

January 16, 2008

Shelby County CHARTER Amendments Ad Hoc Committee

Transcript

9:30 am

9:45 am

Commissioners present: Chair David Lillard
 Joyce Avery
 Mike Carpenter
 Sidney Chism
 J.W. Gibson
 Steve Mulroy
 Joe Ford
 Henri Brooks
 Deidre Malone
 George Flinn

Brian Kuhn, County Attorney

Lillard opens reviewing lawsuit; outlines procedure from this point forward to deal with this matter.

LILLARD: We'll call to order the meeting of the ad hoc committee on amendments to the Shelby County Charter. It's January 16, 2008 about 9:45 a.m. David Lillard presiding, and we have Commissioner Avery, Carpenter, Chism and Mulroy in attendance here today with our County Attorney Brian Kuhn.

We'll begin today's meeting. Also Commissioners Ford and Gibson are present. We'll begin by reviewing and asking the county attorney to give us some background and comments on a petition that has been filed with the Shelby County Election Commission by John Lunt of Germantown, or a group led by him, to amend the Shelby County Charter. I would call on our county attorney at this time to explain this item to us, what it provides and what its impact is; also the procedure that would be utilized from this point forward to deal with this matter. Mr. County Attorney.

KUHN: Thank you, Mr. Chairman. I received a copy of this petition from James Johnson by fax late last week and had conversation with the State Election Coordinator's office, Mr. Johnson, Monice Hagler-Tate, our assistant county attorney assigned to the Election Commission, and myself I believe it was yesterday or day before yesterday on this petition. The Shelby County Charter does allow citizens to propose amendments to the Charter. In fact, the term limit amendment to our charter was proposed by a citizen petition. It's under Article V, Section 5.05(c) of the County Charter that allows voters to frame and propose amendments to the Charter. There are a couple of technicalities there I need to make you aware of. The Charter says it

is to be submitted to the Board of County Commissioners and must be signed by qualified voters of the county equal to the number of at least 15% of the persons who voted of the last gubernatorial election. Both of those provisions, in the opinion of the State Elections Coordinator, have been superseded by state statute. In that the petition is not to be submitted to the Board of Commissioners, who incidentally in the Charter had to forward it on to the Election Commission. But it is to be submitted directly to the Election Commission by state law. The number of signatures required by state law, and I believe Christy wherever she is – she was here a minute ago, correct me if I'm wrong, thank you, it's 15% of the registered voters, is requirement under state law. Those are a few of the technicalities. This was submitted to the Election Commission on their agenda today to discuss. The conversation with the State Election Coordinator, because I raised a couple of substantive issues in this petition that I thought was defective. The conversation with the State Election Coordinator was that that was not their jurisdiction, or area, to comment on substantive problems. It was the State Election Coordinator and the Local Election Commission jurisdiction in decision making process to see if it was in the proper form. If there was some substantive defect, that was left up to the courts. So, I imagine the Election Commission today will be looking at this strictly from is it in the proper form. One of the things that was a problem that was halfway between form and substance that we discussed with the Election Coordinator, and I think it was actually the Deputy Election Coordinator we talked to and I think she is going to give an opinion to the Election Commission on that, but it was the fact that the summary that appears on the front of the petition and also the attachment proposed amendment summary, when it lists what this does, it lists about halfway down it says "all whose elections, duties, qualifications, oaths of office, bond requirements and compensation are governed by the constitution and the laws of the State of Tennessee." When you get to the actual proposed amendment, and it may be a draftsman error, it does not include the word "elections" when they list those things. They say "include the duties, qualifications, oaths of office, bond requirements and compensation" but they left out the word "elections" so I pointed out to them that in the Jordan case, one of the things that had to be decided by affixed to the Charter was whether or not these new officers are elected or appointed. This new amendment does not do that. I think they are attempting to do it, saying it's "elections" but there's a defect I think in the draftsmanship due to that problem. The summary says "elections" but the actual amendment itself does not.

Another problem I think they have is in the summary they again in the last sentence it says "the above named officers shall remain state constitutional officers". It has been our opinion that state constitutional officers are in that paragraph 1 of Article 7, Section 1 of the Constitution and because we have a Charter and we have to replace or do something about these officers, they will be Charter elected officers or appointed officers, but they cannot be made state constitutional officers again because that is a Paragraph 1 Government and that has been replaced. So I think in summary calling them State Constitutional ... shall remain State Constitutional Officers ... again, probably is contrary to the Supreme Court Opinion in the Jordan case. The actual amendment itself doesn't really ... it does say in the very first lead-

in entitled "State Constitutional Officers" they make it a title in the proposed new Article 7 that is the amendment. Now, after that, I haven't cross read the article, I don't know if Ms. Kinard has, but I think the body of the amendment of listing the various officers and their duties follows the verbiage in the Knox County Charter fix, where they basically tried to reinstitute those officers and give them all the same duties. So I think that's the gist of this entire proposed amendment.

The final thing I'll make you aware of is I talked to the State Election Coordinator, again or the Deputy Coordinator, what happens if this does receive the requisite amount of signatures and it appears on the ballot, and the County Commission has another proposed amendment that comes out of its hearings and that proposal differs from this one, either in duties or appointed or whatever, and that goes on the ballot by our method – do the voters get to vote on both? The answer is yes, they do. That's a matter of voter education to try to train the voters that if you vote in one and you select that one, you don't vote in the next one. What our fear is that you like this one so you vote yes in this one, but you're not going to vote in the other one of course, and vote no; but then the people who vote in that one like that one so they are voting yes, and you end up with two of them passing and I asked 'what happens there?' and she said 'you go to court' and I said 'that's not a good place to decide things'. And I mentioned to her the possibility of setting the machines to where you cannot vote for two persons for the same race; once you choose one alternative you couldn't vote for the other one. She said no, in her opinion that couldn't be done. Granted, this was a top of the head discussion we were having, she wasn't doing research. But I just wanted to make you aware of that discussion. With that, I think that is all the information I can give you on this particular issue at this time.

LILLARD: I'll recognize members in just a minute. Let the chair ask a couple of questions about this just to help further define things before we get into discussion on it. One has to do with the fact that the staff has checked with the Election Commission staff and the Election Commission staff apparently informs there are 610,087 registered voters in Shelby County right now. 15% of that would be 91,513. Based on my past experience as an Election Commissioner, that 610,000 number includes both active and inactive voters. The chair's question is whether we probably need to seek some clarification whether "registered" voters means both active and inactive. It generally does under the statutes but I just wanted to make sure that's what we're dealing with, both active and inactive voters, so that number we're dealing with 610,087 is in fact a correct number. The other thing that I wanted to ask the county attorney to comment on is in regard to the timeline here. Is the chair correct that if the Election Commission were to act on this today and in effect certify the petition to go to the voters for signatures, wouldn't the applicant have 90 days in order to gather those signatures?

KUHN: 75. That was discussed in that conversation. I'm glad you mentioned that. She said if it were approved today, they would have 75 days from today to gather those signatures.

LILLARD: Ok, so today being January 16, that'd be March 16th plus 15 days, approximately around the first week in April, and I was looking at our timeline. The issue here is our timeline shows the First Reading of our Ordinance on March 17th, Second Reading on March 31, and Third Reading on April 14, so we would be beyond Second Reading by the time it became known whether or not they had the requisite number of signatures, if everyone's following that. One possible alternative here is to look at whether amendments that the commission would propose might be ones that in the alternative cured any problems the county attorney saw with this particular one, you know, or provided an alternative to it. So I guess those are all issues to be considered but the chair does note there is an issue with the timeline here and the coordination of them both at that point in time. Mr. County Attorney, do you have any thoughts on that because I think we've compressed this timeline pretty much for our work, and then we'll go to members of the committee for comments and discussion.

KUHN: Not other than what the chairman has already stated as far as the timing. You can always push up your readings. This is on your normal schedule, every two weeks. The Charter just requires 10 days to elapse between First and Third Readings. So you could actually compress your readings if you wanted to speed it up. But, if you wanted to start the process, change your timeline before your hearings but I don't think you want to do that. But as it is set now, that's the only way you could speed this process up.

LILLARD: All right. Without objection from the members the chair is going to ask number 1 that the county attorney seek clarification about whether the 610,087 voters, that is the gross number of voters in Shelby County, for purposes under the statute of this petition should include both active and inactive voters so we'll know what number we're dealing with and everything. There may be a coordinator's opinion on that already from some past issue in another county. Secondly, the chair would like to ask the county attorney to prepare an alternative timeline if this committee decides to in effect continue its work but see before the final product whether this gathers the requisite number of signatures with voters, and I think that's part of prudent management of the issue among other things. Is there any objection to seeing those two things being done? Seeing none, so ordered. The chair will open the floor for comments and discussion by members. I had some members over here seeking recognition I know. And I want to note, too, that Commissioner Malone and Commissioner Brooks have joined us.

MULROY: Thank you, chairman, you've already answered my questions.

LILLARD: Commissioner Flinn has joined us. Commissioner Avery.

EVERY: I just wanted to mention that my questions have also been answered.

MALONE: Mr. Chairman, does anyone know this gentleman who filed the complaint?

LILLARD: Yes, I do. I know Mr. Lunt. He's the gentlemen that initiated the petition drive for a Charter Commission in the City of Memphis if you recall. He either initiated it or is a key person in it. But I have met him. He's not a friend of mine necessarily, a bosom buddy, but I know him.

CHISM: I agree.

LILLARD: I think as an overall comment obviously Mr. Lunt or any other citizen is within their right to file a complaint and that's fine. I think though as prudent review of this issue by the commission and the committee, we need to look at the timeline and how that interfaces with the timeline of this petition, should it be successful in garnering the number of signatures required, and be approved by the Shelby County Election Commission. So that's the main concern of the chair, trying to get those timelines in sync.

FORD: Will this county commission have to act on this?

KUHN: No. Again the Charter language indicates it goes through the county commission but that's been overruled and I think we agree with that, governed by General Wall, and it goes straight to the Election Commission, so there's nothing for the county commission to do on this petition.

FORD: The language, the constitutional officers, will someone tweak this?

KUHN: I talked that over with the State Election Coordinator and their position is only to the extent it deals with the form of the petition. In this case they've got that inconsistency between the summary and the body of the petition about the election process, so she may mention that. Other than that, any substantive defects with that is not going to be advised by the Election Commission, or our office because they are not our clients. They'll have to consult with their own attorney.

MULROY: That exchange just triggered one other question. Mr. Kuhn or Ms. Kinard might know the answer to this. If it were the case that that particular form were not corrected, and there was a difference in the summary and the actual operative language, do we know what would take effect at that point – would it simply be the operative language that would control, or would that also be something resolved through a court dispute.

KUHN: To the best of my knowledge, the operative language is what the law is, so that is what would be in place if it was approved. The problem is, I think the way the language exists now because the word "elections" is left out, it substantively does not support the Jordan case and would be subject to a

Declaratory Judgment filed by somebody, maybe us, to challenge that language if in fact it did pass if it was defective.

MULROY: If I could just follow up. Another thing that I'm aware of and I don't know if it's the case in Tennessee but I know as a general matter of election law, some states will say if there is a difference between summary language and the operative language, then you have another reason for invalidating it on the notion that the voters might have been tricked. The voters may not have been adequately informed of what it was they were voting on, and that is yet another reason for invalidating it. Do you know if that's at all, or maybe the chairman from his Election Commission experience would know if that's the case in Tennessee as well?

LILLARD: Can I ask one question before we get to that response? In other words, in your view Mr. County Attorney, the word "elections" being left out, is that out of the summary or out of the operative language?

KUHN: It's out of the operative language.

LILLARD: Ok. So you aren't raising the issue of the summary, is that right?

KUHN: The only issue I'm raising is inconsistency between the summary does say "elections" and the body does not. So, substantively the fact that the body does not is the defect.

LILLARD: Before we respond to your question commissioner, let me make clear what the chair was saying earlier and that is – because I think it is important for the county attorney to print an alternative timeline for this committee to review and consider because one approach that we might take to this – and I'm not suggesting this is what the committee or the commission would do, but it's one approach – is if this petition were to gather the requisite number of signatures and be placed on the ballot, then we might take the approach that we take the amendment that's on the ballot at the same time that in effect cures the problems with the earlier amendment which may be higher on the ballot. So, within the two, you cure up any problems that you have. And that is a technique I'm aware as a former Election Commissioner that has been used in some other jurisdictions, not in Tennessee, but in other states. But that's supposing a whole lot. That's supposing a lot of things happen between now and then. But it would be an issue I think if we ended up with a Charter Amendment that had defects in it and we had to have litigation and other things after that, so that is something to consider about the various alternatives that are open to this committee. Of course the committee and the commission may take an entirely different route. That is something totally unknown at this point. Does that answer your question, Commissioner Mulroy?

MULROY: It's not completely responsive, the legal question that I asked. Upon reflection I'm not so sure we need to resolve it right now. I think we're adequately informed of the many uncertainties created by this technical defect, and we'll just

wait and see what the Election Commission does and take it from there. I'm happy to proceed that way.

LILLARD: All right. Well I guess then unless any other members mind, we have a total of 13 public hearings scheduled, a committee schedule set out. We've already had one of those public hearings and the committee will continue with its work. Certainly this petition is noted for the record, but this committee will continue with its work and the county commission will as well, and we'll have to judge based on future events as they occur, how to take that into account any future actions. But again, I'll restate that any citizen is within their rights to exercise rights given to them by the Shelby County Charter by the laws of the State of Tennessee and in that regard, that is not an issue. From those standpoints, are there any questions or comments on the petition that has been filed? All right, seeing none.

I wanted to announce to everyone that this Thursday evening at 6:30 pm at the Ed Rice Community Center on North Watkins is our next public hearing. The chair committed a long time ago to be on an ethics panel at CBU that evening and through administrative oversight we didn't coordinate the calendars, and I didn't realize until recently that it presents a conflict with that date. So, I've notified Chair Pro Tempore Deidre Malone. Her very able leadership will lead the meeting on Thursday evening and I'll be over at CBU unfortunately. I hate I won't be there in person to hear what the citizens have to say, but I personally will be reviewing the transcript, or the recording of the meeting, so that I know and receive the citizen's comments. So that issue is dealt with.

Lastly, the county attorney's office requested that we review the Secondary Issues list today on your register of issues that has been given out to you. We had said in our previous meetings, and had agreed that we would only submit to public comment those items on the Secondary Issues list that received at least 5 votes from this committee. So, I'd like to quickly go down the list here to see if there are any that fail to garner the requisite amount of support for where we are on each one of them.

Secondary Issue No. 1 on the sheet handed out, Section 5.10 – Residency requirements – create an exemption for Fire, EMTs and Paramedics. I think that's pretty straight forward. The county Charter requires residency in Shelby County to be employed by Shelby County and that creates an exemption for those two classes of employees. Any discussion on this matter?

MULROY: For some of these, and number one is an example, it seems to me that there are a lot of these provisions that are detailed enough that I'm not sure of the need to have them in the Charter. And perhaps one thing we might do to simplify this process rather than have such a lengthy list of Secondary Issues or a lengthy list of things that need to be presented to the voters is perhaps combining some of these and simply saying, having a Charter provision that says these types of issues can be decided by the commission through our ordinary resolution or ordinance

process. Why does our constitution, which is really what our charter is, have to decide the issue of residency requirements? Why can't the commission do it?

LILLARD: The chair would respond that that's a correct statement but in some instances, such as this one, the county attorney can chime in here, but we can propose a charter amendment that says whether or not there's a residency requirement for any particular class of employees, assuming it's legal to do that, could be decided by the commission by ordinance or by resolution. I think the county attorney may have some comment on that.

KUHN: I think that's probably correct in that the charter goes into some detail on these items in the charter now. So, in order to get these out of the charter you would have to either remove it or let it be set specifically by an ordinance. But each of these sections that are Secondary or Technical questions are in the charter now and you'd have to amend the Charter somehow and I don't think you can do it by one overwhelming delegation to the commission of ordinance to change anything in the Charter. You'd have to do it section by section. But you can either remove it or say an exception be set by ordinance. Because they are in there now you'll have to deal with them on a one issue basis each time.

LILLARD: I'll hasten to add, this consideration we're having here today, quickly, these issues, does not mean the commission is adopting any particular position with respect to them, or that it would be part of any ultimate amendment we adopt. It's simply whether or not we want to submit this for public comment.

MULROY: My own preference would be that we submit for public comment number one and several other examples as well, not the current Secondary Issues in which state what the rule is and put that into the charter, but simply something that changes the Charter to say this is the type of issue that can be decided by the County Commission. I'd be more in favor of putting that forward for public comment more than I would be in favor of its current form. Sitting here today with what we're about to do with the vote, I don't understand what I need to do in terms of a vote.

LILLARD: I think that's a valuable suggestion. You're further defining for the public what's really under consideration is what you're doing. So, I think it would be helpful to discuss briefly today on each one of these what the possible fix would be, and change the register of issues to have it on here to say, proposed solution is to "delegate this to the County Commission by ordinance or resolution" or "delete this entirely" as in the Superintendent of Roads, since we don't have one of those anymore, but again not binding the committee or commission, but simply saying "this is what's under discussion at this point". Is that what you're meaning, Commissioner Mulroy?

MULROY: Yes.

LILLARD: Then I'll take it and I'll try to expedite this by saying rather than take an actual vote on each one, I'll ask if any member objects to having this continued on the list, and if they do then we'll have a vote on that issue. And if there's a member who wishes to state a proposed solution or remedy to be stated in the register of issues, please raise your hand and state that.

With respect to the first one, Section 5.10, Residency Requirements creating exemption for Fire, EMTs and Paramedics. It has been proposed by Commissioner Mulroy that we would change our register of issues to add an addition on that that the requirement or exemption would be delegated to the County Commission to be dealt with by ordinance or resolution. Is there any objection to continuing that on the register of issues with that amendment to proposal? All right, seeing none, it will be continued.

Item No. 2 – Section 2.04 - Salary of Commission Chairman meaning the County Commission Chairman. The solution is kind of set forth here in this one where it says "set annually by resolution, not ordinance" I think the charter requires us to set it by ordinance now and we need to put the words "proposed solution" in there to set the salary annually by resolution rather than by ordinance as currently required. Is there any objection or debate or discussion on that? Seeing no objection, so ordered.

Item No. 3 – Section 3.05 – Vacancy in the office of the Mayor – Filled as set forth in state election laws. I probably need some explanation from the County Attorney on this because as I recall there is a provision in the Charter now that provides for interim service by the CAO for a period of time and if he/she is unable to serve or unwilling and it goes beyond a certain number of days then the Chair of the Commission serves temporarily, and there's also provision in the Charter that would require the County Commission call a Special Election, as I remember.

CARPENTER: Thank you. As I recall on this issue and I believe Commissioner Ritz is the one who raised it. The primary issue that I recall and that I concur with is that when this was written it did not contemplate partisan primaries. So the window between when the election would have to happen, something like 90 days or 120 days, whatever it is it is a very short window to account for partisan primaries.

LILLARD: All right. If that was Commissioner Ritz's concern then I guess the proposed solution would be to provide that the election would be conducted in accordance with state election laws, including partisan primaries, as I interpret what has been said here today. Is there any discussion or objection to continuing on the register item number 3 as stated? Seeing none, so ordered.

Section 4, new section on Emergency Preparedness. This may also have been Commissioner Ritz's issue. Commissioner Mulroy.

MULROY: Thank you, Mr. Chairman. I don't really know an awful lot of detail about what would go in this section on emergency preparedness, but I'm inclined to

think of this section similar to the first one. I'm not sure why we need to put this into the Charter details about emergency preparedness. Why couldn't we leave out and let the County Commission by ordinance or resolution make decisions about emergency preparedness?

LILLARD: That's a good point. The chair will comment and ask the county attorney to comment here before we go to Commissioner Carpenter. I think one of the concerns of Commissioner Ritz on this for instance if there were a major disaster in Memphis and Shelby County and a quorum of the County Commission could not be mustered, would there be any ability to act with less than a quorum to make emergency appropriations if the mayor is somehow unavailable or hurt and not able to act as mayor and all those issues I think are what Commissioner Ritz was looking at. Is that right Commissioner Carpenter?

CARPENTER: Yes that was the issue.

LILLARD: Ok. So in that regard since it would actually change the quorum requirement of the commission we'd need to talk to the county attorney whether we could do that by delegation, or whether it needs to be in the Charter.

MULROY: That is my question exactly then. It certainly makes sense for us to have some sort of provision to take care of that. Does that provision have to be within the four corners of the Charter or should we be able to do something by ordinance?

KUHN: That's something we'll have to look into very carefully because generally your Charter is your Constitution – it sets up the structure of the government. It generally does not get into such details that happen to carry out that structure. That's generally your other laws. So, just off the top of my head, if that was your intent here, if you're changing the structure, that's one thing. If you want to make a Charter office to have the Office of Preparedness Director being like the County Attorney or Divorce Referee appointed and confirmed, you probably need to put that in the Charter. But, as far as what to do in an emergency, not too sure that needs to be in the Charter number 1, and number 2, not sure you can contravene state law on that and we're looking at the state law amendments with the CTASK representative about what happens because they are looking at that, too. I think it'll probably have to be a product of state law. But I'll have to get back with you. Those are just top of the head comments.

LILLARD: Is there any value in this situation in asking the county attorney to draft a proposed section for consideration by the committee, and perhaps even consult with Commissioner Ritz by email. He's out of town, but I guess the county attorney could communicate with him by email on that and see if it encompasses his proposals, and at a future committee meeting we can look at that and determine whether that specific thing is submitted for public comments, so it's to try to put some meat on the bones.

CARPENTER: I agree that our constitution, the Charter, is to deal with structural issues. I would say that this in effect is a structural issue and that if there is a natural disaster and a significant portion of your government is gone, you can't at least in any short period of time reconstitute that government in the same structure and the same fashion as it was intended. So, my point being that it is appropriate that be in the charter if it can be, while the specifics of carrying it out may not need to be in the charter, but establishing an alternative process or structure is important to be in the Charter.

MULROY: I don't want to belabor the point. I don't think Commissioner Carpenter and I are necessarily in disagreement, but perhaps for me the question is, if we can by statute, in this case ordinance, set up next month some default rules as in the case of natural disaster of some kind, the following things will occur. And we can set up all those default rules in advance, through ordinance, legally. Then I guess my preference would be to do it that way because I would like to think we should put as little as possible into the Charter as the basic foundational stuff, and the rest can be taken care of by ourselves. So I agree we need to address it somehow, through an ordinance would be my preference. It may not be the other commissioner's but it's mine.

LILLARD: As a suggestion, the chair would suggest subject to your approval and the committee is that we would continue this item on the register of Secondary Issues, item no. 4, in the way it's currently stated – "new section – emergency preparedness" – but that we would request the county attorney to study and advise commissioners by email with regard to the issue of whether you can provide for alternative structures as Commissioner Mulroy outlined by ordinance, or whether it in the opinion of the county attorney has to be defined in the Charter. The county attorney would resolve that issue and then secondarily, regardless of which way that goes, ordinance or charter, that the county attorney prepare a proposed language for this section, and then consult with Commissioner Ritz by email. He is the one who proposed this, I think. And then circulate that to all commissioners by email and of course to the press, and that would be on the table for our next meeting to be discussed.

Is there any objection? Commissioner Gibson is recognized.

GIBSON: Just for clarification, if the county attorney comes back and says we can do either or, will it come back to committee for a vote?

LILLARD: To answer your question, Commissioner Gibson, in any event it will be brought back to the committee to be added to the Register of Issues or dropped or altered or whatever at that point. But in either event we would need language, so we've asked the county attorney to draft it. We're not acting on it today. We are just directing the county attorney of steps to take and it will be brought back to this committee, probably at our next meeting, whenever that turns out to be.

MALONE: Thank you. Is it least likely to be challenged if it's a part of the Charter or an Ordinance?

KUHN: I think there's a different standard applied to whether you can challenge a Charter provision or an Ordinance provision. I'm thinking out loud. If anything, the Charter gives you the authority to do something, then you do the details in the ordinance. You have to have some authority given you to adopt an ordinance. So this would be some language that would give you the authority to address that issue, if it can be done at all. Again, I don't know if it's contrary to state law. If you can, neither Charter or Ordinance won't help you if there's general law on it. Short answer, it's harder to challenge a Charter provision than it is to challenge an Ordinance provision.

LILLARD: Is there any objection to proceeding with the course of action the chair outlined with respect to item 4 on the Secondary list of Issues? Seeing none so ordered. Item number 5. Section 2.04(3)(e) Delete office of Superintendent of Roads, and Superintendent of Schools and it says on here now "Note: Positions no longer elected by the County Commission" so I assume that the proposal would be to just delete those two titles wherever they appear in the Charter, and make other adjusting language as necessary for that deletion. Is there any objection to continuing those, that item on there, item 5, with that slight alteration in the wording to make it more clear. Seeing none so ordered on item 5.

Number 6, Section 2.03(e) Add to the end of section "if the member is not elected, the member may immediately return to his seat on the Board of County Commissioners." I assume that refers to the provision of the Charter that requires a commissioner seeking election to a post being filled by the commission to resign his or her seat. I assume that's what that's referring to.

KUHN: Vacate the seat and resign and I believe changes that to come back right away.

LILLARD: The chair would suggest that if it's going to continue on the Register of Secondary Issues, it needs further explanation to give it context, and we've asked the county attorney to prepare a statement to be included with it that explains the context and how it will operate.

BROOKS: Let me just say one thing on that. I raised my hand to talk about the next section, which is (f), which is not on the Secondary Issues. But since I was recognized let me just point out that I think (e) should be (f) and (f) should be (e). You're saying that the member of the Board of County Commissioners "shall be eligible to hold" but you addressed that in (e) from the part that I read.

KUHN: I think they are both an (e). I think the deletion of those terms in number 5 is an (e), and the person who accepts the nomination for one of those

positions and vacates their seats is an (e) also. The (f) is the one about holding two offices at the same time. It's a different provision from what we're talking about here.

BROOKS: Ok, (e) is specifically talking about those that are named there? Is that correct?

KUHN: When this body is electing a person to fill that position.

BROOKS: Those that are named? In (e)?

KUHN: Yes. In (e).

BROOKS: Ok. When we get to (f) I'd like to be recognized, Mr. Chairman.

LILLARD: All right. Are we saying that (f) should be added to this discussion in item 6 of the Register of Secondary Issues? Is (f) already on our list of Secondary Issues?

BROOKS: No. I'm sorry. I'm getting confused here. I thought you were saying (f) should be added to (e). But no, I would like to address the issue. I don't know, I wasn't here, but if the county attorney could give me some context in terms of the legislative intent of (f).

KUHN: Sure. That was an amendment that was also made to the Charter after we originally adopted it, and I think it was proposed by the commission somewhat after the amendment on the term limits. But this provision applies to is that a county commissioner cannot hold another local county, state or federal elected office so long as they hold the office of county commissioner. And it gives you two ways after that it applies. If you are already an elected officer and you become a county commissioner, you have to resign the elected office. Or make your choice. If you're a county commissioner and you are elected to an elected office, you have to resign your county commission seat or the other office. You can't hold both of them at the same time. That's what (f) is addressing. (e) is addressing the procedure when a local county office vacancy occurs this office is filling it as you do by your votes to fill temporarily. At the end of that section on (e) it requires that if a commissioner becomes a nominee, that commissioner must literally vacate his seat and take a seat in the audience, in the public area of the meeting chambers. If the member is elected, his seat on the Board of County Commissioners shall be declared immediately vacant. If he's not elected, he/her can come back and take his/her regular seat. I think all this does, although I'm not too sure it's really required, but it says that you're allowed to come out of the audience and sit back in your seat. I think you'd be allowed to do that anyhow, quite frankly, but I guess someone wanted to make it quite clear.

BROOKS: I appreciate that explanation on (e). I guess on (f) I need some more clarity and understanding as to the need for (f) to require, under what

authority can you require a member that was duly elected by the public to hold an office to give up that office? I mean the public elected someone to a specific office and we have in our Charter that that individual would have to abandon or abdicate that position if elected, if the public elects them to the county commission. Under what authority do we have to do that? To nullify the public's vote? It kind of begs for a little explanation here.

KUHN: I can answer you legally. Politically I'll leave that structure up to you. The state constitution has a provision that you cannot hold two state offices for lucre or profit or money. That was adjudicated when there was a state office and a county office back in ... it specifically came up when John Ford was County Clerk and State Senator at the same time. And the opinions were it was ok, it did not violate the state constitution, holding two state offices. Shortly after that, this probably came as a result of that historically. This provision with a similar provision in our Charter that's in the state constitution saying you cannot hold two political offices, and this time it goes from county, state, local or city at the same time. Now, legally whether you can do that or not. That's never been challenged per se. But I will say that the state statute authorizing the Charter be adopted and authorizes qualifications be set for those positions. This is a qualification type language for the position of County Commissioner. The qualification issue was adjudicated in the Bailey case where they determined Term Limits was a qualification and could legally be set in the Charter. So in the same rationale, I imagine the argument would be that since this is a qualification type language, or in this case disqualification of not holding two offices at the same time, that it is legally set in a Charter pursuant to the state law authority to allow you to set qualifications in your Charter. That would be the argument.

LILLARD: Could I do this Commissioner Brooks? I think what we've determined is that 2.03(f) is a separate provision than 2.03(e) and what I'd like to do if we could is ... what you'd have to do if you wanted to add 2.03(f) to the Register of Issues and have some proposal, we probably need to take that up at the end after number 16 here, at the end of our list because we've determined it really doesn't relate to 2.03(e), it's a separate thing. I agree you have a discussion on that point. Would that be ok, commissioner?

BROOKS: I agree.

LILLARD: Ok, very good. On item number 6 on the list of Secondary Issues, 2.03(e), the chair's proposal was to continue that on the Register of Issues, but to have the county attorney prepare further explanation giving the context and meaning of that proposed change.

MULROY: I agree with that but if you could perhaps also give us a more definitive opinion about whether it's necessary, given the current language of the Charter. Speaking only for myself, if we determine that it's not really necessary then I guess I'm inclined to take it off the list simply because I'm trying to avoid issue

clutter. We have an awful lot of things that we want the public to be discussing that we're going to deal with and that the public will have to deal with on the ballot. So, if we can find out that something's not necessary then I guess my own inclination at the next meeting would be to say let's not do it.

LILLARD: Well let's ask this quick question of the county attorney. I interpreted that provision that suggested addition "if the member was not elected the member may immediately return to his seat on the Board of County Commissioners" to be a substantive thing because that member had to resign in order to be a candidate for the office being filled by the county commission. Let's say that the sheriff left office and I decided I wanted to be sheriff. I'd have to resign and my colleagues would have to decide if that office still ... but as the current rule stands, I would be out of office at that point and not be sheriff and not be commissioner if I was not successful. But this would allow me to resume my seat. Is that correct?

KUHN: Well I don't think the resignation actually is not the language in the Charter. Maybe the problem is it says "if the commissioner nominee agrees to accept the nomination for that position, the nominee shall vacate the seat and take the seat in the public area of the meeting chambers." Maybe the problem is the word "vacate" that rather than "leave" the seat. So this language is clear that you didn't vacate the office by taking that nomination, because I don't think that was the intent of this, it was just to leave your seat and take a seat in the audience. Then "if the member is elected, the seat is declared immediately vacant". So that's the next sentence and to me the specific controls the general. And that would be the controlling language. So, that's where it becomes "vacant" actually, the office becomes vacant if the person is elected. All this says is that if he's not elected that person can return to his seat in the chambers, his commission seat, which is a little different. I know when this was first presented there was discussion, and maybe there's a state law about resigning if you take the nomination but that's not how our Charter reads now. It just says you vacate the seat if you accept the nomination.

LILLARD: Well, I guess to follow up on Commissioner Mulroy's point, we need further study by the county attorney on this to see exactly what it means. I guess we'll continue it on the Register for the moment until the next meeting simply to get some clarification as to what exactly it means. So, if the county attorney could look at that and advise commissioners and the press about that. So, without objection that is the manner in which we'll handle number 6.

Number 7. Section 2.06(c)(e). Delete the School Superintendent. "Note the County Commission does not set salary." I assume that's a provision where the commission was setting the salary of the Shelby County School Superintendent.

KUHN: That was a listing of the 2/3 vote Ordinances for the County Mayor, the Board of Commissioners, or the School Board Superintendent and we don't set the Superintendent's salary. We used to.

LILLARD: Chair's proposal would be to continue that on the list, but we also ask the county attorney to draft further explanatory information.

CARPENTER: Just a question. Is the state statute that supersedes here and says the county school board sets the superintendent's salary and is that why it's not in the ...

KUHN: Yes. The Charter was adopted before that state law and the lawsuit we had that said we had to have an elected school board. We used to appoint the school board and the school superintendent under that old Private Act and that all went away when it was determined in that litigation that the Shelby County School Board is to be elected publicly, and then they fell under the state statute, they select their chairman, and set their salary.

CARPENTER: But it's explicit that the salary is set by the board and even though they are elected?

KUHN: The superintendent's salary is set by the elected school board, yes. But the Private Act that used to let us do it is gone. So we're just cleaning up the Charter saying we no longer set the superintendent's salary, because we don't.

LILLARD: All right. The chair's proposal of continued item number 7 on the Register of Secondary Issues, but to have further explanatory information prepared by the county attorney included in that. Is there any objection? Seeing no objection, so ordered.

Item number 8. Section 2.12. Delete Divorce Referee. It says "Note: Position no longer requires consent of county commission." Mr. County Attorney, can you explain that briefly?

KUHN: I can't because I don't understand. It doesn't say it no longer requires it. The Charter does require it, not only in that section but in the Divorce Referee section itself which is paragraph (c) of Article 3.08 says "the Divorce Referee shall be appointed by the county mayor with concurrence of the majority of the Board of County Commissioners" just like the Public Defender, County Attorney, and CAO is.

LILLARD: I wonder where this came from. Was this an administration proposal or something? Mr. Huntzicker is on the phone. That's the only place I can think it would come from, you know. Mr. Huntzicker, we're discussing item number 8 on the list of Secondary Issues, it's like Charter Section 2.12. It says "delete Divorce Referee. Note: Position no longer requires consent of county commission." County Attorney has advised it does require the consent of county commission and I wondered if this was an administration proposal in any way. Do you recall?

HUNTZICKER: I'm not aware that it would be.

KUHN: Ms. Kinard has advised me this is a recommendation of Commissioner Ritz. That's different from the way the Register of Issues used to be. The Register of Issues used to read for that section "Delete Divorce Referee from list of positions requiring consent of commission." It did not have that Note. I don't know where that Note came from.

LILLARD: Probably added by an assistant county attorney (ha). Right? I don't know. Would you please correspond by email with Commissioner Ritz and ask him what was meant by that. If he is proposing to have that consent taken off of there then that is what it needs to state.

MULROY: If it turns out that it's premised on the false understanding that we no longer need to approve Divorce Referees then that would be reason in my view to take it off the list. But if instead it is actually a proposal to change it so that now we have to approve Divorce Referees but after this is passed then we would no longer need to approve Divorce Referees, then on the merits I would oppose it for that reason and would also be in favor of taking it off the list.

LILLARD: And again, we're not taking substantive action, we are just deciding whether to continue to submit it. But first we need to get clarification of what it means, what the proposal is.

CHISM: (could not hear comments)

LILLARD: Ok, then perhaps we need to look at it 1) the way it's stated now does not make sense, we have agreed on that, and the only other way I can see it being interpreted is as a request to delete the Divorce Referee from the list of officials the commission confirms or approves. I sense there is some opposition to continuing this item on the Register. I guess all those commissioners who are opposed to continuing it on the Register would you raise your hand at this point. Commissioner Chism, are you opposed to continuing item 8 on the Register of Issues? All right Commissioner Chism says aye. Commissioners Malone, Mulroy, Chair and Commissioner Ford raised his hand. So we have at least 5 members of those present, and Commissioner Avery, so there are only 2 or 3 members present who wanted to continue it so Chair orders item 8 deleted from the Register of Secondary Issues.

All right. Item number 9, Section 3.03(b) Mayor to present budget to commission no later than March 1, instead of April.

MULROY: I think I'll make the same suggestion about that one that I made about number 1. Rather than try to have our constitution set what the deadline is for budget, I'd rather not speak to the issue and either implicitly or explicitly, whichever the county attorney thinks is the most appropriate. Delegate that authority to the county commission. We can pass an ordinance that would set up a budget schedule.

So, if we could change it so that it goes in that direction, I would be in favor keeping it on the list. Right now I don't see why our constitution should get into this kind of detail.

LILLARD: Chair will treat Commissioner Mulroy's statement as a request to amend our item number 9 on our Section 3.03(b) to delete the current language and to insert thereof that the date for required presentation of the budget shall be fixed by the commission either by resolution or by ordinance, whichever is appropriate. Is there any comment or discussion on Commissioner Mulroy's request? I'll treat that as a motion. Is there a 2nd? Commissioner Malone is recognized.

MALONE: Thank you Mr. Chairman. I think administration has done a good job at trying to get the budget in anyway. We had budget hearings earlier than we've ever had them last year, so I'm trying to figure out why this was even recommended, quite frankly.

LILLARD: Well if the chair could comment - one reason it might have been, you know we've had a very cooperative relationship with Mayor Wharton and his administration but there may be a future commission with a future mayor with a relationship that may not be as cooperative. I think you and I know that with respect to the budget, the earlier you get it the better chance we have of really understanding it and having some concrete input on it.

MALONE: I think we've always received it before April. Anyway, those are my comments.

MULROY: Seems to me that whether you're happy with the way administration has done it, or concerned about a future administration not doing it, we can work that out through an ordinance. We don't need it in the Charter.

LILLARD: The chair would ask the county attorney if we delegated this to the commission in the Charter, the voters did, would the commission have to act with an ordinance or would a resolution be sufficient to set a date for submission of the budget?

KUHN: Since it is a year to year deal type budgeting you can do it by resolution because it would be changeable each year as opposed to setting something in stone which is what ordinances do. They are non-changeable usually.

LILLARD: Is that acceptable by you, Commissioner Mulroy, to state your amendment by requiring it by resolution rather than by ordinance. Commissioner Malone is that alright as seconder?

So the motion at this point is to change or amend the language of item 9 on the list of Secondary Issues regarding Section 3.03(b) and to delete the current language of that section and to require that the power to set the date for submission

of the budget be delegated to the commission through its act by resolution. All those in favor signify by saying aye. Those opposed, no. The ayes have it. Item 9 is amended accordingly. We'd ask the county attorney to prepare further explanatory material for that item.

Item number 10 of Section 3.03(g) Delete the last sentence so the mayor has line item veto of budgets of elected officials and clerks. Comments and discussion on this particular item? I'm continuing it on the Register of Issues. I think that's fairly clear. The question is does it work. The proposal, does it actually make sense as far as the current language of the Charter?

KUHN: The current language of the Charter which is a veto power language says "the mayor shall have veto power over annual budgets of the county which may be exercised by voting specific items or parts of items without invalidating the whole." That's known as a line item veto that was given to the mayor in the original Charter. He can take a particular line item in someone's budget and veto that without vetoing the whole budget. So right now that's fairly significant power. Line item veto is always significant power of an Executive Branch of government. This section looks like would not apply that line item veto to elected officials' budgets. You know elected officials are rolled up into the overall budget, but quite frankly the mayor is in charge of his budget now anyway so if he does not want to do something in his budget he doesn't need a veto, he can just not spend it. So this gave the mayor an independent Executive Branch power to veto line items in elected official's budgets. The issue is do you want to remove that or not?

LILLARD: But does it work if you in fact delete the last sentence? Would that have the affect of extending to the mayor a line item veto over the budgets of the elected officials and the clerks. And I realize there are state statutory issues and other issues related to that but I mean given the language of the Charter does it work?

KUHN: I apologize, I'm going too fast. The last sentence says he does not have the line item veto over budgets of elected officials and county clerks. This would give him that right.

LILLARD: But further if we deleted that last sentence, would there need to be an amendment above that in the language that says he has line item vetoes to make clear that it's not only over his administration but it's also over the elected officials and clerks?

KUHN: It wouldn't hurt although the elected officials and clerks budgets are rolled up into the overall county budget so I think it would be interpreted that way once the county commission adopted a budget. They're in there. To be a line item veto in there he could do it. But I think it wouldn't hurt to make that crystal clear.

LILLARD: All right. Is there any objection to amending this item, item number 10 on the list of Secondary Issues, to further include a statement that the language of that

Section 3.03(g) would be amended to explicitly state that the mayor's line item veto would be extended to the elected officials and clerks. Is there any objection to that being amended in that regard? Commissioner Flinn is recognized.

FLINN: (could not hear comments)

KUHN: And to further follow up on that, Mr. Chairman, even if that's adopted depending on what happens to the Salary Petition process, ya'll changing this with elected county officials, that if the Salary Petition process stays in effect as in general law, then I don't think the mayor can veto a part on the salary part of an elected official if the court approved that in a court under a Salary Petition. So if you still have the Salary Petition process when these amendments are all done, you may still have a problem amending the Charter to allow the mayor to veto a line item in the salary or personnel complement of an elected official – if that runs contrary to a court order.

LILLARD: That's advice well taken. However, it wouldn't be a problem with respect to those parts of the personnel budget that aren't covered by the Salary Petition, or those parts of the O&M, Operations and Maintenance budget.

KUHN: That's right.

MALONE: It is the mayor's responsibility to present to the commission a balanced budget, right?

KUHN: I don't think it says balanced budget. I think it just says budget in the Charter. Now, they've always presented ... the county has an overall responsibility it has to adopt a balanced budget.

MALONE: So it's not necessarily the mayor's responsibility to present to us a balanced budget? It's just the responsibility of the mayor to present a budget?

KUHN: Right. Actually the balancing of the budget is a two-fold process. It depends on what the budget is when it's adopted, and the tax rate you have to set to fund it. You actually do a balanced budget when you set the tax rate for the budget you adopt. So, the mayor could submit anything in a budget because he submits what the tax rate might be to fund it, but he doesn't adopt the tax rate. So he could submit any budget to you.

MALONE: I was just trying to weigh his area of responsibility because if he is required to submit to us a balanced budget, then we should give him that authority to be able to go in and give him that veto power on a line item. That's the reason I asked the question.

GIBSON: Understanding that there is some contingency on this issue, are you going to make that amendment suggestion a motion?

LILLARD: I was just going to ask without objection if we can do that, or if members would like to vote on it, however you would like to do it commissioner. Are you wanting to vote on the matter?

GIBSON: To expedite it, yes.

FLINN: I would just like to see us have more of a say in this. Have the budget committee have a say in this. I'd like to see the commissioners who are also elected to represent the people live with the budget. Especially with our budget committee the way it's functioning now. I assume it will function just as well in the future. But looking at each of these items very carefully, the mayor has to look at so many things. He presents us a budget and we go over it. I think we should maintain that authority to go over it.

LILLARD: Any further comment or discussion? All right the chair will divide the question into two questions because we have really two different votes here. One is to amend the current item 10 on the list, the Register of Secondary Issues that currently reads "**Section 3.03(g) Delete last sentence so mayor has line item veto of elected officials and clerks and to amend that to further state that the remaining language of Section 3.03(g) will be amended to make explicit the fact that the mayor would have line item veto authority over the budgets of elected officials and clerks in addition to the current authority.**" That's the proposed amendment at this point for Section 10. We'll vote as a second vote whether to continue that amended item on the Register of Secondary Issues.

Again, this is a vote simply to amend this item on the Register and then ultimately a vote to whether this item continues on the Register. To expedite matters the chair will make a motion to adopt that as an amendment. Is there a second? Second by Commissioner Brooks. Any debate or discussion on the motion to amend? Seeing none, all those members in favor of the motion to amend shall raise their hands. Those members opposed? We only have two in opposition. The majority is in favor of amending, so the amendment is adopted.

Now we'll vote on whether to continue item 10 as amended on the Register of Secondary Issues. This requires at least 5 affirmative votes. All those in favor of continuing it as amended raise your hand. I've got Commissioners Carpenter, Gibson, Avery, Chism, Brooks, Mulroy, Malone and Chairman Lillard so it receives the requisite number of votes and item 10 as amended will continue on the Register of Secondary Issues.

All right let's go to Section 3.07(b) Elected Officials and Clerks to submit budgets to mayor instead of commission. Is there discussion whether to continue this item on the Register of Secondary Issues and I'll just ask the county attorney to look at it and make sure it makes sense in terms of the language of the current Charter.

KUHN: I think it does. The current Charter section says all elected officials and clerks of county courts shall submit their budgets to the County Commission which shall supply copy of each to the County Mayor for the purpose of that office submitting a consolidated budget. Minor technical language after that, but that's the way it's set up now. The elected officials and clerks send their budgets to the County Commission and you send a copy to the mayor for their consolidated budget. I cannot quite frankly recall during the Charter Commission why that was set up that way. I think that was some sort of independence, or subservient problem, didn't want to have to submit budgets to the mayor himself or do it to the commission but I just can't recall exactly why that was there but it's in the Charter now.

LILLARD: Ok any discussion on whether to continue this item? All right. Without objection Commissioner Flinn is recognized.

FLINN: Are we saying that everyone will submit their budgets to the mayor
***.

KUHN: They do it now.

MALONE: They do it now.

GIBSON: Yes they do in county government ***.

FLINN: Is that the process right now?

KUHN: Yes the process now is that all department heads, divisions, and everyone in government except the elected officials send their budgets directly to the mayor when it's budget time. Elected officials send their proposed budgets to the County Commission with a copy to the mayor because the mayor has to have it rolled up into a consolidated budget to show the whole picture when he submits the budget to the County Commission for approval.

FLINN: And this amendment changes the procedure?

KUHN: Yes. Now they would submit their budgets instead of to the County Commission and the commission submitting a copy to the mayor, now they just submit it straight to the mayor.

LILLARD: The chair took this to be a technical amendment in the manner of conforming to current practice because the actual practice as Commissioner Malone as chair of the budget committee can chime in, as the mayor gets the budgets from all departments and elected officials and consolidates it and rolls it up and we don't actually do that. We may receive something for filing but that's all it is. We're not trying to consolidate the entire budget, so it seems like a technical amendment to conform to practice.

MALONE: Chairman Lillard is right. What actually happens is they send their budget to Mr. Huntzicker's department but they'll send us, the budget committee, a copy, but it all rolls up to administration to put together the consolidated budget for us to review.

LILLARD: It's valuable I guess to the extent the mayor may decide that this department or this elected official doesn't need this money and changes it in the budget they submit. It's helpful for the commission to know what was originally submitted to us if we want to do that. But there would be nothing to keep an official from sending it to us as a matter of practice anyhow. We're just dealing with a legal requirement is all.

MALONE: And to that point there have been times where there may have been a tweaking of the budget and elected officials are not really happy about it and they will let us know. And that debate then will come up as part of the budget process. So our elected officials are not shy about anybody tinkering with their budget. They are very vocal if it's something that they believe that they need.

FLINN: As chairman of the budget committee I'm sure that you've heard from some of these officials. Number two, going back to the previous amendment we put in would they not now if both of these were passed, submit their budget to the mayor, he would have line item veto, and all we are is the rubber stamp, much like the city does.

LILLARD: Well, I guess you could say that. Now, maybe the county attorney can comment on this about what strictures are on the City Council about amendment of their budget. Commissioner Ford is not here, he stepped out just a minute, but he used to serve on the council and he could tell us. As I understand it, there are some further strictures in city government that prohibit them from delving into the finer details of the city's budget. I don't know that there are any strictures on us. I think that if we want further information on a particular item submitted to us at budget, we can require that information, and once we find out we can amend it to take an item out or add an item back in. Is that right Mr. County Attorney?

KUHN: I believe that is correct and further reflection on this I think that this was originally put in there as I recall now that the elected officials did not want the mayor to take their budgets through the mayor review process and actually make changes in their budget before it came back as part of the consolidated budget. This envisioned that the mayor would get a copy, he would simply take that copy and roll it into the overall budget, but he wouldn't have budget hearings administratively on their budgets, etc. That would come at the County Commission level. Now, the other thing I didn't comment on is you said the mayor could veto their budgets at this stage. Actually the veto applies to a legislative act so he could not line item veto anything until the County Commission has adopted a budget; then when it comes to him to sign he can veto an item at that time after you've adopted it but it wouldn't be in the early budget process. But the County Commission has a lot more power than

the City Council does in its form of government budgetary wise. You can go through budget hearings and add or subtract just about anything. And whatever you finally approve will be the budget, subject to the mayor's line item vetoes, and you can override his veto.

FLINN: My overall concern is that we don't water down the County Commission's authority so to bring it more in line with the city as a precursor of consolidating city and county governments.

LILLARD: Ok. So I guess the county attorney has said though that we have authority over each item in the budget either to amend it, restore it or delete it and that isn't being changed by anything, right Mr. County Attorney? And that's not being changed by anything we've seen so far here today, as such. So I assume that answers your question.

FLINN: I just want ya'll to keep that in mind. That looks like what we're doing.

LILLARD: That's right. I haven't seen anything today that the chair sees as changing that authority, and the county attorney is indicating that he hasn't either. Commissioner Brooks.

BROOKS: Just a point of clarification. I think something you said triggered this question. To me it's just a process matter here and I'm wondering if we need to have it. Elected officials and clerks submit their budgets to the mayor. Since the substantive part of it still remains the same. Veto power will only come after it has been reviewed by the County Commission. That's the substantive part of it so the process part of it is the submission. Who gets it first? I mean that's the way I see it. Am I being too simplistic?

KUHN: I think you're right. Again, the reason I think that was in the original Charter is so the mayor didn't have the idea that he or she could modify the elected official's budget before they presented the consolidated budget to the commission. Even if they did ya'll could still change it. But it was just to roll it up into his budget without him making any changes. It's just the process.

BROOKS: Well then why don't we state our intent as opposed to going around the bush and causing all this discussion and just rephrase that, if you will. I don't know.

LILLARD: How would you propose to rephrase that commissioner?

BROOKS: What did you say the intent was Mr. County Attorney?

KUHN: Again, the intent was the mayor would not have the authority to modify the budgets of the elected officials just when he submits it. That's what's intended now.

BROOKS: What we have right here is just a process issue, logistics matter.

LILLARD: Ok. So I interpret your request to amend that by adding at the end of it, **"but the mayor shall not have authority to modify the elected official's budget submitted."** Is that right? Ok Commissioner Brooks has requested that item number 11 be amended in that regard. Is there any objection to her amendment? Ok, seeing none so ordered and it's amended.

Is there any objection to continuing item 11 as amended on the Register of Secondary Issues? Seeing none it will be continued as amended.

Ok item 12. Section 3.08(c)(i) Delete section in its entirety. Note: Contingent on Secondary Issue number 9 above.

MULROY: I think what that note might mean is contingent on Secondary Issue 8 above since it refers to the Divorce Referee.

KUHN: I think that's right. It's the section in the mayor's administrative section in the charter that allows him to appoint a Divorce Referee with consent of the commission.

MULROY: Since we already decided to take off the Register of Issues number 8, I would think it would follow to take this off the Register of Issues as well. It's no longer necessary.

LILLARD: Ok. I think that's a point well taken then.

KUHN: I agree.

LILLARD: The proposal is to take item 12 off the Register of Secondary Issues. Any objection to delete that item? Seeing none, item 12 is deleted from the Register.

Item 13, Section 5.05(c) Conform to State Law. Note: See Editor's Note. Ok. We need to see what that means. Chair is in doubt on that issue.

KUHN: 5.05(c) is the thing we talked about a minute ago about amendments to the charter and it was about the voters submitting amendments, and we were saying the Charter language is wrong because it is controlled by state law now in that 15% of the registered voters as opposed to 15% of the voters in the last gubernatorial election. I think that's the section. It's just trying to change our Charter

language to purport with what the Election Commissioner position already is, and that is state law controls.

LILLARD: Let me ask you this. Wouldn't it be more appropriate to leave the provision that's in the Charter now in there, but to say, "**unless changed by other applicable law**" because the state law may be changed at some future date. Then if they repealed it we would revert back to the Charter provision is what we would do. So we would want to, wouldn't we want to leave the Charter provision there but say ", **or otherwise as provided by applicable law.**" Because the Constitution of the State could be amended to provide something different at a future time. Hope not, but it could.

KUHN: That's fine, that would certainly be a safeguard.

LILLARD: All right. So we would ask the county attorney to 1) I assume there's no objection to amending Number 13 with regard to Section 5.05(c) to state the requirement that's in the Charter now, but to show an amendment to it that says "except to the extent required by other applicable law" and preparing an explanatory note about the current status of state law to include with this item. If there's no objection to amendment in that regard, seeing none, so ordered.

Is there any objection to continuing item 13 as amended on the Register of Secondary Issues? Seeing none, so ordered.

Item 14, Section 5.05(d) Conform to state law. Note: See Editor's note.

MULROY: Mr. Chairman can we just take the same approach with that? Once again, it's a situation where state law ...

KUHN: (d) is again the dates and time periods that you submit a referendum to the people and once again, I think it's controlled by state law, so the same thing would be applicable.

LILLARD: So we have the same substantive amendment to item 14 that we had to item 13. Is there any objection to that? Seeing none, so ordered.

Item 15 Section 2.02(b) Change Term for CPA Performing Audit from 4 successive years to ten successive years. I think this refers to the provision of the Charter that requires us to use a different Auditor for each 4 year period. The chair had a question about that. Is that something also in state law? I think there are some state law provisions about county auditors as well.

KUHN: That I don't know but I can find out unless Mr. Huntzicker is familiar with that, Comptroller Rules or State Laws on Audits.

HUNTZICKER: I don't believe that there is a restriction on that at the state level.

KUHN: We can check and find out. I just don't know.

LILLARD: Is there any objection to continuing this item, item number 15, on the register with some explanatory material supplied by the county attorney? Seeing none, so ordered.

Item 16. New Section. Prohibit Salary Petitions by Constitutional Officers. The chair would ask whether this is even a permissible thing in the sense that salary petitions come from general law of the State of Tennessee.

KUHN: This is one of those sequituous arguments. Again, we've got to put it in the right framework. There are no more, or there shouldn't be any more constitutional officers after you fix your deal. Whatever your fix is, provided the new officers are elected and they still have the rights and duties of the other officers and there would still be salary petitions if they still have those same rights, because that is a right now of the constitutional officers to go to court over a salary petition. The only way you would adopt a new section prohibiting salary petitions would be to correspondingly dovetail make sure that's correct with whatever your fix is with these new officers so they don't have that right in the new provisions. You cannot, just as it is now, adopt something saying you can't have salary petitions for the constitutional officers because the constitutional officers under paragraph 1 do have that right, that is pursuant to state law, so you cannot make anything contrary to it. So I guess it's a semantics problem here.

LILLARD: Can you state again? I didn't hear the first part of that.

KUHN: If I had a court reporter, I'd have them read that back. Basically I was saying that it dovetails in with your fix of the officers that you are selecting, how you are selecting them and whether you are giving them the right to have salary petitions in that process, because you may end up with an appointed officer that doesn't have a salary petition right, or you may end up with an elected officer that doesn't have a salary petition right, in which case you don't need to prohibit petitions by constitutional officers because you no longer have constitutional officers. It would be taken care of in those provisions.

MULROY: Thank you. I think Mr. Kuhn obviously is right, it's a semantics problem. But maybe we need to look at it this way. If we were to create, we're going to be creating county Charter offices, most likely, right? If we were to create those offices and with Charter language that says they will have the same rights, powers, duties as the state constitutional officers, that would in effect give them the right back to do salary petitions. In which case it would be necessary to have item 16 except we are not doing the salary petitions. If we instead specified different duties and powers and don't include the salary petitions, then I would guess 16 probably would not be necessary. It depends on what we do with the ultimate issue, whether we're going to take the approach of the citizen petition and just say yes, whatever

powers they had under the old state constitutional system, that's what we're giving them in the county Charter. If we're doing that, then 16 might be necessary IF we wanted to say no we're taking away the salary petition right.

KUHN: Let me add one other twist. We're always saying the constitutional officers. We're talking about those 5 constitutional officers in article 7 section 1. You may recall there are other constitutional officers being the clerks of the court, the judiciary section that the Jordan case didn't touch, said he couldn't touch it. So I still think those clerks of court still have salary petition rights. They are not the same "constitutional officers" of article 7, as we are myoptically concentrating on that. But we've got to make sure we don't adopt something that says any officer of the county can have a salary petition. You can't do that to those clerks as they still have the right to have their salary petitions.

LILLARD: If I could, as Assistant County Attorney Kinard has pointed out that item 16 under the Secondary Issues Register is identical as item 6 of the Mandatory Issues as it has the same substance and is already on the Mandatory Issues Register and does not have to be dealt with by the committee today. So, without objection, we delete number 16 from the list of Secondary Issues because it's already stated above. I noticed our County Trustee is sitting forward in his seat out here. Do you have any comments for committee Mr. Trustee? I don't see any other constitutional officers here today. Mr. Trustee.

PATTERSON: Along the salary petition it is interesting. The trustee has a rule as submitted our budget to the county commission, line item by line item, position by position. Prior to this administration we had 5 successive years that it took five minutes and no money to get a wage petition passes. As of today, county commission has approved my budget. I have all of the same positions that I had last year and it has been contested. We have a Consent Order from the Mayor and what the law says is that he has thirty days to review it. All of our petitions have been within the parameters of the 3% raise and/or the General Policy. Historically they pick one or two slots and they challenge that. We have to go to court and we have to have a chancellor decide those issues. So, when you talk about debate for five years, our salary petition took 5 minutes, no money. The last 5 years it cost. We had to go to court. We used the same thing the county commission has to approve. The same positions. The same 3% raise. And today we're still in court over the county commission's issue. So, I would say to you that all we have to do is to get the administration sign the Consent Letter that the county commission has already approved, and the thing could be done in 5 minutes. Now, the contest is whether or not we have enough people to do your business and collect the taxes. If we've had a constant 95% over the last ten years, FTEs and the county has grown 2,000 – 4,000 parcels per year, that's a pretty good indication of efficiency. But why we have to file the wage petition, we don't have to. A Consent Letter would work. We have more wage petitions now, filed this year, more than any other year. The clerks of the court had to file them. Used to we could send a Consent Letter and moved right on

because you've already approved the salaries. That's my only comment. A lot of debate over a wage petition.

LILLARD: Thank you, I appreciate that. So it will continue on the list of Mandatory Issues as II.item 6. And lastly, I would just ask the county attorney to be sure and study this issue closely. I'm just concerned about even if they are not constitutional officers, they are Charter officers that are established by election for instance, does the fact that the state law and salary petition say the sheriff, etc. has the right to file salary petitions, does that apply to them even though they are Charter officers? We need to get down to the fine tooth on this because I think this may become an issue at the end.

Any further business to come before the ad hoc committee? Commissioner Brooks.

BROOKS: I think we moved the item that I had regarding Section 2.2(f) to the heels and simply ... 20.03(f) I guess the concern I need further clarification on or some background on some legislative intent is by what authority we have to deny a county commissioner from serving a state or federal compensated elected office.

KUHN: I'll have to write an opinion on that. I don't think we've ever written an opinion on that so I'd be happy to do so to give you an opinion of whether or not it is legal to have a Charter Amendment that denies a county commissioner the right to hold another elected office.

BROOKS: No, that's not the question. I understand. I want to delete "county" and "local". I understand that very well. That's very clear in my mind.

KUHN: State and federal.

BROOKS: I don't need an opinion on that but I need some authority, if you will. And I understand the state constitution does not allow you to hold two state offices. However, I do not and would like to know the authority and jurisdiction to give, which allows us to deny a county commissioner the opportunity to hold a state or federal compensated elected office. This is the framework that the individuals were elected by the citizens. And if they ran for another office, either state or federal, it would have to be elected by the citizens. So I think you are nullifying the participation of the citizens by putting this provision in the Charter. And I think most citizens understand local and county as double dipping. If you are county commissioner you go to another ... I want to be county commissioner and mayor. It's just hard to explain. I find myself at a loss to explain to my constituents why we have this provision regarding state and federal compensated elected offices, so I would like to deal with that, Mr. Chairman, in terms of language.

LILLARD: Ok, Commissioner Brooks, the chair interprets that your desire for the list of Secondary Issues list be amended to include Section 2.03(f) on there with an

amendment to delete "state or federal" from the list of offices that would be prohibited as duly held.

BROOKS: Any state or federal compensated elected office. Right. So long as they hold, yeah.

LILLARD: Is that your intention to have it included on the Register of Secondary Issues?

BROOKS: Actually I would like to have it put on the Mandatory Issues.

LILLARD: All right. Well I guess the Mandatory Issues relates solely to those five officers. So this would relate to and I interpret your request to be that this prohibits commissioners at this point. So this prohibits commissioners holding other state or federal compensated elected office, so you would delete those words from that section. It would only apply to county compensated elected offices. Ok, is there any objection to putting that on the list of Secondary Issues as stated? Seeing none, so ordered.

The chair would like to ask in light of that another alternative to this is and perhaps public comment should be sought on expanding Section 2.03(f) to include not only the county Board of Commissioners, but any other county officer doing that. Leaving the language the same as it is now in (f) but adding to it not only county commissioners but all other county officers because the way the chair reads this now, the mayor could hold two offices.

KUHN: Well I think there is a requirement that the mayor "devote his full time and attention to the duties of his office" so with that requirement it would be hard to be in Nashville or in Washington and still be mayor. But that is the only section of the Charter that has that language of "devoting his full time and attention to the duties of his office."

LILLARD: For instance, the Sheriff could hold two offices now, or the Register could.

KUHN: Unless one of the offices was county commissioner. He couldn't hold both of those. I'll check the general wording of the General Statutes and the Sheriff's general statutes to see if there is more general wording about that. The theory is if you are elected to one position you cannot hold another one. But the problem is the part time positions.

LILLARD: Well even the part time positions don't expressly say that's the only thing you can do, or that you have to devote full time.

BROOKS: It's a little discriminatory if you will, because you're holding county commissioners to a different standard.

LILLARD: The chair was just saying that it seems if we're looking at one side of the coin, we should look at the other side as well and that is extending it to all county officers as well.

BROOKS: Do you want to put that onto my amendment?

LILLARD: It would be a second issue on the Secondary List. Your issue has been approved to go on. This would be a separate item.

MALONE: I was just going to state that I think we have a sitting state representative that is also a school board commissioner.

KUHN: We do. We actually looked into that and wrote an opinion on it. But remember the Charter does not apply to school board members for any purposes. That prohibition section of our Charter that says "nothing in our Charter applies to the school board." That was not two state offices, it was a state and a county office. So the only prohibition would be in the state law, and there was no prohibition in the state law.

LILLARD: I think we ought to probably put it on the list of comment items to see what the public thinks about it. So another addition to the list of Secondary Issues would be proposed by Section 2.03(f) to expand not only to have it apply to the Board of Commissioners but also to any other county officers or office. Is there any objection about adding that? Seeing none, we have two amendments to add on. Any other business to come before the Ad Hoc Committee on Charter Amendments.

No other business? Adjourned to Thursday January 17, 2008 6:30 pm Ed Rice Community Center under the leadership of our distinguished and gallant Chairman Pro Tempore, Commissioner Malone. So adjourned.

11:23 am

end