheduled meeting of the Hamilton County Election Commission at 7:30 p.m. on August 5, 2010 at the office of the Hamilton County Election Commission, 700 Riverfront Parkway, Chattanooga, Tennessee.

Invocation: Commissioner J. B. Bennett Pledge of Allegiance: Chairman Walden

Present at Meeting:

Secretary Summers, and Commissioners Bennett, Anderson and Walden were present at the meeting. Attorney Chris Clem and the staff of the Election Commission were present as well. Also present were members of the community, as well as members of the media as shown on the attached sheet.

Minutes:

A motion was made by Chairman Walden that the minutes be approved, Secretary Summers seconded, and the minutes were unanimously approved.

New Business:

Chairman Walden stated that they would count the ballots and recess and reconvene the meeting after the ballots had been counted. Chairman Walden asked if there was any new business and Administrator Charlotte Mullis-Morgan said that they had two new recall petitions, one for Jack Benson and one for Manuel Rico. She further stated that she had given everyone a copy of the report on that issue Secretary Summers asked if it had been presented to the state to see if the language was sufficient. Attorney Clem said no, it had not been sent to the state but it exactly modeled the Littlefield petition. The state approved the Littlefield one and all they did was change the names. Chairman asked attorney Clem about the formula and how many signatures do they actually have to have. Attorney Clem stated that he had handouts and distributed them to the Commissioners. "He further stated that TCA 25-151 Section D the code states to have a ballot recall you have to have 15% of the registered voters from that municipality or county. In this particular race (the Mayors race) there are about 100,000 registered voters, therefore it's around 15,000, but if you look at the end of this same statute, it says "any charter provision of a municipality which is enacted after 1997 shall control with respect to the requirements set forth in D." That is read basically as you have to have 15% of the registered voters but if the city wants to have a lesser figure they can do it but they have to do it in a certain way. Attorney Clem then directed the Commissioners to the Chattanooga City Charter. It clearly has a different formula which comes up with a smaller figure. Its basically 50 % of the people who voted in that race. Only about 18,000 people voted in the last Mayors election so we are going from 15,000 down to 9,000. They talk about what happens if it is not a city wide or county wide election and the city charter says for instance if it is a city council race then it is 50% of the people who voted in that last city council race for Mayor.

Attorney Clem stated that he had written to Phil Noblitt of the city attorney's office and spoken with the state attorney, Beth Henry Robinson and there is a letter from Phil Noblitt and his summary is that this could go either way. The reason it can go either way is this. The key is that first statute says that it has to be enacted after 1997. The City Charter was enacted 30 or 40 years ago reenacted back in 2002. The whole charter was re-enacted. They made a few minor changes but they re-enacted the whole thing. I believe that it is sufficient that the city charter probably has effectively lowered the amount. When you read Phil Noblitt's letter from the city attorney, and my letter, and previous counsel for the Election Commission, all of us come to the same opinion. Jerry Summers did, I did, Phil Noblitt and Beth Henry Robinson, and that is that it could go either way. If the Chancery Court does not feel that it was not effectively enacted in 2002, then it needs to be the state figure of 15%. Beth Henry Robinson and myself kind of think it's the lower number that it has been done properly and that it will be 50% mark as indicated in the city charter but I'm not 100% sure."

Secretary Summers stated " All I can say in support of that the Chancellor in the Healy case, in his opinion... It was on a residency issue

(Blank tape resumes with attorney Clem in mid sentence)

under the Charter 50% of the last election for all these city council people they are trying to recall and for the Mayor, I think it would be wise for you to make a decision and direct Charlotte to either accept or reject. There is a third option that Phil Noblitt mentioned in this letter that we could file a declaratory action. I think it would be better or easier to direct her to do one or the other and leave it up to the other side to file suit. Secretary Summers asked what was the total number of Mayoral votes cast in district 4 and 7 for Mayor.

Administrator Mullis-Morgan said that in district 4 (Jack Benson) there were 1,762 voters and half of that is 881 and that is total votes. Jack Benson was unopposed at that time so we did add in the write in votes. This is what was voted for in Benson's race. We need to pull the numbers of what was voted for in Littlefield's race. Secretary Summers said "All candidates for Mayor in that district. That's the number we have to take 50% of in my opinion." Commissioner Anderson asked what would be the consequences if we made a decision and it was overturned?" Attorney Clem said if they get the signatures there would be a lawsuit either way.

Administrator Mullis-Morgan gave the total voters for Healy, Littlefield, and ????. Attorney Clem stated that the number was incorrect, that there was no way 1700 voted in Benson's race but 19,000 voted in Littlefield's race in the same precincts.

Commissioner Bennett said he would like to make a motion that we accept the charter as being the appropriate measuring stick to determine how many signatures you need. The 2002 charter, section 3.18 Chattanooga (inaudible). Secretary Summers seconded. Chairman Walden stated that he wanted Attorney Clem to draft a memo and assist Charlotte with a package if someone comes in to file a recall petition they get a package that says this is what you have to do from this point on we don't have

to revisit this. This commission has voted that it is the charter unless a judge says otherwise.

Legal Matters

There were no other matters at this time.

Attorney Clem asked if they made a motion to adopt the city council recall petition? There were two of them. Commissioner Bennett Made a motion to approve the recall petitions and the number would be according to the charter section 3.18. Secretary Summers seconded.

Chairman Walden stated that if there was nothing else can we have a motion to adjourn. Commissioner Bennett made the motion and Secretary Summers seconded.

Next Meeting: The next meeting is scheduled for August 23, 2010 @ 8:00 a.m.

Adjournment:

Commissioner Bennett made a motion to adjourn and Secretary Summers seconded, and the meeting was adjourned.

Jerry Summers Secretary

APPROVED:

Michael S. Walden Chairman

J. B. Bennett Commissioner

James Anderson Commissioner