

HAMILTONCOUNTY ELECTION COMMISSION
MINUTES OF MEETING
March 6, 2012

Call to Order:

Upon notice duly given, Chairman Walden called to order a regularly scheduled meeting of the Hamilton County Election Commission at 7:30 pm on March 6, 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 and 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:

Commissioner Braly made a motion to approve the minutes.

Secretary Summers seconded.

New Business:

Administrator Mullis-Morgan stated that they needed to certify the results and expenses at the next meeting, She further stated that the TACEO seminar is in June if any of the commissioners are interested.

Commissioner Crangle stated that he wanted to attend.

Chairman Walden and **Commissioner Braly** stated that they wanted information on it.

Chairman Walden asked if there was any other new business.

Jim Folkner stated that he had initiated an appeal to Judge Hollingsworth and wants the election commission to support it.

Charlie Wysong stated that he appreciates the election commission's help and what they have done for the recall effort and also wants the election commission to join in on the appeal.

Commissioner Crangle made a motion for the election commission to appeal and ask for expedited appeal.

Commissioner Braly stated that she thought the election commission should just file a brief and not appeal.

Commissioner Braly stated that at the last meeting we encouraged the petitioners to get into lawsuit, the election commission has done its part. That is just my opinion.

Commissioner Anderson stated that he just wanted to make sure that in looking at council's reason for appeal, he didn't find any basis for appeal in terms of any errors the election commission itself made is that correct?

Attorney Clem stated that would be one of their bases for their appeal but, no I don't think so.

Commissioner Anderson stated that if they lost due to an error we made, I don't see how we can just leave them hanging.

Commissioner Braly stated that the brief we are filing has our position in there correct?

Attorney Clem stated that he would ask the commission to give clear direction, I see one of three things you can do. One, either say don't appeal and don't take any part in an appeal filed by anyone else, and just ignore it. I don't think that is completely wise, we are a party to this suit, and we should file something. Two, you can direct me to file an appeal, but I get the sense that the votes are not there for that. The third option is if we are not going to appeal and someone else does there are two kind of options file a one page notice saying we don't have an opinion and we will do whatever the court says or I can modify my trial brief a little bit, which does have the election commissions position in it and file that as my appellate brief.

Commissioner Anderson asked did they lose because of specific advice we gave them and the relied on?

Chairman Walden answered yes.

Commissioner Anderson then stated that if that is the case then the minimum we need to do is file a legal brief. You cannot tell citizens to do something and then follow your instructions and then suffer detrimental results and then say I'm sorry.

Commissioner Braly stated that she agreed, if they relied on advice we gave and it caused them to lose. I want to do what is right here.

Secretary Summers stated that the parties can address that in their appeal

Attorney Clem stated that he can do one of two things here. He could file a one page brief or modify his trial brief a little bit and send that up as the appellate brief. That is the direction I would want from this commission.

Secretary Summers stated he thought we were over simplifying what the one page brief should say. He further stated that he thought it should say that we are a neutral body that is required under section 2-12-116 to make sure the electoral process is open and that we will enforce whatever decision the courts make. I believe that will be a little closer to what we need to say. I am not suggesting that you're indicating that we don't care just in general.

Attorney Clem stated that Jerry was right and that is how he would phrase it.

Commissioner Anderson asked that the commission correct him if he was wrong, but didn't council say that there had been errors by the commissions and the citizens had been held harmless? Not in this case but others.

Attorney Clem stated that he thought there was case law to that effect. He also stated that he didn't think this commission made a mistake. We made it clear that we thought it was the lower number but that we weren't sure and it could be the higher number.

Commissioner Anderson stated that he thought it was with the dated signatures.

Attorney Clem stated that he thought on the dated signatures we made an error on that but I don't know if that was the basis for the opinion though.

Secretary Summers stated that it was discussed but he didn't believe that was the crux of the matter. He further stated that the appellate courts will avoid answering decisions unless they think they are critical. I just received one back from the 6th circuit where they reversed the sentencing. I prevailed but they did not answer the question I really wanted an answer for.

They will try to avoid those issues and I don't think that part will be the big crux of what they say. I believe the big crux will be which statute applies, the city charter or the state statute.

Commissioner Anderson stated that he valued secretary Summers opinion based on his experience.

Charlie Wysong stated they did rely on information given to them by this body as to which number. We really have been disenfranchised.

Chairman Walden stated that the petitioners have filed a notice of appeal, I agree with what you have said we should be a party to it. I am hesitant to spend anymore taxpayer money.

However, if someone comes in here today and asks us what they have to do to start a new recall of a city council member or someone else, we can't tell them we have not benefited from all this litigation. We still have conflicting opinions one from the chancellor and one from Judge Hollingsworth., and if someone were to get the higher or lower number there would be an ongoing legal matter. Our position has always been we genuinely do not care if it is the higher or lower number. Just give us a definitive answer once and for all, we still do not have that. I think the least we should do is have attorney Clem file since the majority of the work has been done to be a party to this and in no way take this over, it is not so much whether we are disagreeing with Judge Hollingsworth's ruling. We are just saying that has not helped us in solving this problem because we have a chancellors ruling and we have Judge Hollingsworth's ruling we don't really know who is right and if the petitioners had not filed an appeal I do not think the commission would have to take any action tonight because no one has the stomach for it. It may be a moot point in this election, however after the next election if someone wants to recall the mayor we are in the same situation and we have spent a lot of city of Chattanooga's taxpayer's money. This is not a budgeted item, but the Hamilton county election commission will pass this cost over to the city of Chattanooga. They are the ones who have caused this issue not this body and they should have to pay the costs. However I want to be respectful of the city of Chattanooga's taxpayer's money.

Secretary Summers stated the statute says we have the right to choose council and we chose Chris, however it doesn't say we can just send the bill over. We have done that in the past, but they have the right to object that this is not a reasonable expense. That just gets into more litigation. The budget for special legal services and I assume he gets what I did \$1000.00 plus \$ 200.00 for special work. As of Feb 16, 2012 the legal obligation was \$20,811.00 and \$25,000.00 was a budgeted item. To go above the budgeted item are we going to have to go before the county commission and ask for more money?

Chairman Walden stated that he understood that but as you well know when you are involved in litigation the costs sometimes get out of control and we can't control that. We are a party to this and as much as we would like to shuck it and run we can't.

Attorney Clem stated that his costs were about 20% of what Ron Littlefield has said his costs were.

Chairman Walden stated regardless of that this is about the citizens today don't know anymore how to recall an elected official and we can't give them that advice because we don't know anymore and we are this far down the road. We need to get a definitive answer one way or the other. We know nothing now, we have conflicting rulings and they have filed an appeal.

Commissioner Anderson asked how much would a (in audible) brief cost?

Attorney Clem stated I don't think it would be very difficult to modify my trial brief. I want you to know the difference between what Jerry said and filing the trial brief. The trial brief defends the election commissions position and goes through and says please address these issues. What Jerry was saying is also a valid option. We are in the middle of this just tell us what to do. There are two differences here and that is what I want direction on. I don't want to file my trial brief and then come back and find out all you wanted was for me to file a one page brief saying something to the effect of we have no position.

Chairman Walden asked if we could get the same answer from the court of appeals that says going forward do we use the chancellors ruling or judge Hollingsworth's ruling. He further stated that we need some clear direction so we can tell the taxpayers, the voters who want to recall or challenge any other thing how to do it. Right now we have conflicting rulings and an

appeal and we can't just let them file an appeal and not be part of it. What will accomplish that? I think that is all we want, we are not taking a position. We made a decision based on the chancellors ruling and we should stand on that. Now we have judge Hollingsworth's ruling. The court of appeals should answer that question. How do we get that question answered? That is all we care about. Whatever their decision is we are fine with.

Commissioner Braly stated that she agreed that she didn't care if there was a recall or not but that we needed a definite answer to that, but did we need to file an appeal?

Attorney Clem stated that no we didn't need to.

Secretary Summers stated that the chancellors ruling was based on a residency issue on whether Rob Healy lived in the county or the city. Judge Hollingsworth did not accept that as a valid precedent He further stated that he wanted to say something in support of our staff. Some of the questions about whether Mr. Wysong or Mr. Folknor were misled by something and so forth , if that happened and he didn't say that it did , he didn't say that it affected the outcome of the recall . He further stated that he was confident that it wouldn't happen again.

Chairman Walden stated that the issue is we told them they didn't have to have dates and we did so in error and that was a mistake. Going forward that won't happen again. The second issue was we told them they had to get the at the lower number and they got the lower number. They brought in 12,000 signatures of which 8,000 were acceptable because that is how many they thought they needed. They may have worked harder to get the higher number had they thought that was the thresh hold, but that isn't the number they thought was the thresh hold. In my opinion they acted in good faith as we acted in good faith based on our understanding of the city charter and that the chancellor had said it was enacted. Well if it was enacted for a residency issue then wasn't it enacted for the amount of signatures? I understand that judge Hollingsworth has said that is not a valid precedence but half this room thinks it was, so we need someone to give us a definitive answer and then we can move on. Then going forward if we can get an expedited hearing the next citizen that comes in here and wants to know how to recall an elected official then we can say here is the court of appeals opinion and this is what we are basing it on. Other than that I don't care if they recall people or not we can't today tell them what they have to do to get recalls.

Secretary Summers stated that there is no guarantee that you will get an expedited hearing.

Chairman Walden stated he understood that.

Charlie Wysong stated that the problem with the recall is not just with the mayor. Only 15% of the registered voters have to sign a petition to do a recall for the mayor, but if we operate under the state law, this body now has to say if someone wants to recall Jack Benson that it is 15,000. Judge Hollingsworth's ruling has thrown everything into a top hat.

Chairman Walden stated that he understood that we have city officials elected with 900 votes and it take 15,000 to recall them, and I just think that is probably not right and we need to get an opinion.

Attorney Clem stated the motion needs to be either in the form of we're not directing me to appeal this case but the fact that they have given notice that someone else has appealed then the question is I want direction to file a simple one page statement similar to what Mr. Summers said and I'll even run it past him if that is the route we go or to modify my trial brief which addresses all the issues and defends the election commission's position. One of the two things I want direction on.

Commissioner Crangle stated that he thought it was his job as a commissioner to do everything he could to make sure we follow the law in all the decisions we make. He further stated that he felt like they had done so and he didn't see how he could change his mind that

they didn't do it correctly. He then stated that he had an opinion and maybe the commission did not but he did.

Chairman Walden stated that we need to make a motion and it will be voted on and the commission will decide. That is the only way to know.

Secretary Summers stated that the question was did it needed to be the short brief or the long brief

Commissioner Crangle asked what the difference was between appealing and filing a brief that has an opinion.

Attorney Clem stated once it is appealed the real issue is whether we addressed all the issues or not.

Commissioner Anderson stated we want to maintain neutrality, and as the chairman has said we want to ask the courts to rule on the issues because the commission doesn't know what to do until it does. He then asked can you do that with a one page brief.

Attorney Clem stated no

Chairman Walden stated that even with the amended brief, not the one page but the amended one Chris can add that this is what we based our decision on however common. We were doing so due to the chancellor's ruling and our understanding. If that is not the case, let us know. We are neutral but we are defending why we made the decision. If they think we made the wrong decision as judge Hollingsworth has thought then that is fine, just tell us.

Secretary Summers asked the chairman if he thought public would think we are neutral with that position?

Chairman Walden answered I would hope so because we are.

Commissioner Anderson stated that we can't ask for a ruling on that (in audible) issue because we don't know what to do as Jerry said but now they can find just on the basis of the signatures and (inaudible) and still leave us with no guidelines.

Attorney Clem stated that was a possibility.

Commissioner Anderson stated that this commission needs specific guidelines on this position (inaudible)

Chairman Walden stated that he agreed 100%.

Commissioner Crangle asked does that go before the supreme court before we get the final word.

Attorney Clem answered yes

Commissioner Crangle asked was it one judge to rule one way and then the appellate judge rules another?

Secretary Summers stated that you have three appellate judges to make a decision and then either side can appeal to the TN Supreme Court.

Commissioner Crangle asked even if we don't appeal now we can do so later?

Secretary Summers answered no

Commissioner Anderson stated that we do not have to appeal this.

Commissioner Braly stated that we could just put in the brief that we need clarification.

Chairman Walden stated that our motivation isn't whether we are for or against this, We are just saying this is what we made our decision on. If that is not correct tell us so we can correct it going forward.

Commissioner Anderson stated that we view it as a conflict between the courts.

Chairman Walden stated that is right and no one has done anything to change the conflict the entire time we have been arguing this. He further stated that Commissioner Crangle needed to amend his motion.

Commissioner Crangle stated that the city had not re enacted their charter or tried to rewrite it, they are not going to & I assume because they want the larger number.

Attorney Clem stated that the trial brief addresses all the issues and why we went this way, tell us what you want us to do. The shorter brief the one page brief says we really don't have any idea just tell us what to do.

Commissioner Crangle asked that the only reason we can do that is because someone else filed? We will file a brief on their appeal?

Attorney Clem stated that yes because they have already filed.

Commissioner Crangle made a motion to direct attorney Clem to modify his trial brief with a statement to explain why we did what we did.

Commission Braly seconded

Secretary Summers voted no. He stated he did not want to spend anymore taxpayer's money.

Commissioner Crangle asked if we are acting on behalf of the recallers.

Secretary Summers answered yes

Chairman Walden answered no. He further added that we have conflicting rulings. We are not taking a pro position. Our position is not for or against the recall, we have conflicting rulings and there is an appeal about the matter and we need to be a party to justify and explain why we voted the way we voted. Whether the appeals court comes back for or against the recall is no concern to this commission. The only concern is that we have clear direction in this case and any cases going forward that a citizen knows for sure what it takes to recall an elected official whatever the number is. He further stated that we don't care but right now we need a definitive answer of what that number is. We have the chancellor saying one thing and the judge saying another and we don't know and if someone comes in tomorrow to have a recall we are in no better position than we were two years ago, that is the issue. We have not, can not and will not be for or against the recall.

Secretary Summers stated that by a vote of 3 to 1 we have gone on the side of the re-callers. He further stated that by going on the appellate brief this is going to be interpreted by the taxpayers that we are on the side of the re-callers.

Commissioner Crangle stated that he disagreed.

Chairman Walden stated there was a motion and a second.

Commissioners Summers & Anderson voted no and Chairman Walden voted to break the tie in favor of filing the brief.

Adjournment:

Commissioner Braly made a motion to adjourn.

Secretary Summers seconded

The next meeting is Monday March 12, 2012 @ 8:00 am

APPROVED;

Jerry Summers

Secretary

Michael S. Walden

Chairperson

Ruth Braly

Commissioner

James Anderson

Commissioner

Tommy Crangle

Commissioner