

**HAMILTONCOUNTY ELECTION COMMISSION**  
**MINUTES OF MEETING**  
November 17, 2011

**Call to Order:**

Upon notice duly given, Chairman Walden called to order a regularly scheduled meeting of the Hamilton County Election Commission at 8:33 am on November 17, 2011 at the office of the Hamilton County Election Commission, 700 River Terminal Road, Chattanooga, Tennessee

Invocation: Commissioner Braly

Pledge of Allegiance: Chairman Walden

Present at Meeting:

Commissioners Walden, Braly, Summers, Crangle and Anderson and Attorney Clem were present at the meeting, as well as staff of the Election Commission, members of the media and public.

**Chairman Walden** stated that before we get started he wanted to explain what happened to the 8:00 mtg this morning. We went into a legal session with our legal counsel and we did so to discuss some items with the pending litigation and the possibility of future litigation so that's what we discussed in there.

Approval of Minutes:

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

**Commissioner Anderson** seconded.

New Business:

**Administrator Mullis-Morgan** stated that the county commission adopted a resolution and approved it for the Dist. 3 lines and we will be using their lines for the March election and it is for the County Commission Dist 3 only.

**Chairman Walden** asked what the commission needed to do.

**Administrator Mullis-Morgan** stated that everything has been taken care of.

**Chairman Walden** stated that the next thing on the agenda is the Recall Petition. There are three issues and possibly four that we will try and take care of today. The first being whether the amount of signatures required for the recall in light of the recent court of appeals ruling, whether the higher or lower number will be discussed first. Secondly whether or not if the signatures meet the requirements of either the higher or lower number. Thirdly, with the court of appeals ruling whether we have the authority to act now on whether to approve the higher or lower number and the dated signatures today, and what effect if the stay is in effect. Once we get through those then that will be the determining factor on whether we vote today and if we do and it is voted there is to be a recall when would that be on the election schedule. He further stated that the first thing they needed to do was to discuss or vote on whether the higher or lower number of signatures would be accepted.

**Secretary Summers** stated that he thought it will be premature to vote on this at this time.

**Chairman Walden** asked attorney Clem if we were legal to act on this.

**Attorney Clem** The issue is not as clear as I would like it to be. It is clear that the case is not final. It is clear that the appellate decision is not final. I think that is a separate issue of whether the stay is in effect or not however. When this first came before us last August the trial court issued a stay, meaning we were not allowed to make the decision and that the trial court would make the decision. That has been appealed to the court of appeals. They in my opinion have lifted the stay. I don't believe the stay is in effect, but it is correct to say the decision is not final. There are two different issues. I do believe the stay is not in effect and we could act if in your discretion wanted to. I don't believe the law is very clear on that. I'd like it to be clearer. It is in my opinion that the stay is lifted, but to be honest I am not 100% sure.

**Chairman Walden** thanked attorney Clem and asked if there was any discussion.

**Secretary Summers** stated he sent a memo to the members of the commission based on history as we have a relatively new commission. Chairman Walden was the only holdover and I was legal counsel and at the time we addressed this back in the DePinto matter. I've given to you a package that Charlotte tells me has been sent to you. (SEE ATTACHED)

Without getting into the merits of which state law or ordinance is right, at this point the losing party in this case the court of appeals (The Littlefield side) has 60 days to appeal to the Tennessee Supreme Court, after that 60 days they can take whatever time they want to make a decision whether they want to grant or deny any application for permission to appeal. I think until we get a ruling on that if nothing happens then we automatically can come back (as per our legal counsel it appears that time wise we are looking at August anyways) it seems to me to act on this at this point with legal situation existing where the losing party in the court of appeals or even technically the winning party if they wanted to raise questions-I doubt that they will- on the same issues that weren't decided. The opinion by the three panel member of the court of appeals did not address the most difficult issues we have to deal with and that it whether state law or city charter applies. My personal opinion is we wait until the 60 days expire if anything takes place in that court that would put it further on hold we just have to deal with it. But to me until the Tennessee Supreme Court grants or denies an application if one is made in the 60 days I think we are premature.

**Commissioner Crangle** asked that no matter what we do today does it change their right to appeal?

Secretary Summers stated that no they still have the 60 days to appeal.

**Attorney Clem** stated that in his opinion yes the commission can act or not act at their discretion. state law does not allow cities to choose the date of election after a successful recall petition. He further stated that section of the city charter would be invalid.

**Commissioner Crangle** asked if they still had 60 days no matter what the commission decides.

**Commissioner Bray** stated that the court of appeals has put it back on the Election Commission because we have not completed everything we need to complete.

**Secretary Summers** stated that the judge didn't have jurisdiction.

**Attorney Clem** stated Secretary Summers is right it is not a final decision so it could complicate things quite a bit if we acted before the final decision, if for any reason the final decision was changed.

**Chairman Walden** asked attorney Clem if the commission was within their right if they made a decision today?

**Attorney Clem** stated that it was at the discretion of the commission to act today or to put it off.

**Commissioner Anderson** made a motion to wait on the decision to become final before we take a vote. This will also give us an opportunity to due diligence on issues that are presently contested or we anticipate to be contested, that are not presently before the court so we can make the most informed decision as possible.

**Secretary Summers** stated that he had hoped there would be some bi-partisan if not I will seconded.

**Commissioners Braly and Crangle** voted to go ahead and vote now.

**Chairman Walden** voted to break the tie and he voted no.

Commissioner Braly stated that we should not wait and we should vote on whether the number of signatures are correct and if we are going to accept the number of signatures on there, because the petitioner has gone and gotten the signatures. So we need to vote whether to accept the signatures.

**Chairman Walden** stated that right now the motion was should we vote now, and we had a motion not to that was defeated. Do we have a motion that we should vote now?

**Commissioner Braly** made a motion that we vote now.

**Commissioner Crangle** seconded

**Commissioners Anderson and Secretary Summers** voted against.

**Chairman Walden** voted to break the tie and he voted yes that we vote now.

He further stated that the next thing before us is whether we accept the higher or lower number.

**Attorney Clem** stated that this is the same decision the commission made last August. I don't think you are bound by the decision you made last August as a matter of fact I think that decision still stands unless you overturn it. You are free to affirm it or to overturn it today. A lot has happened since last August as Mr. Summers has pointed out. I don't think you are bound by the trial court opinion since it did not have jurisdiction. So it is at your discretion. I can defend it either way.

**Chairman Walden** asked for discussion.

**Secretary Summers** stated that in 2006 it was voted five to nothing in the DePinto matter that the state law would apply. Since this time the litigation that has ensued where Judge Jeff Hollingsworth has held the higher number to be between 14 & 15,000 signatures should apply. The big difference is when I voted in 2010 I went along for two reasons. One I felt like it was the consensus of the majority and it has always been my philosophy to try and reduce if not eliminate as much political haggling because of the interest of the election commission. I know we are political entities because we are involved in the political process but our main trust is to ensure there is an equal opportunity for parties to participate in the electoral process, at that point I went along. I have since changed my mind based on the fact that there was no legal precedence no decision on this issue as Mr. Clem has stated It could go either way. In my opinion Judge Hollingsworth made a decision even though the court of appeals said he didn't have jurisdiction, unfortunately the three member panel didn't address the issues that are causing the discussions this morning which is whether state law or local ordinance applies dealing with the question of amendment or enactment. Now Judge Hollingsworth's opinion here speaks for itself and he upheld the higher number for the recall. Based on the fact that now there is an opinion by an elected judge (even though he was held not to have jurisdiction I think it gives some precedence. In my opinion based on the language in Judge Hollingsworth's opinion which I think there is another question here, is a recall at this time proper? There has been a change since we voted and I think the higher number should

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apply. There is also a collateral issue on the signatures dated and so forth and if they received improper advice. There is also language on that if in itself allows those that are not signed or dated to be valid or not. So it is my respectful opinion on this that state law apply It is not designed to keep anyone from voting. If we are going to do it we need to do it in the right and correct form. He further stated he favored waiting until a 60-day time period for an appeal to be filed. He also stated that he agreed with two newspaper editorials that said recalls should not be over policy decisions but should be reserved for misfeasance, malfeasance or some impropriety in office.

**Commissioner Anderson** stated that even though the circuit court decision may become void after the 60 days. Presently we have a judgment from the court that the state statute applies. I would prefer not to vote and I will abstain.

**Chairman Walden** stated the issue before this board is the state law & city charter have given us a set of rules that we are to interpret on whether the recall effort met the requirements under the law, not whether they are justified to recall the mayor. It is not our position to have an opinion whether we like the players of the game, just to determine what the regulations requires. We have always sided with the voter/candidate even if they didn't fill out the right papers. I feel Mr. Folkner worked hard and did what they were told to do and the last time we voted to get the lower number and since they did I am not going to change my mind and now say they need to get the higher number. The election panel has always decided for the voter or the candidate in such issues and let the people decide at the ballot box.

**Commissioner Crangle** made a motion to accept the lower number.

**Commissioner Braly** seconded.

**Secretary Summers** voted no

**Commissioner Anderson** abstained.

**Chairman Walden** stated that we had a petition to approve for Mr. Folkner during the 75 day window. They presented another petition with the same wording with no place for a date. They met with Charlotte and she said it was fine. They used that knowledge and continued to get signatures and out of the 9,000 about 4500 didn't have a date on them. We researched it and there is an opinion out of Knoxville that says if you act on good faith whether there is some inconsistency it is okay.

**Secretary Summers** stated that there is another opinion out of Nashville that is a conflicting opinion.

**Chairman Walden** stated that there is a conflicting opinion but that Nashville doesn't have to have any dates on theirs. So 94 counties in the state of Tennessee have to do a recall one way and Davidson Co didn't want to do it that way so they don't have to put their dates. There is some issue on whether that is even constitutional. I'm not saying it won't be over turned by the court. I'm saying since I have been on the commission we have never impeded someone's right to have the voters decide their issue.

**Secretary Summers** stated that that was not exactly true. There have been people who were not qualified and we did say they were not qualified. On this particular issue you are correct.

**Commissioner Crangle** stated I don't know how I could ever come down on the side of something that will deny the right of the people. We lose confidence in our government all the time. The people need to have confidence that their laws are legitimate. I think they have the right to recall their officials. I don't know how we can deny that right.

**Commissioner Anderson** stated that the only ruling we have on the merits is from the circuit court and that decision is not void. It is not void until 60 days.

**Chairman Walden** stated that is not true.

**Commissioner Anderson** stated that the decision is not final until 60 days.

**Chairman Walden** stated that they may make a motion and that can go through. Judge Hollingsworth made a decision that we could not certify these petitions and that has been vacated therefore we have the right and this commission has voted to approve the petitions. There is nothing to prevent us from doing our job. His order prevented us and that has been overturned. Now, they can do something later and right now we can make a decision and we made a decision and we are having an election.

**Administrator Mullis-Morgan** stated it would have cost the city of Chattanooga \$50,000 or more to have a stand-alone mayoral election. She further stated that by combining it with other voting on Aug. 2, 2012, the cost should be from \$6,000-\$8,000 for the city.

**Commissioner Braly** made a motion that the recall election be held on the August election.

**Commissioner Crangle** seconded. Motion passed.

**Chairman Walden** asked attorney Clem that since the court of appeals has overturned this ruling is it my understanding that in Judge Hollingsworth's ruling that the legal fees be divided between both parties, but now that this has been overturned are we not entitled to our attorney fees back?

**Attorney Clem** stated that yes he didn't think anything in Judge Hollingsworth's order can be enforced

**Chairman Walden** asked did that include the fees.

**Attorney Clem** stated that yes it did include the fees..

**Chairman Walden** asked how they got the money back for Hamilton County.

**Attorney Clem** stated that again that would be a decision for the commission to make.

**Chairman Walden** stated that he is directing attorney Clem to get the legal fees back.

**Chairman Walden** then thanked the visitors for coming and asked if any of the visitors had any questions or comments.

**Paul Smith (Democratic Party Chair)** asked if everyone in Dist. 3 had been notified

**Administrator Mullis- Morgan** stated that yes they had been sent a letter as well as a voter registration card. She further stated that some of them had come back but both have gone out to notify them.

**Paul Smith** then asked had the election commission done anything to register the high school students.

**Administrator Mullis- Morgan** stated that yes, Deputy Steve Gaston was in charge of that and that he had already began. She further stated that there were 31 high schools.

**Andre' McGary (City Councilman)** stated a potential mayoral candidate, said the city charter states that in the case of a recall the election for mayor should be held within 30-60 days. Section 3.18 of the City of Chattanooga City Charter.

**Chris Brooks (Chattanooga Organized for Action)** stated that he wanted to thank the commission for siding with the voters and democracy in Chattanooga.

**Charles Wysong** stated that he wanted to thank the commission for sticking with their original decision, I was very gratified by all of this.

**Hal North (Attorney for Ron Littlefield)** stated the election panel at the close of the meeting that the recall has been a comedy of errors, mis- information and bad advice. He further stated It is unfortunate that the Election Commission has now compounded those problems today.

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He further stated that he suggests that when you leave here you get on the internet and look at rule 43 of the Tennessee rules of appellate procedure, I think each of you at some point will be called upon to explain to a judge or a panel of judges why you acted in violation.

**H. Eric Burnette (James Folkner et al)** stated it was highly inappropriate for attorney North to chastise the Election Commission. He further stated the appeals court ruled that the opinion of Judge Hollingsworth was void - that means it's absolutely gone.

**Mark West (Tea Party)** stated it was highly inappropriate for the mayor's attorney to come in here and try to intimidate the Election Commission.

Adjournment:

**Commissioner Braly** made a motion to adjourn.

**Secretary Summers** seconded

The next meeting is Wednesday January 11, 2012 @ 8:00 am

APPROVED;

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Jerry Summers

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Secretary

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Michael S. Walden

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Chairperson

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Ruth Braly

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Commissioner

\_\_\_\_\_  
James Anderson

\_\_\_\_\_  
Commissioner

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Tommy Crangle

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Commissioner