

**HAMILTON COUNTY ELECTION COMMISSION
MINUTES OF MEETING
Monday, July 23, 2018**

Call to Order:

Upon notice duly given, Chairman Walden called to order an emergency meeting of the Hamilton County Election Commission at 9 a.m. on July 23, 2018 at the office of the Hamilton County Election Commission, 700 River Terminal Road, Chattanooga, Tennessee.

Invocation: **Commissioner Braly**

Pledge of Allegiance: **Commissioner Clem**

Present at Meeting:

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

Approval of Minutes:

Commissioner Clem made a motion to approve the minutes.

Commissioner Braly seconded the motion.

Secretary Summers abstained.

Commissioners Braly and Clem, and **Chairman Walden** were in favor.

New Business:

Early Voting Update

Administrator Steelman said as of July 21, the total Early Voting turnout has been 10,469 ballots cast. As a note, there have been a total of 2,760 ballots cast in House District 26th.

**Pursant to T.C.A. § 2-12-101 Commissioners Selection of Legal Counsel
for Representation and Other Business Related to Case No: 18-
0426
Chancery Court for the State of Tennessee**

Chairman Walden said the reason for the emergency meeting this morning, the Hamilton County Election Commission has been served with a lawsuit. We're here to discuss this matter and how to move forward and retain outside legal counsel to represent us in another lawsuit.

Secretary Summers asked why do we need outside counsel? We have the County Attorney to represent us.

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Chairman Walden said in my conversations earlier with County Attorney Rheubin Taylor we discussed that in the event of a lawsuit we would use outside counsel and use the County Attorney for the day-to-day legal issues that come before the commission. That's the reason we're here. No decisions have been made and we'll be glad to listen to your recommendations or thoughts.

Secretary Summers said I represented the commission for more years than I realized. The starting point was the Tiny Town legislation. I represented the commission in that manner and then was asked to come on board as the attorney and I was paid \$1,000 per month as a retainer. If there was anything above it, I never went over \$25,000 and that was only on limited occasions.

Chairman Walden said if you'll resign, we'll entertain the idea of hiring you again as our attorney.

Secretary Summers said that's a good idea, but that's not the purpose of my inquiry. I represented this commission in several lawsuits and we never had a problem. When the legislature was taken over by the Republican majority, I was appointed as a Democrat to serve on the commission and Mr. Clem was retained as our attorney before being appointed to the commission. Sometime after that a decision was made for Mr. Taylor's office to represent us with the idea it might save us some money. With all due respect to what Clem says, this is not a complicated matter. You have input from the state coordinator's office. As always, you can call state election attorney Beth Henry-Robinson and she will help you in any way form or fashion. Any well-qualified lawyer who is admitted to the practice of law in the state of Tennessee can handle these matters without the taxpayers of Hamilton County having to pay, as I saw in the minutes, up to \$50,000. I object to that portion of it. Do you want to hear the rest of it and you can get me out of the way?

Chairman Walden said yes, please continue.

Secretary Summers said the second thing is, I'd like to state for the record that on Sunday before this vote was taken I had several conversations with Administrator Steelman. I inquired whether we'd have a quorum present. He indicated there was and then informed me that you, Mr. Chairman, would be out of town. As has been the tradition ever since I've been on the commission – and there was a statute, but I'm not sure if it's been changed or not – that the chairman shall call the meetings and set the times and in his absence the secretary – which is the position I was elected to – will hear the matter. In any respect, I asked Administrator Steelman if he'd check with the commissioners, since the chairman was not going to be present and I had a doctor's appointment at 8. I said I could be there by 8:45 a.m. Steelman called me back and said they had agreed to that.

Administrator Steelman said no.

Secretary Summers said that's what I was told. I arrived at 8:25 a.m. and told that the meeting had been adjourned and the issue already voted on. I raise the question whether it was a legal or illegal hearing on the matter. I was also informed where Commissioner Clem said he had to be in court by 9 a.m. After 52 years as a practicing attorney in this community I have never been in any way disciplined if I couldn't be there at 9 a.m., particularly on a Monday morning when there's probably 50 cases on the docket. All you have to do is pick up the phone to the clerk or the bailiff and say "I'll be a few minutes late." They give it to the judge and they hold that case. Those things concern me about the legality of this and we don't need to authorize

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any money to pay any outside counsel. We can save the taxpayers money by using the in-house Hamilton County Attorney's office.

Chairman Walden said thank you, Secretary Summers. Let's talk about selecting an attorney to represent us. Does anyone have any recommendations?

Commissioner Clem said I've been in contact with the attorney in Nashville. They had the Davison County lawsuit dismissed. Basically the state Democratic party was forum shopping, trying to find a judge that they were comfortable with. The Nashville judge threw it out; said it was improper to file in Nashville. That firm did a lot of good work. They've briefed all the standings, jurisdictions, facts, and sent it to us. They did recommend that we get local counsel. With that advice, I've had two or three cases with Stephen Duggins with Husch and Eppenberger. I have litigated with and against him. I've contacted him and he said he's open to defending us. But I'm open to any other suggestions. I just wanted to throw his name out because I think he'd have a reasonable rate. Also, with him being at a smaller firm, I think that he'd have fewer conflicts.

Chairman Walden asked is it possible to recess for a few minutes? I'd like to talk to Attorney Taylor.

Chairman Walden called the meeting back to order after a brief recess.

Chairman Walden said the recommendation we have now is to hire Stephen Duggins as counsel. He has represented the county in the past. And he's agreed to represent us at the same discounted rate he did the other county work for?

Commissioner Clem said he said \$290 an hour.

Chairman Walden said does anyone have anything else?

Commissioner Clem said I'd like to address the timeline of the last meeting. First of all, there was no agreement to pass that meeting. That was never represented. You were mistaken on that.

Secretary Summers said I was not mistaken. He told me everybody agreed to it.

Chairman Walden said Administrator Steelman, do you remember that being confirmed?

Administrator Steelman said no, sir.

Chairman Walden said I'm sorry there was a misunderstanding for whatever reason. I wasn't here and all I can say is I'm sorry that it happened.

Secretary Summers said you had a legitimate reason for not being here. And when you aren't here it is my obligation as secretary to...

Commissioner Clem said but you withheld information. Nobody gave us a clue the state Democratic Party had an objection. They went two weeks without saying anything. All we were told is some unknown entity might have an objection and might show up. They didn't show up. We weren't going to postpone a meeting because someone might show up and object.

Secretary Summers said what about me showing up? Am I not a member of this commission entitled to be present? First of all, I told him that I had been contacted by a Mr. Gastel.

Commissioner Clem said you wouldn't tell us who was objecting. If you'd just told us what was happening, we might have postponed it. All we knew was you might be late and someone might come to object.

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Secretary Summers said as acting chairman of this board I had the authority to set the meeting because it's important if the chairman can't be here that the secretary is. When you up and set a meeting at 8:45...

Commissioner Clem said we didn't set the meeting for 8:45. You're the only one who remembers it that way. And you knew the Democratic Party was going to file suit. You knew who the firm was and you never told us any of that. You kept all that secret until after the meeting.

Secretary Summers said I told Administrator Steelman that there was going to be a lawsuit filed and that's the extent...

Commissioner Clem said no, you just said some unknown entity might be objecting. You wouldn't say what the objection was. You didn't tell us anything.

Secretary Summers said does that eliminate the fact that you couldn't wait another ten minutes for me to be present and preside over the meeting?

Commissioner Clem said we didn't know when you were going to show up. And, yes, I can call and try to rearrange schedules, but not based on some unknown entity who might show up and might object at some point.

Chairman Walden said what's the exact timeline from June 18? Commissioner Clem can you give me the timeline of how things went and all the opportunities to voice some question or concern about putting a new candidate on the ballot?

Commissioner Clem said Gerald McCormick sent a letter to the Hamilton County Election Commission on June 18. That was very public, everyone knew about letter. Nobody made any objection June 18. By statute the qualifying deadline was reopened. By statute – it didn't take a vote of the commission. The local Democratic Party said nothing. The state Democratic Party said nothing. Nobody objected. Robin Smith qualified and the qualifying deadline closed. Nobody said anything. We then had an Election Commission meeting set for July 2. We sent notices to the state Democratic executive committee member and to the local Democratic Party. They didn't object. We send it to the media and it was published. Nobody objected. And then you informed us you weren't coming to the meeting. We have the meeting set for 8 a.m. on Monday morning. Administrator Steelman called me on Sunday and says Secretary Summers might come, but if he does come, he'll be late. I said fine, but I'm still having the meeting at 8. I never agreed to 8:45. I said we'll play it by ear when I show up. If anyone had shown up at 8 and objected, I probably would have ... well, I don't know. That's speculation what I would have done. I asked Administrator Steelman if it was going to be a routine meeting. He said probably. No one has objected. So I asked why is Secretary Summers changing his mind and showing up and Administrator Steelman said some unknown entity has an unknown objection and they might show up. We got here at 8 a.m. and no one was here to object. Nobody sent us a letter or notice saying they were driving in from Nashville. No one told us the Democratic Party had a problem. No one told us what law firm had a problem. No one even told us what the problem was. With that being the case...yes, if you'd just been honest with us and told us you'd been in contact with the state Democratic party and they intended to file a suit, yes, I probably would have waited to talk to you.

Secretary Summers said I had not been in touch with the Democratic Party.

Chairman Walden said what happened after the meeting? Who showed up and with what?

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Commissioner Clem said 20 minutes or so after we left, the state Democratic Party showed up. They didn't call us to say they were running late. They never told us who they were. All they had to do was call.

Secretary Summers said if you had waited until I got here, Commissioner Clem.... All I'm trying to do, just as I've done for the last 20 years with this commission, is to make sure everyone gets a fair shake.

Commissioner Clem said we can't play games if we don't know games are even being played. If we had known someone was going to show up with an objection, we would have waited. We had no idea anyone was going to show up.

Chairman Walden said when they showed up, then what happened?

Commissioner Clem said we were gone.

Secretary Summers said they were gone.

Chairman Walden said yes, but they showed up with a...

Commissioner Clem said they already had a 20 page complaint ready to go with a 15 page objection letter that they obviously had prepared the prior week. They could have given it to us.

Secretary Summers said they could have given it to me, too, but they didn't.

Commissioner Clem said that's their fault. They didn't give us any notice and they knew they had an objection. They had already probably billed 100 hours on this case and they kept it quiet. They didn't want us to know what they were going to do. And they could have been here at 8 a.m. They didn't have a doctor's appointment.

Secretary Summers said the guy met me on the sidewalk and said "my secretary got the time frame wrong".

Chairman Walden said now that we have the timeline, let me tell you what I care about. I care that 10,000 people have already voted early in Hamilton County. I care that 25% of them are in District 26. That's 2,760 people have already cast a ballot. The cake is baked; the election is happening. We've been early voting. We've sent out ballots to military members and we've gone to nursing homes. Early Voting ends this Saturday. I think this is ridiculous; I think this is much ado about nothing. And Secretary Summers, I believe you are serious about saving money, then the Democrats from Nashville should stop filing frivolous lawsuits that have no standing. I'm embarrassed for them. This Commission has always allowed the voters to vote and that's exactly what we intend to do now unless we are told otherwise. The people in the 26th District will make the decision on who will represent them, not Nashville Democrats. I think we should hire the best lawyer we can. Do we know where we're at on the budget for the last lawyer?

Commissioner Clem said the case was just dismissed last week. They'll send us the bill when the Chancellor signs the final order of dismissal. It'll be this week when we get the bill, but we don't have it yet.

Chairman Walden said we have to throw out a number, not to exceed \$50,000 was the number we did last time. I don't know how much it'll cost or when it'll be heard. But again, if everybody wants to save money, I say quit filing frivolous lawsuits. Let the voters of the 26th District decide who represents them. I can't imagine a situation where anyone would throw out the 2,760 ballots that have already been cast. I will entertain a motion to appoint Stephen Duggins as our attorney and move forward in the most aggressive way that he can. We have to stop these people from Nashville costing the taxpayers here money with frivolous lawsuits.

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Commissioner Clem made a motion to hire Stephen Duggins at \$290 an hour.

Commissioner Braly seconded the motion.

Clem and Braly approved.

Summers opposed.

Walden approved.

Adjournment:

Commissioner Braly made a motion to adjourn.

Commissioner Clem seconded the motion.

All approved.

APPROVED:

Michael S. Walden

Chairman

Jerry Summers

Secretary

Ruth Braly

Commissioner

Chris Clem

Commissioner

Secondra Meadows

Commissioner