

RULES AND LEGISLATIVE COMMITTEE

Minutes for Aug. 15, 2017
3rd Floor Bedford County Courthouse at 5:00 PM



Present: Chairman Biff Farrar, Tony Barrett, and Jimmy Patterson, Ed Castleman and Jimmy Woodson

Absent: 0

Others Present: Finance Director, Robert Daniel; County Commissioners, Linda Yockey, Bobby Fox, Bob Davis, John Brown, Mark Thomas, Don Gallagher, Chuck Heflin; Juvenile Director, Michael Bennett; IT Director, Josh Carney; Probation Director, Joyce Reed; BCSD, Jail and Workhouse Director, Tim Lokey; Sheriff, Austin Swing; Executive Assistant/ HR Director, Anita Epperson; Zoning Director, Chris White; Health Dept. Director, Angie Faulkner; T-G reporter, John Carney; Donny Porter

1. **Call the meeting to order:** Chairman Biff Farrar
2. **Roll Call:** 0 Absent
3. **Prayer:** Tony Barrett
4. **Approval of the July 18, 2017, Rules and Legislative Committee minutes** – Motion made to approve, (Castleman, Patterson) unanimous.
5. **Consideration of placing the approval of the Aug. 08, 2017, Commission minutes on the Sept. 12, 2017, Commission Agenda** – Motion made to place items on county commission agenda, without a recommendation. (Woodson, Barrett) unanimous.
6. **Consideration of placing the notary applicants on the Sept. 12, 2017, County Commission agenda as requested by County Clerk Donna Thomas** – Motion made to approve, (Castleman, Barrett) unanimous.
7. **Veterans Officer Report-** Reports were handed out prior to the meeting. The Veteran's officer was not present. Commissioner Castleman made a motion to approve, Patterson 2nd, unanimous.
8. **OLD BUSINESS** –
9. **NEW BUSINESS – Beer Board Appointments-** Anita Epperson said she had spoken to Chairman Troy Thompson and he said all 5 members now serving wished to remain on the board for another term. Mayor Ray said that was fine to re-appoint them or if another Commissioner had someone else to recommend who wished to serve they could recommend them. Commissioner Woodson made the motion to reappoint all 5 members currently serving on the Beer Board. Commissioner Barrett seconded the motion passed unanimously. *Item to be placed on the Sept. 12, 2017 County Commission agenda by the Rules and Legislative Committee.*

Commissioner Farrar asked for a motion to put the surplus property for Hwy. Dept. in Courthouse and Property Committee. Motion carried.

Commissioner Heflin presented a letter to the Rules and Legislative Committee and asked them to take action on it.

Mayor Eugene Ray
1 Public Square
Shelbyville TN 37160

Mayor Ray,
I hope your health continues to improve and that you may rejoin us soon. I know I speak for the entire Board of Commissioners when I say we have missed you and that you are in our continual prayers.

As you know, there was a breach of procedure and due process at the last August 8th meeting of the County Commissioners when prior to the meeting our County Attorney improperly advised Anita Epperson to inform Commissioner Brown that he could not vote on any issue while acting a chairman of the Commission. That decision was not announced at any time before, during or after the meeting and I was unaware of Mr. Bobo's advise until I received a phone call later that evening.

After a day of researching the issue, I emailed Mr. Bobo on August 10 inquiring as to his reasoning on making that decision. On Saturday August 10, Mr. Bobo called me and we spoke at length on the subject. At the beginning of that conversation, he told me his initial decision was correct and was based on the Rules of the Commission and Roberts Rules of Order. I cited TCA 5-5-109(b) (2) [copy attached] and after review he agreed he had made an error as the statute clearly states that any Commissioner, acting as chairperson, may vote but cannot break a tie vote. He said he would put out a letter to the Commissioners, which I received via email last evening. Unfortunately, he did not spell out what the proper cure would be for rectifying this error.

I spoke with Doug Bodary of CTAS on how to correct this violation and he said that he would have to consult with others at CTAS. Just this morning I received his response which is attached to this letter. In short, in is up to the County Commission to decide how best to handle this. Since the cure for this violation of law apparently lies with the purview of the County Commission, I intend to bring this matter up tonight in the Rules and Legislative Committee meeting as a Point of Order for that Committee's recommendation.

My intent of raising this point is not to call out anyone or place any blame on anyone for a mistake..we all make mistakes, but in I believe as a public servant when errors are made by those who govern, it must be addressed and a remedy enacted, especially when an error could have a serious impact on the budget and future taxation of the citizens of this County.

Cordially
Chuck Heflin

*** Current through 2017 Regular Session (Chapter 493). The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis.com and Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA. ***

Title 5 Counties
Chapter 5 County Legislative Bodies
Part 1 Substantive Provisions

Tenn. Code Ann. § 5-5-109 (2017)

5-5-109. Voting.

(a) A majority of all the members constituting the county legislative body, and not merely a majority of the quorum, shall be required to:

- (1)** Elect county officials required by law to be elected by the body;
- (2)** Fix salaries;
- (3)** Appropriate money; and
- (4)** Transact all other business coming before the county legislative body in regular or special sessions.

(b) (1) If the members of the county legislative body are equally divided upon any question coming before them upon which they may lawfully act, then and only then, a county mayor serving as chair may cast a deciding vote.

(2) If the person serving as chair of the county legislative body is a regular member of the county legislative body, such person may not break a tie vote in the capacity of chair, but may cast a vote in the first instance as a regular member of the body.

HISTORY: Code 1858, § 4190 (deriv. Acts 1835-1836, ch. 6, § 2); Acts 1875, ch. 63, § 2; integrated in Shan., § 6019; Code 1932, § 10218; Acts 1935, ch. 10, § 2; C. Supp. 1950, § 10218; Acts 1973, ch. 26, §§ 1, 2; 1978, ch. 934, § 15; modified; T.C.A. (orig. ed.), § 5-509; Acts 1983, ch. 138, § 1; 2003, ch. 90, § 2.

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Bodary, Doug <doug.bodary@tennessee.edu>

Tue, Aug 15, 2017 at 9:33 AM

To: Chuck Heflin cheflinjr@gmail.com

Chuck,

After discussing with Kristy we agree that the county commissioner in question should have been able to exercise his right to vote. This is clear. What is not clear is if this vote would have changed the final outcome of the issue at hand (per our discussion). As noted below, the county commission is free to raise and vote on the matter again in a future meeting should that be the desire.

Best,

Doug Bodary

County Government Consultant

The University of Tennessee

County Technical Assistance Service

226 Capitol Blvd, Suite 400

Nashville, Tennessee 37219

Cell: (615) 653-7001

Office: (615) 532-3555

doug.bodary@tennessee.edu

www.ctas.utk.edu

From: Brown, Kristy Godsey

Sent: Monday, August 14, 2017 2:46 PM

To: Bodary, Doug

Subject: Voting Procedure

Doug,

Regarding your question about voting again on a matter where the chair was advised to not vote—

As we discussed, the matter can be raised again at a subsequent meeting. Under Robert's Rules, you cannot bring up the same issue multiple times in the same meeting, but you can bring up at the same issue at future meetings. Even if there was not an issue with the voting, they would be free to vote again on the same matter at subsequent meetings.

Thanks,

Kristy Godsey Brown

Legal Consultant

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Commissioner Farrar read the basic information and the jest of the letter which was that Commissioner Brown was not allowed to vote in the previous Commission Meeting if he had wished to do so. Commissioner Barrett said he didn't know how Commissioner Brown would have voted or if he would have voted but it wouldn't change the outcome of the vote. Farrar said there was a possibility it could. Either way he was denied his right to vote. Commissioner Woodson said the easy way to say was to ask Commissioner Brown which way he would of voted. Commissioner Farrar said no that was not fair to put him on the spot like that, they were not there to throw anyone under the bus. Commissioner Brown said he appreciated that. Commissioner Heflin said he was not allowed to vote or participate in the debate before the vote if he had wanted to and may have swayed someone's opinion and they violated the act. He said TCA suggest it goes back to the rules to remedy it. It was a mistake it is just how do we remedy the mistake? Robert Daniel said he was meeting with the people to sign the contract tomorrow at 9 am and is afraid if they are thinking about overturning the resolution and waiting until the next meeting the contractor may back out. He said legally the projects are all tied together and that would stop Cascade. Commissioner Farrar said that is exactly the reason they should have been kept separately ant that is why it is a dialect of duty. When you lump three projects into one and give them a blank check it is wrong! Commissioner Woodson said if we take action and send it back to vote on again the contractor may back out completely and the fees may go up plus we may have to pay a penalty if we don't draw the money down in the allotted time. Woodson said he understands Heflin and Farrar's complaint and admits it was done wrong but he doesn't want to send it back to the Commission. Commissioner Barrett said we know it should be done different. We know now he can vote, it won't change the way I vote. Commissioner Castleman said me either. Commissioner Heflin said he was not trying to delete or change Cascade either. A law was broken and we have to set a precedent on how we cure what happened and fix it. Commissioner Barrett said we have a way to fix it we won't do it again.

Commissioner Fox said he had a warm and fuzzy feeling all day he drove by the school and they already had heavy equipment out there ready to go and now they are talking about delaying his project again! It has been 12 years and these kids are in portables and it is time we do something. Haven't we waited long enough? Commissioner Thomas said he thinks we just have to eat this 9 and a half million and learn from it and the Rules and Legislative can make this a rule that it doesn't happen again. They can pass it to the commission where they don't lump three projects together. And they need to put it before the proper committees in the first place. Commissioner Heflin said it states it was to go to the proper committees now but this particular project was just allowed to bypass that with no reason. Commissioner Farrar said if the BoE decides not to pay the loan who pays for it? Robert said the County is always responsible for any bonded debts, so the county would have to pay it. Commissioner Yockey said if they don't do the project they don't borrow the money. But whatever they do if they are going to do something they need to do it before 9 am in the morning. Commissioner Farrar said he assumes the committee wishes to keep everything as is because he sees three people shaking their heads so there is no need to vote on anything. They did nothing and moved on to Announcements.

10. ANNOUNCEMENTS – Fish Fry at Cascade School starts at 6:15 all proceeds go to the School.

11. ADJOURN: 5:34 PM (Patterson, Farrar) unanimous.