

MINUTES OF MEETING
Wednesday, January 8, 2014

Call to order:

Upon notice duly given, Chairman Walden called to order a meeting of the Hamilton County Election Commission at 8 a.m. on January 8, 2014 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 county employees, members of the media, and staff of the Election Commission.

Approval of Minutes:

Secretary Summers said he would like to clarify statements in the last meeting. It is not a big point but you made the statement the last meeting that the Democrats had controlled the Election Commission for 140 years and I just wanted to point out to you that prior to the 1970s the majority party of the County Election Commission was determined by which gubernatorial candidate had got the most votes. Can we attach that to the minutes? It's not a correction but I think at the time you were a little over-generous by saying we had it for 140 years. Now the state Election Commission is another issue, but that's the way it was and it's an historical matter.

Commissioner Braly made a motion to approve

Chairman Walden said you don't have to make a motion. It will just be attached to the minutes.

Commissioner Braly made a motion to approve the minutes

Secretary Summers seconded.

Motion passed unanimously.

New Business:

Chairman Walden added two items to the agenda. The first was approving the use of the Hamilton County Attorney's Office to provide the legal services of the Election Commission. The second was to address the longevity pay of Administrator Morgan. He said it had come to his attention that she had not received her longevity pay based on her seniority for the years 2010 through 2013 and she's entitled to it.

Secretary Summers and **Chairman Walden** discussed Roberts Rules of Order and how it is followed by the Election Commission.

Chairman Walden asked Administrator Morgan to provide a report on the Dominion Voting System contract.

Administrator Morgan stated we received the bid from Dominion Voting Systems and they are the ones who came in the lowest and they met our needs. She asked Gail Roppo, who is the Director of the Hamilton County Purchasing Department to address it further.

Gail Roppo stated that in November she came and made the proposal to the Election Commission and the Election Commission voted to accept the proposal of Dominion Voting System at that time. They were the lower of the two bids that we received. We sent the bidding package out to the three vendors who were certified by the state of Tennessee, only two chose to submit bids to us and Dominion was the lowest. After you approved it, it was taken to the County Commission to also approve and that was done at the subsequent meeting. Since then County Attorney Rheubin Taylor and I have been working with

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Administrator Morgan and the folks at Dominion, both their sales staff and their legal staff to customize the contract to make sure it has all of our needs, and all of Dominion's needs, and also complies with all the terms in the RFP itself. We feel confident that we've got a contract that you should feel comfortable signing.

Chairman Walden read from statute 2-12-210, which indicates that the Election Commission should be "...subject to purchasing laws of such county" and stated therefore we followed proper procedures by going through County Purchasing Department. Although we have a certain amount of autonomy in that we are appointed by the State Election Commission, we are funded and act on behalf of the Hamilton County Government.

Secretary Summers asked for a clarification about the bidding process.

Gail Roppo replied that countywide anything under \$1,000 can be done without competitive quotes or bids; anything \$1,000 to \$3,999 is subject to three verbal quotes; \$4,000 up to \$9,999 is subject to three written quotes; and anything over \$10,000 by state law is a sealed bid. The sealed bid process is advertised in the newspaper, posted on bid website, and bids are opened—at the earliest—10 days after the advertisement. It can be longer, but is 10 days at the minimum. Those are the thresholds; does that answer your question?

Secretary Summers said yes it does, thank you.

Chairman Walden asked for a motion to authorize him to sign the contract to purchase the Dominion Voting System based on recommendation of the Administrator of Elections, the Director of Purchasing, and the County Attorney.

Secretary Summers asked County Attorney Taylor if he's seen contract and if he's comfortable with it.

Rheubin Taylor said yes, he had, been working on it the last several months and is satisfied with it.

Commissioner Braley made a motion to sign the contract.

Commissioner Scott asked wasn't there a statement made several meetings ago that we'd be furnished copies of the final contract?

Chairman Walden said at the last meeting, he did say anyone who wanted a copy should get with Administrator Morgan and she'd make a copy. Also, any of these contracts are public record and available at purchasing and I apologize for any confusion.

Secretary Summers seconded the motion.

Motion passed unanimously.

Legal Matters:

Chairman Walden stated that Chris Clem has resigned. Since I've been on the commission 15 years, we've had two attorneys, Jerry Summers and Chris Clem. As I've researched the law and purchasing and budget, we do nothing to create money, Hamilton County funds us. Well, Hamilton County has a legal department and they are the legal department for most departments and agencies within county government. I made a call to the County Mayor and asked him if it was ok if we asked the Hamilton County legal department to provide legal services to us. We had budgeted I think somewhere between \$35,000-\$50,000 dollars but we went over last year. I felt like it would be very prudent to try and save \$35,000 budgeted for legal expenses and that is why I asked for the County Attorney to come over.

Commissioner Braly asked how many attorneys are in the office.

Rheubin Taylor said three of us full time, himself, Neill Sutherland, and Dee Hobbs.

Secretary Summers explained he came on as attorney for the Election Commission during the Tiny Town Law situation. Up until that point the Commission had no legal counsel. He handled it on hourly basis and he was asked to stay on. He has no problem with the county attorney doing this. The law says when a city or the county is sued, they are supposed to provide us with counsel, but the choice of who counsel

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is up to the commission. He also said he wants to see the \$50,000 budget go back to \$25,000, but, of course we can always make a special expenditure if needed.

Chairman Walden stated he agreed with that.

Commissioner Braly asked if there is a conflict, we will hire an outside attorney?

Chairman Walden said yes, and that may happen, but it hasn't happened in the 15 years I've been here. That was that situation with the Tiny Town Law, there was a need for it and Jerry came and then he just stayed. And after we (the Republicans) took over, we just appointed an attorney because that's what had been done in the past. With Attorney Clem resigning that gives us an opportunity to reduce that expenditure and eliminate it, hopefully, but will there be times when we need the county to provide legal service to us? Absolutely.

Commissioner Scott asked if it's always been within our legal parameters to have county provide service, why did we ever go outside and get a personal attorney? I don't want six months to a year later to come in here and have a motion for us to get our own attorney.

Chairman Walden said he cannot guarantee there may not be some hypothetical conflict that's going to happen. But if a conflict does happen, then we need to get the best counsel we can to represent our interests.

Commissioner Scott asked if Attorney Clem had tied up everything he was involved in.

Chairman Walden said yes, he has sent his final bill.

Commissioner Crangle asked if we do need outside counsel will you (Walden) be the logical person to decide that or will the board need to decide? If we decide, we'll have to meet.

Chairman Walden said if Administrator Morgan has needs beyond the budget, she'll bring it to us. So if there is a time when we need outside legal counsel, we'll need to have a meeting. And in certain instances over legal matters, you can have executive meetings that do not have to be called.

Secretary Summers asked are you going to accept applications? How would we go about that if we do need outside counsel?

Chairman Walden said yes, I think the commission gets to choose who their attorney is and who represents them. I'm not opposed to putting it out there. I guess we'd have to follow budgetary process; we'd have to put a bid out.

Rheubin Taylor said first, our office would be glad to assist you. There is an exemption under our county purchasing rule that you don't have to have competitive bids when it comes to certain professional services and attorneys are one of them. So it would be up to the Election Commission to determine what process you'd follow to choose who represents you, but you don't have to put it out to bid.

Secretary Summers said so we could call three people and have them come in for interviews and then decide who we wanted to hire.

Rheubin Taylor said you wouldn't have to call three people. If there was someone who had expertise in a particular area, you would just negotiate with them. That's the exemption.

Secretary Summers said well, I think we ought to have three to consider. Three people would be better than just one.

Commissioner Scott made a motion to accept the County Attorney's office to represent the Election Commission.

Commissioner Braly seconded.

Motion passed unanimously.

Commissioner Scott made a motion to reduce the legal fee budget to \$ 25,000 from \$50,000.

Secretary Summers added subject to emergency consideration and seconded.

Motion passed unanimously.

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Chairman Walden said the one outstanding issue we have now is the selection for the new Administrator of Elections. Since I've been Chairman of the Election Commission, we've hired and reaffirmed Bud Knowles and we've hired Charlotte Mullis-Morgan. And the way we did that was we had people apply for the jobs, we read the resumes and then, based on the majority of the commission, we voted. This is a political appointment. This is the only position that is like this in the Election Commission. Historically, it has been that the majority party has selected the Administrator of Elections and the minority party has the Secretary's position. In the attempt to give everyone the chance to apply for the job, we had the county post the job. I have asked that everyone pull out six or seven of their top candidates that they would like to be interviewed and the top vote getters will be interviewed.

Secretary Summers expressed concern that including the requirement for a college degree would open the Election Commission up to the potential for lawsuits if someone feels like they were precluded from applying. He also noted his concern that this was added to the agenda at the beginning of meeting, rather than there being advance notice of it.

Chairman Walden asked Attorney Taylor if we needed to go through their list of candidates in a public meeting.

Attorney Taylor said yes.

Commissioner Scott said he had four top candidates: Kerry Steelman, Louise Patterson, Michael Ogden, and Tracy Thomas.

Ruth Braly said her top candidates were: Sharon Moody, Michael Kirk, Kerry Steelman, Sherrill Duncan-Moss, Mark Simpson, Todd Bragg, and Jules Doux.

Commissioner Crangle said his top candidates were: Kerry Steelman, Sherrill Duncan-Moss, David Torbett, Heidi Mahlum, Sharon Moody, and Patrick McFadden.

Chairman Walden said his top candidates were Patrick McFadden, David Torbett, Sharon Moody, Jules Doux, Michael Kirk, Sherrill Duncan-Moss, and Kerry Steelman.

Secretary Summers said he had four top candidates: Kerry Steelman, Marti Rutherford, Louise Patterson, and Jeff Lewis

It was determined that Kerry Steelman had 5 votes. Sherrill Duncan-Moss and Sharon Moody each had 3. Five people received two votes each: Michael Kirk, Jules Doux, David Torbett, Patrick McFadden, and Louise Patterson. The following people had one vote each: Michael Ogden, Todd Bragg, Mark Simpson, Heidi Mahlum, Tracy Thomas, Marti Rutherford, and Jeff Lewis. All eight candidates who got multiple votes from commission members will be interviewed. Interviews will take place Monday, January 27 beginning at 9 a.m. in 30 minute increments. Charlotte was directed to call the candidates and scheduled them in alphabetical order, making reasonable accommodations as needed.

Secretary Summers asked what is the salary?

Chairman Walden said it is 90 percent of the Assessor of Property's salary. When they are certified, the state gives the county \$18,000 toward the salary.

Secretary Summers stated he'd like to amended the requirements of getting certified, extending it from six months to one year, because this is a busy election year.

Chairman Walden stated all of these things have to be flexible. It is not a requirement that they be state certified, but it just helps the county recover \$18,000 and we think we will get a better product if they are. But we don't have to have these hard set and fast rules. He also stated that scheduling eight interviews does not mean they can't have a second round of interviews if they so choose.

Commissioner Scott asked if we're doing this on the 27th, has Administrator Morgan's retirement date been extended?

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Chairman Walden said that's been done and asked if there were any other questions. There were no more questions.

Adjournment:

Commissioner Crangle made a motion to adjourn.

Commissioner Braly seconded.

All were in favor.

APPROVED:

Jerry Summers

Secretary

Michael S. Walden

Chairman

Ruth Braly

Commissioner

Tommy Crangle

Commissioner

Kelvin Scott

Commissioner