

MINUTES OF MEETING
Wednesday, November 20, 2013

Call to Order:

Upon notice duly given, Chairman Walden called to order a called meeting of the Hamilton County Election Commission at 9:00 a.m. on November 20, 2013 at the office of the Hamilton County Election Commission, 700 River Terminal Road, Chattanooga, Tennessee.

Invocation: Commissioner Braly

Pledge of Allegiance: Commissioner Crangle

Present at Meeting:

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

Approval of Minutes:

Secretary Summers stated that he had some questions regarding some things said in the previous minutes regarding the political appointments in this office, and the state law requiring that the administrator live in Hamilton County.

Attorney Clem stated that no, there was no state law requiring Hamilton County residence.

Chairman Walden stated that he just wanted the best candidates.

Commissioner Braly asked did it state what the four year degree is in?

Secretary Summers stated that we (the commission) do not appoint both the administrator and assistant administrator. (2-12-201 paragraph 1)

Secretary Summers made a motion to accept the minutes of November 6, 2013 with the amendment to exclude that the Hamilton County Election Commission picks the administrator and the assistant administrator, and to also reflect that there is no state requirement that the administrator live in Hamilton County.

Commissioner Braly seconded.

Motion passed unanimously.

SEE ATTACHMENT

Legal Matters

New Business:

Petition

Chairman Walden stated that he wasn't going to call a meeting and the only reason he did so is because the state said he had to. So at this point, if there is a petition out there that would like to be brought before this commission for us to approve, please submit it now. That is the only option, the only thing we are interested in looking at today. He further stated that if you wanted us to look at this petition it would have behooved you to send it before right now, because we need time to look it over, so I guess we go into adjournment and come back in seven days to review this petition because you're giving us something here to approve now and if it is wrong you are going to sue us and it is kind of unfair to call this meeting without giving us something to know why we are calling the meeting.

Secretary Summers asked if the commission could adjourn for 30 minutes and someone call the city attorney about what they voted on?

Chairman Walden asked and have them come over? He then stated that we have a motion do we have a second?

Commissioner Braly seconded.

Meeting was adjourned for 30 minutes.

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Chairman Walden stated that while on the break the petition was submitted.

Secretary Summers stated that before we say this is what they actually passed, can we have someone from the city come here and tell us from their view point so they can't say we misunderstood something, and I know we all have things to do and Administrator Morgan has blisters on her fingers from trying to get someone on the phone, but I think we need to adjourn till 4:00 p.m.

Chairman Walden stated that unfortunately he was not available.

Secretary Summers stated that he wasn't either but that they are doing something here that is important. This petition does not include the language that Commissioner Braly and I looked at, it doesn't include 11.24 and 11.25. He further asked is the public going to be informed on what they are voting on when it refers to a state charter and two city charters?

Commissioner Braly stated that she thought they would be very well aware of it.

Secretary Summers stated that this needs to be readily available so that anyone who wants to be an informed voter should know what these provisions include before they vote on it, and that is the only point I am trying to make.

Chairman Walden stated that it is recommended that when it says pursuant to T.C.A. 2-5-151 and city charter 11.24 and 11.25 that the exact wording from those two sections be included in this paper. It was mentioned that they could have separate pieces of paper with the wording on it attached it to this. The truth of the matter is they will be on a clipboard and they are going to ask people to sign it and I don't know that people will take the time to go through all the pages, but if they are going to sign something I don't care if there is five signatures per paper, as long as everyone that signs their name to this petition understands what they are signing. So following your logic, on every sheet of paper the first part of it lists the statutes and the city charter and then you have the signatures and then on the back page, if you want to use that, you put the same information on every page so that they don't have to turn pages and pages to read. They should be able to read what they sign—is that not how the petitions are drawn up? What is the state law on how a petition has to be formatted?

Attorney Clem stated that most petitions have to do with a candidate qualifying or a recall election and it isn't referencing another document. There are two examples of when another document is involved and that is when you are doing a charter provision and it has to go on the ballot or a constitutional amendment and it has to go on the ballot, they never put the whole amendment on the ballot. You can't, it is too long. They have to put a short summary on there. That is the model we need to look at, The City of Chattanooga has had charter changes recently and they don't have the whole charter on the ballot. Likewise, a petition that is essentially asking to repeal an ordinance, you can't put the entire ordinance on the petition and you can't put the whole ordinance on the ballot.

Secretary Summers stated that you are talking about an antiquated law well before the social media we have now. If we are going to pass this matter my concern is having an informed populous that can make a decision. If we put this on the website and we give it to the media that are here and the others so that people have access to it on the Chattanooga and nooga.com and the TV stations. People are for it or against it and if they are against they will say I am against it and sign and not going to go into six hours of study like a lawyer will do.

Commissioner Braly stated that they are not going to read it. Once you have all that language on there they know and when you give them a petition and say this is for the ordinance providing for the extension of benefits for domestic partnership, they know what they are signing. You make it sound like the people don't know what they are doing.

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Attorney Clem stated that just like in the last election the petitioners have a certain right under 2-5-151 in the recall of Ron Littlefield to put in the reasons and I can't remember the reasons—one of the reasons was garbage, the picking up of garbage. But likewise in this petition, I remember we got into this argument briefly about what was the reason for recalling Littlefield and it came down to they can come up with their own reasons and put it on the petition. It just can't be vulgar, I think was the only restriction.

Chairman Walden stated that I am reading this and relative to the domestic partnership and non-discrimination and this says shall the City of Chattanooga ordinance number be adopted? They didn't even list the full name, whether something is non-discriminative or not would have a bearing and they are choosing to put the words for their cause, that is not a true, accurate representation of what the bill is. He further stated that he was not going to be for anything that does not make sure that the people signing this petition actually know what they are signing.

Commissioner Braly stated that she thought they had put it on there. That are the two issues.

Chairman Walden stated that before I call for a vote, I want to see the actual petition in its entirety to be approved. If this is it, I don't think it meets the requirements based on what you said outside. Now, if you want to call for a vote I will be glad to tell you my opinion. I am not for approving something that the people are going to change to meet the requirements. We called a meeting today and we are just now seeing the document and there are—to me and others—obvious problems with this document. Is that fair enough? Because you are wanting us to tell them to change these things and we'll approve it right?

Secretary Summers stated that no, that is not what he was he was saying at all.

Chairman Walden stated if you are saying it needs to reference 11.24 & 11.25, it is referenced but we don't know what it says and the people signing it won't know either. Understand?

He then stated that somehow we are going to have to put the language on the document that they are signing or approving. But I want to see that before we vote because we should have something that says exactly what was presented, and what was approved, and if you bring in a paper that doesn't look like that it is not valid. We asked for changes last time and they didn't make them and it resulted in lawsuits.

Secretary Summers stated that he understood the chairman's concerns but he was also telling him that there is nothing black or white in this. There are going to be issues raised and I don't have a dog in this fight, I don't care if it is passed or not, but in my opinion, we can prepare copies of the thing passed last night and attach 11.24 & 11.25 to them.

Chairman Walden asked was there not a guideline for this? Let's look at TCA and if they have followed all the rules by state and city charter, then I am fine with that.

Attorney Clem stated that 2-5-151 says the petitioners get to define their own questions and that is what goes on the ballot.

Secretary Summers stated that if you are saying we put 11.24 and 11.25 on the back of the document and at the bottom we add that they be apprised that alteration of an official ballot is a criminal offense punishable by the laws of the state of Tennessee then they act at their own peril.

Attorney Clem stated that he thought you should see if all that could be printed on the back before a motion was made.

Chairman Walden stated that I am not inclined to approve this and I am not inclined to draft their petition either. I also think before they call an emergency meeting they might want to have petition that meets the requirements to vote on. This is the cart before the horse.

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Secretary Summers stated that he thought it did meet the requirements.

Commissioner Braly stated that she wanted to know what Attorney Clem thought about the petition.

Attorney Clem stated that the forms look like the forms we have approved in the past. This looks like the form that 2-5-151 would comply with, now Chairman Walden brings up a good point in that if the summary isn't accurate, then it could be a problem and provide litigation in the future. I think the form with the date that refers to the ordinance number and the TCA section, I think all that is in proper form. Whether the summary is accurate or not could be a problem, but I don't know how to resolve that.

Commissioner Braly asked what did he mean about the summary?

Attorney Clem stated the two sentences there of what the ordinance says.

SEE ATTACHMENT

Mark West stated that we followed what we thought was the right way to go. We hired an attorney (Steve Duggins) and sought professional legal advice on this, we submitted this to the state and we worked with the state on this. Mark Goins assisted us on this making sure the wording (he reviewed it) on this document would meet the requirement. He reviewed it for us. To put 11.24 and 11.25 has nothing to do with this petition it is just the specifics of developing a petition. Specifically if you look at 11.24 this is exactly what we followed. It says half way down the first paragraph middle of the page, it says the ballots used when voting upon said ordinance shall contain these words "for the ordinance" then it doesn't tell you what to say, it just gives you parenthetically stating the nature of the proposed ordinance. Certainly if you ask anyone in Chattanooga that has been awake over the past few months they will know it is a domestic partnership. So what we have tried to do is exactly what they told us to do and that is state the nature of the proposed ordinance. He further stated that every TV station you turn on, it says domestic partnership across it and that is what the people know it as in layman's terms so we said providing extension of benefits in domestic partnerships. That is what this does. Secondly, yes there are two questions but since the ordinance itself addresses a myriad of issues we have to address a myriad of issues. Certainly some may be for one and not the other in that scope but it is up to them to decide. Just like Councilman Grohn said last week, he might have been for the one but they wouldn't break it apart. So we are stuck addressing both. I would contend that the wording here—which again we tried to follow the letter of the law and tried to make sure that the conflict between the city and the state doesn't become a conflict in court and so this is why this meeting was so pressing to us and hopefully you. I know you - like we - do not want to end up in court in a few months like we did three years ago, so we are trying to get this done today. I believe this petition does accurately reflect what the law requires us to do. Now it is up to you to decide if the people have the right to put forth this petition.

Chairman Walden stated that no, that isn't right. The question before us is if the petition is accurate. There is no question that the people have the right if they follow the proper procedure. The issue is that you show up here this morning and hand us a petition that you've had how long?

Secretary Summers stated that 11.24 and 11.25 when they become attached to the petition it does become significant. When they put that in there, it has to become part of it.

Chairman Walden stated that is the only issue—how do we attach? Just listening to the comments, without making changes and attaching 11.24 & 11.25, I don't think you have the votes to pass it today. How as a Commission do we get to a point where we are comfortable that this meets the requirements?

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Secretary Summers asked what percentage of people did they think would want to read all this? I assume you will have 2-5-151 and 11.24 and 11.25 available?

Mark West stated that we have learned from the mistakes other groups made three years ago. We tried to follow the letter of the law.

Chairman Walden stated that Commissioners Summers and Braly stated earlier before walking into meeting that as long as we attached part of the law to your sheets, you would be okay with it.

Secretary Summers stated that no, that isn't exactly what we said.

Chairman Walden stated that before we came in here you had some question about how 11.24 and 11.25 are properly addressed. What do they need to do?

Attorney Clem stated that it is going to be incumbent upon the voters to understand it and to do a little research on their own. This will be very similar to the constitutional amendments going on the ballot next November: one has to do with abortion, one has to do with property rights, one has to do with marriage. They don't put the whole constitution on the ballot. It is going to be incumbent upon the people next November to understand this has to deal with one man and one woman, abortion, or whatever the amendments are. The ballot initiative just references the constitution. It is going to be up to the people to go look at it. Likewise here, I think you need to properly reference the ordinance, have the correct ordinance, have the correct statute, and have the correct charter provision.

Commissioner Scott asked can we not--whichever way it falls--vote on this petition today and it can be on record?

Chairman Walden stated that based on what Attorney Clem and Secretary Summers have said, they both think it is alright and if a judge holds that it isn't, we acted on good faith and on advice of counsel.

Attorney Clem stated that the reason he did not go through this petition and draft it for them is because the chairman told me not to. In the past we have always had the state attorney Beth Henry Robinson review these. I did tell them to get their own attorney and make sure that Beth Henry Robinson the state attorney approved their petition.

Chairman Walden stated that his issue is this is the Hamilton County Election Commission and if there are issues that need to be brought before the Hamilton County Election Commission then they should be brought before the Hamilton County Election Commission, we should not be directed by the state on issues we know nothing about. There is a process--if you have an issue affecting Hamilton County Election Commission, I'd encourage you to come to the Hamilton County Election Commission and not the state. If someone needs to go to the state that is Administrator Morgan's job, my job, and Attorney Clem's job. There is a chain of command to follow.

Attorney Clem stated that the procedure under 2-5-15, they have submitted their petition today and this commission has 30 days. You can wait the full 30 days, you do not have to vote today. You have the discretion to vote today if you want to because then there is the other issue, their 14 days begins running today. I am not telling you how to vote just giving you your options.

Chairman Walden stated that, as Secretary Summers knows, this Commission has almost without exception voted on the side of the candidate or sided with the petitioner. Is that correct Secretary Summers?

Secretary Summers agreed.

Chairman Walden stated that the issues before us are at this time is 1) Is this accurate? and 2) The city charter or state? Which is really for a judge to decide, but we can interpret it and if someone doesn't like it, they can go to a magistrate. But being consistent with what we have

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done in the past and that was err on the side of the public so at time I will call for a motion to approve or not approve.

Commissioner Crangle asked when the next general election would be?

Attorney Clem stated that it would be August of 2014.

Commissioner Braly made a motion to approve the petition as presented.

Secretary Summer seconded.

Motion was unanimously passed.

Secretary Summers asked that the documents, summary, petition, letter from Mark Goins, and the provisions 11.24 and 11.25 be attached to the minutes.

Commissioner Scott seconded.

Correct and approved in meeting.

Adjournment:

Commissioner Braly made a motion to adjourn.

Commissioner Summers seconded.

The meeting was adjourned.

The Next Meeting is scheduled for **Wednesday December 4, 2013 @ 8:00am**

APPROVED:

Jerry Summers

Secretary

Michael S. Walden

Chairman

Ruth Braly

Commissioner

Tommy Crangle

Commissioner

Kelvin Scott

Commissioner