

HAMILTON COUNTY ELECTION COMMISSION
MINUTES OF MEETING
February 8, 2012

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 February 8, 2012 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, Anderson and Attorney Clem were present at the meeting, as well as staff of the Election Commission, members of the media and public.

Approval of Minutes:

Secretary Summers stated there are a few things in the minutes that are slightly incorrect. But not anything that will have any consequence.

Commissioner Braly made a motion to approve the minutes.

Secretary Summers seconded.

New Business:

Resolution

Administrator Mullis-Morgan stated that she had received a resolution from the county commission asking that we put session's judge on the ballot for August to replace Bob Moon.

Commissioner Walden asked was this in accordance to state law?

Administrator Mullis-Morgan stated that yes it was.

Secretary Summers made a motion to accept.

Commissioner Braly seconded.

Recall

Administrator Mullis-Morgan stated we will be in court on Friday at 9:00 am over the recall.

Administrator Mullis-Morgan also stated that we finally have the maps for redistricting, they are at GIS. It will be a while, they have really changed. It is going to take some work.

Chairman Walden asked when the county does theirs.

Administrator Mullis-Morgan stated that already have. So has the City, we have just been waiting on the legislature. Now that they have sent theirs we can hopefully start working on them Friday of this week or first of next week.

Chairman Walden asked if there was anything she needed from the commission

Administrator Mullis-Morgan stated that no there wasn't at this point.

Legal Matters:

Attorney Clem stated that he had spoken to Administrator Mullis-Morgan on the redistricting and the precinct lines. He further stated that we do have a case in court on Friday. This will be similar to the prior case; I believe it won't be a fact specific case. Most of the facts will be stipulated. It will be mainly a legal argument.

Commissioner Anderson Asked that a statement be entered into the minutes.

SEE ATTACHMENT

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Chairman Walden asked attorney Clem if he had read It.

Attorney Clem stated that he had skimmed over it that he too had just been handed it, but that any commissioner has the right to bring in a statement and have it entered into the record.

Secretary Summers asked had the Attorney General responded yet.

Attorney Clem stated that yes.

Secretary Summers stated that they usually uphold the state statute; did he take a position one way or the other?

Attorney Clem stated that yes they did a brief statement arguing that the state statute is constitutional under a national basis test.

Secretary Summers asked if he could send the commission a copy.

Attorney Clem stated that yes he could today.

Chairman Walden asked if anyone had anything else.

Paul Smith stated that he had a few questions. First, could the agenda be posted on the network so we will know what you are going to talk about before we get here, and after the minutes are done have copies available for the press and us in attendance so we will know what you are approving? Secondly, on the precinct lines will there be any precinct changes in District 3 after the March election for the August election?

Administrator Mullis-Morgan stated that there possibly could be

Paul Smith then stated that what was being said is that we still do not know what the voting precincts will be for district 3 will be in the August election?

Administrator Mullis-Morgan-Morgan stated that no we do not know any of the precincts at this point.

Paul Smith stated he just wanted everyone to be aware that we are having an election that we have been trying to process for several months now and you've done the best that you could but we are still in limbo as to where those voting places are going to be, If they are changed substantially then there will be purges and cards re-issued.

Administrator Mullis-Morgan stated that yes sir, as soon as we know we will send out a letter explaining the changes and a new card. This will be all across the county.

Paul Smith stated so it will be county wide, and we have two other county wide races.

Administrator Mullis-Morgan stated that yes it would be.

Paul Smith asked did anyone have any idea at this point how many people that are registered voters who have not picked up their Photo ID?

Administrator Mullis-Morgan stated that no we do not.

Paul Smith asked was there a way to find out?

Administrator Mullis-Morgan stated she didn't think so. The state sent out letters to all those who didn't have a photo ID.

Paul Smith asked could we get list from the state.

Chairman Walden stated that we do not have that information.

Attorney Clem stated that you could get it from the department of Transportation.

Commissioner Anderson stated that the NAACP has it.

Attorney Clem stated that he was sure they got it from the dept. of transportation.

Paul Smith stated that they just wanted another way to contact those people so that they didn't lose their voting rights on a legal technicality.

Commissioner Anderson stated that there is pending legislation to amend the law to allow city & county ID's to be used for Voter ID's.

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Jim Folkner stated that he understood that the commission had asked for a change of venue from Circuit court to chancery court. Had any consideration been given in asking the judge to recuse himself based on the information that has come to light since his previous ruling and the change in judiciary standings?

Secretary Summers stated that they don't have a dog in that fight. I've said that before. This lawsuit should be settled by the parties. We have already voted on it, whatever is going to happen will happen. The state statute has been declared and if the parties want to move to have the judge recues himself then let them do it. We don't need to be continuing to keep running up legal fees. Let the court decide. We are supposed to be a neutral body.

Chairman Walden asked did anyone else have anything to say.

Charlie Wysong stated that the commission is imminently involved; to say we are a neutral bystander just isn't true. We got instructions from this body that we relied on. We assumed we were getting good information. I know Mr. Clem wrote again and again to the attorney general and again and again to the election commission in Nashville and we acted in good faith & I think you acted in good faith and I think the court needs to declare that this was a recall. They got up in the election commission meeting last night and said the fix is in and we are going to get a ruling from judge Hollingsworth that the recall is defective and null and void.

Secretary Summers asked what election commission meeting last night?

Charlie Wysong stated he meant the city council. He further stated that they (the people involved in the recall) felt they are not being represented properly. They are going before a judge who has a very determined outcome in mind. This is the proper body to rule not a judge. I think you should champion our cause and the cause of the rule of law since we came to you for instructions, I object to that idea that you can simply just go to a judge and say tell us what to do. It is an abomination.

Secretary Summers asked are you saying that the state attorney general is in on this fix Charlie?

Charlie Wysong stated that he didn't say that. Perin Lance at the city council meeting last night said that. He also said that (expressing his own ideas that the fix was in and all the effort we put into the recall and it was considerable and even getting to the recall there were a lot of issues involved that we worked thru and that it is all for naught and we get it washed out by the judge. This body has already ruled and this is the proper body to rule and not a judge.

Chairman Walden stated that this is the proper body to rule when we have clear rules and regulations. The conflict comes in between the city charter and the state law. When we have a question as to which one pertains, it is not up to this body to make the law, we have to go to the court and get an opinion. That is what we have done.

Chairman Walden also stated that in all of this we have not been the one pushing either side. We haven't sued anyone for anything, we have merely responded. We made a decision and prior to making the decision the mayor sued the commission and we had to respond. At that time the judge ruled in favor of the mayor's position. At which time the recall group filed an appeal and we had to join in order to be a part of it. When it was overturned by the court of appeals we made a decision that we were prevented from making before. For the second time the mayor filed a lawsuit and once again we had to be a party to that. Again we have taken a position all of us the first time and the majority the second time that the city charter should prevail. That is up to the judge to decide. Whatever his decision is we have to live with it like it or not. I have no problem if Chris asked to move from one court to another.

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We asked they said no and we are moving on. I am also aware that the recall effort hasn't joined in on this last lawsuit (the second one).

Attorney Clem stated that no not as of yesterday.

Chairman Walden stated that this commission has discussed it, and our question is which law pertains. If the judge rules the same as the attorney general did I would think it wouldn't be this commission's position to appeal? We have always responded. We made a decision to with the city charter. If the judge rules it is the state statute, then going forward it will be the

state statute and we have a legal opinion and even a judge's ruling and the next group to come through and wants to have a recall then it is clear that we should go with the state.

Charlie Wysong stated that there were two chancery court decisions that the city charter was in force and that this body could rule with clarity.

Attorney Clem stated that he had mentioned that in the briefs that we were going with Chancellor Peoples. But we are also going to go with this judge too.

Charlie Wysong stated that we the citizens don't have any guarantee that a third judge won't be involved.

Chairman Walden stated that I agree 100% with you in that regard on that point. This goes back 6 years to the DePinto case. The city council has done nothing to correct this. At one of their meetings lately in the past few weeks, they said that they are not going to take a position to enforce it or not. They've shown no desire to fix it. Our job is not to make the laws but to enforce the laws as we understand them to be. We voted unanimously the first time and majority the second time to take the least number of signatures.

Attorney Clem stated that this commission thinks it was enacted properly but even if it wasn't the city council knows how to do it right. We warned you the entire time that we weren't sure whether a judge would rule or not.

Chairman Walden stated that he'd argue the point that the next person that comes in here there could be a challenge next time as long as this is on the city charter.

Commissioner Braly stated that if a judge rules this time that state law is in effect and that is what we go by then we have set a precedence and then there would be no question because we have set a precedence.

Chairman Walden stated that we would be able to articulate that because the judge ruled but the opposing party could go back and say no I think it is the city charter that is in effect.

Commissioner Anderson asked if all the parties were notified so they could be heard.

Attorney Clem stated yes. He further stated that it is important to note that the reason the judge first ruled that the state law was in effect was because he believed the city charter wasn't properly enacted in 2002. He made it clear that if the charter was properly enacted that the lower number would apply.

Chairman Walden stated that the issue tomorrow is if the city charter was properly or improperly enacted

Attorney Clem stated that even the city mayor is arguing that it was not properly enacted, the judge agreed with him, if the city charter is properly enacted then the lower number applies. Everyone agrees to that. They are arguing that it was not properly enacted. Chancellor Peoples did give an order back in the Healy case, he that believed it to be properly enacted. This commission was justified in following Chancellor People, but Judge Hollingsworth is not obligated to follow that, but we are obligated to follow Judge Hollingsworth's ruling

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Mark West stated that he wanted to say 3 quick things. Put yourself in a personal lawsuit that you're engaged in and you know these facts. First you're going to be in front of a judge who has already ruled against you in the case and it has gone to appeals and back and you are in front of the same judge expecting to get a different outcome. Second, that judge you're in front of had had 42% of his campaign contributions made by the attorney's law firm representing the other party. And third, that the TN court of judiciary has passed new clear guidelines on when a judge should recues himself on a variety of matters and in this instant if you apply the facts of this case with the new guidelines that take effect July 1st then this judge without question should have to recues himself. So consider all those facts and it's your personal case would you feel like you are going to get a fair and unbiased ruling? That's

where the people are and in my view where the commission should be because you represent the people and you're here to make sure there are fair elections and fair recalls. You've given us instructions and we are in court a second time do you think this is the right man to render a fair decision?

Secretary Summers stated that he is going back before the same judge as before in a different case, and just because you don't like the outcome doesn't mean he wouldn't be fair. That is an unfair attack.

Commissioner Anderson-in audible- re: a compulsory interest

Attorney Clem stated that yes and we put down a clear order and all parties agreed. Even the city Mayor is arguing the city charter was not properly enacted. At that point Judge Hollingsworth did say at that point he believed it was possible that the city had to be of the party whether they wanted to or not. So at that point the city of Chattanooga was contacted and they agreed to intervene to be a party. Even though they weren't a party in the beginning. As far as the other people-potential candidates who have picked up papers etc. and petitioners they are not required to be a party but have been invited to do so all they have to do is file a petition.

Chairman Walden asked that if they do not file and the judge were to rule against them they wouldn't have any standing right.

Attorney Clem stated that yes that is correct. If you are not a party before Friday, you would have no rights to post trial motions to reconsider or to appeal.

Commissioner Crangle asked did I hear you say the city was a party

Attorney Clem stated yes

Commissioner Crangle asked what position they took.

Attorney Clem stated none what so ever. In their defense the city council directed them in the resolution, and I don't think the city council gave them clear direction. They are doing what their city council told them to do.

Charlie Wysong stated May I say this in conclusion, we have never felt that when we came before this body that we were not treated fairly and considerate. I feel like the greatest consideration was given to us in this room here., and I do appreciate it.

Jim Folkner: stated I'm not saying the fix is in, I'm saying people unbeknownst to us have spoken publicly and said that. However, the opportunity for recusal is a chance to protect the judge so that his integrity is not questioned now or in the future. The 42 percent was on the front page of the paper. It was in the paper the day after he gave his ruling (2010). Other things have come to light about Mr. Littlefield's contributions.

Attorney Clem: I think that the consensus was we were concerned that this has to do with the city charter that there was a small possibility if this did get appealed the Court of Appeals

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would have us do it all over again because the city was not a party... I don't think anyone wants that. We were concerned that later the city was a required party and they were not a part of the case.

Jim Folkner stated the people that brought this up are not a party? The judge publicly asked the city to join. He did not ask us. I think that shows bias.

Attorney Clem: I think you were considered a discretionary party where you can be or can't be, but since this has to do with the city charter and we did not want to risk going on with the case without them being a party.

Secretary Summers: You intervened in the first one. Have you intervened in this one?

Jim Folkner stated Not this time. Our position is that the Election Commission has voted and why should the people who signed the petition hire attorneys to protect an election that has

already been established. I am also concerned about possible appealing the judge even though we have different opinions so there will not be any closure on this until it is settled in favor of the Election Commission or it is appealed. There is also the issue of the dates and the Appeals Court determined that you have the authority to make that decision and you have made that decision.

Attorney Clem: It is my job to defend the opinion of this Election Commission and how they voted. Let me make this very clear. If you want to make sure that your interest and whether or not you want this case appealed or not, there is only one way to make sure your opinion on whether this case is appealed or not is protected and that is to make sure you are a party to this case.

Jim Folkner: stated that I just say that if you are going before a Judge and the Judge has already said it's not going to be appealed and the judge has got all this money from the other attorneys, who are his old law firm that's not a very good position to be in.

Commissioner Anderson: stated nobody said that.

Attorney Clem: stated that once the judge makes a decision and has signed the order, it may be Friday or it may be next week. Then there will be 30 days to decide whether to appeal. This body will meet and vote on that. It will take three votes. This Commission may do what you want or it may not do what you want. If you want to have a say in whether it is appealed, you have to be a party.

Commissioner Anderson: stated let me say that there are two kinds of issues before the court. One is possible malfeasance on the part of the Commission. If we lose that I would say that we would definitely appeal that.

Attorney Clem: stated I don't think anyone is claiming malfeasance on the part of the Election Commission. I don't even think anyone has alleged that.

Commissioner Anderson: If somebody is claiming they have to have dates and they hold us to it....

Chairman Walden: That's not even the issue.

Attorney Clem: I think you are right. If someone found malfeasance on the part of the Commission I think we would appeal that. I don't believe anyone even alleged that.

Commissioner Anderson: If somebody wants to hold us to dates I think that we definitely One was dates and the other was whether it was put forth properly on the ballot...

Chairman Walden: The issue the judge is going to rule on is whether or not the charter was correctly enacted. That is the only issue. Dates or amounts of signatures are not an issue.

Attorney Clem: They flow from that issue.

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Commissioner Walden: Right. But before you get there you have to decide if it was enacted. If he says it wasn't ...

Attorney Anderson: It would be moot.

Chairman Walden: If it was not enacted properly, you could argue those issues.

Correct Chris?

Attorney Clem: Correct

Commissioner Anderson: The point is the counsel for the mayor has already raised those issues and if they are not mooted out they are going to be litigated and we will defend those issues I would hope.

Attorney Clem: We are defending the lawsuit. Yes.

Commissioner Anderson: But those issues specifically.

Secretary Summers: Don't you also have the issue of state law having precedent over the charter. The state Attorney General has said *"We defend the constitutionality of the state"*

statute”, which is the minority position now by this body. It appears that if the recall people are not in this lawsuit The court of appeals last time chose this very narrow issue and said he did not have jurisdiction. Without the recall people in it and why they choose not to intervene and that’s their prerogative but it seems to me that they ought to be in this lawsuit if they are going to get a ruling. I understand and respectfully disagree for the grounds of recusal. Grounds of Recusal are not someone standing up here in a meet and saying we have the fix in. That’s not the way we do things. We operate under the law and the court will decide. The court of Appeals may decide that the recall people may be necessary parties that should be included. We’ve been down the road before. It needs to be resolved.

Mr. Folknor: If we get a recall then you have to hire more attorneys to protect your interests and then hire more attorneys.

Chairman Walden: Isn’t that funny that the guys getting paid to defend it are the guys that wrote the thing also.

Mr. Folknor: Jerry is a good attorney in my opinion..... and expensive.

Secretary Summers: Thank you.

Commissioner Crangle: There have been comments about the majority number of petitioners. It should be noted that the number of petitioners is almost equal to the number of people who voted for the mayor in the last election. Another thing is about the appropriateness of our defending our decision to defend. Our attorney thinks it is his job to defend decisions of the commission. The issue is how aggressive we should defend our position.

Commissioner Anderson: If the other side loses they have standing to appeal and they will exercise it. Number two, You won’t have standing if you don’t intervene. Number three, it becomes a policy issue if we have a vested interest going beyond a declaratory judgment.

Chairman Walden: When the city of Chattanooga has an election, we pass the cost on to them. I had a chance to look over Chris’s expenses. I think they are in line but we spent considerable money defending an either properly or improperly enacted city charter and now the city is taking the position of “We don’t know”. They have cost the citizens of Hamilton County a lot of money defending their poorly written, properly or improperly enacted charter I would like to ask Chris to work with you Charlotte and get together the bill for our legal expenses.

Attorney Clem. I have looked at it and my bill is approximately one fourth of the mayor’s bill.

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Chairman Walden: I looked at your bill and I think it is in line. However, I think the City whose charter has caused this problem should reimburse the citizens of Hamilton County for our legal expenses having to spend money

Attorney Clem: This is a city recall effort. We only have two options: Either the county will pay for it or the city will pay for it.

Chairman Walden: This is a city issue not a county issue and I think the city should pay for it. When we have a city election, all of our expenses go to the city and this is no different. This Commission is incurring expenses because of the actions of the city.

Jim Folkner: I would like to say that the citizens, through no fault of their own do not have anyone to submit a bill to.

Commissioner Walden: They have known about this for six years and done nothing about it. If there was one clear statute then there would be nothing to argue about, but that’s not the way they want it. Let’s send our invoice and report back when we receive payment. Do we send them one bill or multiple invoices.

Attorney Clem: Let’s wait and send them a bill for the August election.

Jim Folkner stated A direct quote from Mr. McMann at court of appeals in Knoxville stated that the city recall portion of the charter was amended but never enacted

Chairman Walden: Chris, what is the difference between amended or enacted?

Attorney Clem: Chancellor Peoples did not seem to think there was a difference. Hollingsworth might think there is a difference. He further stated that Chancellor Peoples said if you enact the charter then you enact it in its entirety and it is enacted and enacted properly. Judge Hollingsworth in the first case accepted Mayor Littlefield's argument that the city The citizens were led to believe they were making small changes to the Brown vs. Commission. They were not put on notice that they were doing anything with the recall.

Commissioner Anderson stated there were two things. One that the section of the recall was reaffirmed. Second that the judge made a conclusion of law-in audible

Attorney Clem stated that there is an argument both ways and he was just trying to describe it.

Chairman Walden stated that back in 2002 was the last time the charter was amended or enacted, what all issues were amended or enacted?

Attorney Clem stated that they restated and voted on the entire charter, and that was to make small changes to the education part.

Chairman Walden asked what the parts were not enacted according to Mayor Littlefield?

Attorney Clem stated the only thing listed was the education part.

Commissioner Anderson stated that what had happened was Johnny Franklin was no longer going to be commissioner because they abolished that position, but the judge ruled – in audible

Attorney Clem stated that this commission needs to vote to adjourn before you have any other commissioners getting up to leave.

Adjournment:

Commissioner Crangle? Made a motion to adjourn.

Secretary Summers seconded

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The next meeting is Tuesday March 6, 2012 @ 7:00pm

APPROVED;

Jerry Summers

Secretary

Michael S. Walden

Chairman

Ruth Braly

Commissioner

James Anderson

Commissioner

Tommy Crangle

Commissioner