

February 13, 2008

Transcript

CHARTER AMENDMENT Ad Hoc Committee

9:30 a.m.

9:38 a.m. actual start time

Commissioners present: Chair David Lillard
 Deidre Malone
 Mike Carpenter
 Sidney Chism
 Henri Brooks
 Mike Ritz
 Joyce Avery
 Steve Mulroy
 Joe Ford

Christy Kinard, County Attorney

Skip Jones, County Attorney

LILLARD: We'll convene this meeting of the Ad Hoc Committee on Amendments to the Shelby County Charter and Shelby County Board of Commissioners. This meeting is held on Wednesday, February 13, 2008 at approximately 9:30 a.m. Commissioners present are Commissioners Brooks, Ritz, Malone, Carpenter and Chairman Lillard presiding.

 There are several issues that we need to consider today. One is in regard to our timeline. Staff has previously given to the committee and committee has approved, a timeline that basically calls for public hearings through the end of February, and we would begin markup of our current timeline on or about March 5th in our ad hoc committee. The issue is the Lunt petition as we all know is out there and gathering signatures on it and it is due to be turned in to the Election Commission no later than March 31 at 4:30 pm. I said noon at the public hearing, but it's 4:30 pm. The question is whether we in any way adjust our schedule to get behind the date the Lunt petition is turned in so that we know with more specificity whether the Lunt petition is likely to get enough signatures or not. And, I'll just comment that I've gone back and forth with this since the Lunt petition began thinking about how to possibly proceed on this and I wanted to get the committee's input because the timeline is subject to approval by the committee. It seems to me after thinking about it, that if in looking at a proposed alternative timeline I had Christy Kinard prepare – is that if we shifted our schedule to where we didn't really begin serious markup until after about March 31 or so then we would have a very reduced time to have committee deliberations on amendments. It would mean that we could at the very latest have our first reading on or about April 14th, is that right Ms. Kinard?

KINARD: Correct.

LILLARD: It's going to take the Election Commission staff at least two weeks to determine whether they've got enough signatures, unless you just look at it and say you only have 60,000 so you didn't make it, you know. But if you turn in the signatures it's going to take the staff a couple weeks over there to go over all these things. So it seems to me it's difficult to try to get on the slippery slope of trying to stay behind the Lunt petition, if you will, because it's going to reduce our deliberation time. The other thing I'll add is I have no idea nor does any other commissioner at this point, whether we would gain any benefit in terms of public, benefit of the public to shifting it like that. We don't know in this committee whether things will sail through the committee with 9 aye votes, or if it will take a lot of meetings dealing with this of the committee to come up with an amendment. So, I'll open up the floor for discussion on that point at this point. But the committee needs to consider that issue, whether we stay with the existing timeline which would call for markup to start occurring after committee hearings close the end of February; or are we going to shift it so markup starts occurring more around March 31, somewhere in that area. Commissioner Carpenter is recognized.

CARPENTER: First thing I would say is to leave it the way it is, if not even move it earlier. I don't think we gain anything by waiting until after the Lunt petition. I'm personally not convinced they will get 91,000 good signatures. That's a whole lot more after the city Charter commission. Another thing is that we don't know what this committee is going to do and it may be that what we put on the ballot will be acceptable to the public. So by getting something out there early, ahead of the Lunt petition, we may actually make it moot. Another thing I wanted to say, I'm just going to say this for the record because I don't know that anyone else agrees with me on this point. But I think we've gotten to a point in my opinion on these public meetings that I'd be ok if we didn't do anymore and just began deliberations now, frankly. And I still have at least one in my district. Half the audience in these meetings work for the county for the elected officials. Very few people come in with the idea of having open discussion but rather to preach rather than to actually figure out what is right. We've got a lot of work to do because I don't think this is necessarily going to necessarily go smoothly. I don't think it's going to be contentious among us, but I think that we've got a lot of things to hash through, particularly some of those Secondary Issues, so the sooner we get started I think the better.

LILLARD: Chair will comment. I understand Commissioner Carpenter frustration about some aspects of the public hearings, but I do think it gives our commission credit to be able to say at the end of the process that we did everything humanly possible to solicit public input. That's why I was in favor of having 12 or so public hearings, which will actually end up being 12 with Collierville cancelled. There are a few citizens at each hearing that are new. As you know, the chair is not letting old people speak again except if they have a question. It tends to loosen up the situation. So we're trying to move through it expeditiously. I understand the frustration of the commissioners and it is wearing me out, too, going to these meetings and everything; but on the other hand it's very important because I don't want any allegation that the commission or committee has acted in a manner that did not solicit public, meaningful public input. So from that standpoint I think it's valuable. But I do understand Commissioner Carpenter's point of

view. And I do think, we're going to have some meetings, as it started out with the hearing in Millington, then went to the city and back to the suburbs. We're coming back to the City of Memphis here shortly for further hearings, and I think we're going to hear different opinions. That's the reason I say at every hearing, you have to keep in mind that Shelby County is a diverse county. It's not just like you and your neighbors where you live. If you live in southwest Memphis, Bartlett is different; or if you live in Bartlett, southwest Memphis is different. They don't understand that because they don't travel in the other areas very much and they need to travel to different areas of the county to see what other people's opinions are, regardless of where you live.

So, I take it it's the will of the committee that we will continue on the timeline that we adopted initially? Ok then without objection then committee has asked to continue on the original timeline that has been adopted, subject to such minor adjustments that are necessary to accommodate the changes.

The next thing we have is the Register of Issues that's been passed out to you. On this I want to look at two issues. One is, Commissioner Ritz, while you were gone – were you in Australia?

RITZ: And New Zealand and Fiji. I have a slide show if you'd like to see it. Ha.

LILLARD: Well I might need to schedule a committee meeting to see that. Commissioner Malone and I have been like hot house plants here dealing with the bad weather in Memphis while you've been enjoying yourself.

RITZ: I feel for you, I do.

LILLARD: That's right. And we've been having these public hearings, too. We need to get medals for that. But at any rate, we had this Register of Issues and first of all with respect to Commissioner Ritz I want to look quickly at some of these things that we need further definition on. We did get some definition on some of them from you by email. And secondly, we've had some new issues raised during these public hearings. We need to consider those and vote whether we're going to put them on the Register of Issues.

On the first issue, Ms. Kinard, do we have anything that needs to be defined as to what it was? We were looking at the one on Emergency Preparedness before committee convened.

KINARD: Are you looking at the draft responses to the questions raised during the January 16th meeting?

LILLARD: We've got two things - we've got the draft responses, ok they are passing them out. Ok. So we've got the draft responses but if you'll look at number 4 on the thing that's marked "draft – draft" at the top here. It just says "new section – Emergency Preparedness". My question as chair was do we have a definition on what that means?

Some of the citizens at the meetings have said "Look I cannot comment on this because I don't know what is being proposed or what it means."

KINARD: While Commissioner Ritz was out, I did email him and ask him if the intent of the recommendation was to address how the commission would be structured to conduct business following a disaster? And he said yes, that is what he wanted to be considered. That issue is being researched still by our office.

LILLARD: But does the committee need to act to be sure that clarification is put on the Register of Issues on the website and in our handbook so the citizens can see that that is what it means when it says Emergency Preparedness.

KINARD: I would recommend that maybe after what is written there now, a new section hyphen Emergency Preparedness and put a colon and add "How would the County Commission be structured and conduct business after a disaster?"

LILLARD: All right is it limited to the commission or is it county government?

RITZ: County government. Let me ... this isn't the solution but let me suggest what might be an approach to a solution. I've been thinking more about it since you sent me the email, Christy. For instance, we don't know what's going to happen in a disaster, but maybe if there is something in there that says as few as 5 commissioners can act for the commission if the governor has declared an emergency. The emergency could be, quite frankly, that someone walks in here and blows half of us away one day. The most probable thing is where there's a tornado or earthquake. And in addition, in the absence of the mayor, the CAO, the CFO a couple things need to be done. Who is going to write the checks? Can we borrow money? Can we issue contracts? Just basic things ... those kinds of things we need to permit the government to continue to operate and quite frankly, not put ourselves in a position where the governor has to operate the county because we didn't contemplate this. That could be the case if you all know from reading your history books that the state took over this county 2 or 3 times in prior ... so

LILLARD: From the chair's standpoint we need to write up his discussion here so it gives the broadest view of what the amendment might be about if it were enacted.

MULROY: I agree these issues ought to be explored but let me ask a question Ms. Kinard might answer. Is it possible to answer these questions by ordinance? Are there provisions in the Charter that would need to be changed, like the sitting of the quorum is for the commission?

KINARD: That's sort of the same question that was proposed with regard to Secondary Issue Number 1 about exemptions in the charter to delegate authority to the commission to establish exceptions by ordinance or resolution. That's the aspect of these two items that are still being researched by our office.

MULROY: I see. Well when you get the answer I'd be interested in hearing it. Just whatever. My own view is to the extent we can keep things short and sweet and simple if necessary, a single sentence that says if an emergency is declared by the governor, the commission has authority by ordinance to create exceptions by to requirements required by quorum and provide emergency procedures in the event of an emergency declared by the governor, then we can hash all the other details out by ordinance.

RITZ: Good point. Couldn't agree with you more.

LILLARD: In further response to your question, Commissioner Mulroy, I know myself that the Charter specifies the quorum requirement of the majority of 13 commissioners, would be 7 to do business, so yes a Charter Amendment would be required to change that. The question is if we did change it, it would be contrary to any aspect to state law or the state constitution but that's another issue. On the issue of who can write checks, that's a matter that I'm sure can be done by ordinance, or by order of the mayor or something like that, because that is totally an administrative matter who signs warrants and checks for the county. But I want to make sure we have enough on there to show people what we're considering. Are there any others, Mr. Kinard, that we need to look at as far as having definition on them to make sure the public has some notice of what's being considered?

KINARD: Going in order, Mike Swift had provided a response, number 15 Secondary Issue, but I don't think that needs to be expanded for public purposes though. It says what they want. Then number 17 item, actually Brian is researching that item himself. What we might want to do although it says to delete state and federal you can decide if you want to add something on there about what authority can the county require a duly elected commissioner to give up a state or federal office. That might be more explanatory.

LILLARD: It would appear that number 17 of Section 2.03(f) Delete state or federal probably does need more definition what it means. The proposal would be, or the possible thing would be to allow a commissioner to hold another office, is that right? State or federal. So we may need more meat on that one to give some notice as to what it is that's being considered. The others look like they have at least minimal notice what we're talking about.

9:54 a.m.

BROOKS: I raised the issue, I'm looking for the section you just referred to, and I'm not quite sure that's the language that I proposed in reference to whether or not county commissioners can be prohibited from holding another elected office. Where is that in the Charter?

LILLARD: Section 2.03(f) I believe. That is what's referenced on our Register of Issues.

BROOKS: Where is it on our little sheet here?

LILLARD: The one titled "Register of Issues" item number 17 under Secondary Issues on the 2nd page. And actually item number 18 fits in with that also.

BROOKS: My intent on this issue was to simply make ineligible or prohibitive for a county commissioner to hold a compensated county office, but not prohibitive for a federal or state office.

LILLARD: Did you hear what Commissioner Brooks said? Her intent was NOT to hold a county office.

KINARD: As Section 2.03(f) is written it is prohibited in its language as written, so maybe as clarification we could just add as Chairman Lillard said with regard to that line where it says "delete state or federal" on the issue; we would add "delete state or federal to allow county commissioners to hold state or federal offices also" just to clarify it.

BROOKS: Ok.

LILLARD: Then on number 18 as a suggestion, it says to "expand the applicability from only county commissioners to all county elected officials" we just need a one sentence explanation as well on that one I think about what it would mean. If you are an ordinary citizen looking at it you may not comprehend what that means.

CHISM: I just need some clarification myself. What does that mean, we could conceivably hold office with the county and conceivably hold an office with the state?

LILLARD: As I understand Commissioner Brooks, she's saying you would NOT be permitted to hold another county office, but you WOULD be permitted to hold a state or federal office.

CHISM: Under this proviso, I could be elected as a county commissioner and also as a state senator?

LILLARD: I believe that's correct. We'll ask Ms. Kinard but I believe that would be the correct effect of the proposal if it was adopted. Again, we're just discussing what's going on the Register of Issues and all that and how it's clarified. That's all we're discussing now. I assume there's no objection from committee to clarify items 17 and 18 the way we've discussed here on the Register of Issues? Again, that doesn't mean the committee is adopting it or doing anything about it. It's just going out there for public comment as a suggestion. Ok. Without objection then, items 17 and 18 will be clarified in that regard. Does anyone see anything else on the Register of Issues that they feel needs to be clarified or expanded to help the public get notice about what the possible proposal is?

CARPENTER: On the Register of Issues, the highlights that are here for numbers 3, 7, 8 and 9. What are the highlights?

LILLARD: We're going to discuss those in just a second. We're coming up to that. That's the next one of additional issues. Ms. Kinard.

KINARD: On the draft of responses on issues that were raised at the last meeting where your office set out what the issue was going to read as. There are some other recommendations in here. I don't know if you needed to vote on those.

LILLARD: We're going to take up next the issue of what additional issues are added and what other things are considered, so I assume that's what that falls in. I'm trying to get to the issue of whether or not we have anything else that needs to be clarified.

RITZ: Later we're going to new issues?

LILLARD: Yes. On my hand written agenda here. Ok. Just trying to keep focused on what we're doing right now. So I assume there are no further clarification on existing issues?

MULROY: The 18 that are listed under Secondary Issues, they have already been voted in by getting the necessary 5 votes?

LILLARD: All those have. We did it at the last meeting. And the ones that are crossed off failed to get 5 votes at the last meeting. All right. Any questions on that issue? Seeing none, we'll move to the next matter which is New Issues to be Added, and I believe that is what Ms. Kinard has passed out with the yellow highlighting on it. The chair knows some things that have been discussed at the public hearings are the express issue of qualifications for the offices. That has never really been on our register. It's been implied by such things as term limits. There's one other thing.

At the meeting in Germantown there was discussion by citizens about and a request from them basically for us to consider adding to the Register of Issues the issue of amending our Charter to decrease the number of signatures required to commence a citizen petition. But, state law, and Ms. Kinard can explain it further. It says that "after a certain date if a county or city amends their Charter to reduce the requirement, then that would be controlling, rather than the state law to increase the number of signatures." So that is an additional issue that we need to consider. We'll look first at number 3 of the highlighted part of the Register of Issues. Should the qualifications of holding the office such as term limits, minimum standards of education or training apply to any of the 5 officers, whether elected or appointed. Is there any discussion on adding that issue as an issue on the Register? All right. Seeing none, I assume there's no objection to adding it to the Register, is that correct?

MALONE: No. And chairman I'm supportive of it because if we decide to move forward with allowing these individuals to be elected, I believe they need to have some qualifications. I'm supportive of this.

LILLARD: The chair will note that Commissioners Mulroy and Avery have joined us. We now have ** commissioners present, so I'm asking without objection number 3 will be added to the Register of Issues as I just read it. Seeing no objection, so ordered.

Next. Number 7. Should commissioners be prohibited from holding any current elected offices that are changed by proposed Charter amendment to appointed offices? Is there any discussion to adding that to the Register of Issues? Seeing none, chair will assume there is no objection to adding it. Without objection, it is so ordered. Number 7 as just read will be added to the Register of Issues.

Number 8. Should the Charter prohibit the duties of any current constitutional officers that are changed by proposed Charter amendment to appointed offices from being diminished?

Commissioner Ritz is recognized.

RITZ: I'm sorry, I need to go back to number 7. Would this number 7 permit one of us, one of the commissioners, to be appointed to County Clerk because it now becomes an appointed position?

MULROY: Prevent that.

RITZ: Ok.

MULROY: I think Mr. Chairman to clarify.

RITZ: Could a commissioner now be appointed by the mayor and confirmed by the commission to be CFO right now?

LILLARD: I don't think that's permitted by the current county Charter. Ms. Kinard.

KINARD: That's actually one of the things that we're looking into, whether or not a county employee could be a commissioner, and what you're saying then is could a commissioner become an employee; so we would have to check that as well because we do think there is something that does not prohibit an employee for running for county commissioner, but we are looking into that.

LILLARD: I will note in my service with the TCCA, they are, right now it's not prohibited in the statutory counties but there are various bills that are introduced in the legislature to deal with that throughout the year. There are rural counties where county employees serve on the county commission. But there have been a lot of bills introduced over the years prohibiting that, but I don't think any of them have gone anywhere. But they are there, so.

RITZ: I'm more concerned frankly about if some employee runs as elected, well I guess if an employee runs as elected I guess they are elected, but if in fact one of us is

appointed to some position with county government I think that's going to look real bad to the citizens and I'd like to avoid that, just personally. I think that could be pretty ugly.

LILLARD: In reviewing the Charter for our election we had the other day for Trustee, the Charter prohibits any commissioner from being elected to any offices like the Trustee, County Clerk, Sheriff, all those things. It says in there that if you're elected to one of those positions by the commission, you vacate your office of commission immediately. It also says in the Charter that if you hold another compensated office, like if I were to run for state senator in the district and be elected state senator, I could only hold both offices for 90 days. I'd have to resign one or the other at the end of 90 days, so that is in the Charter now and everything, and pertains to state offices as to commissioners and all. Now, the issue as you pointed out Commissioner Ritz, being appointed to some other office, that's what this will deal with. It talks about them as elected offices in the Charter now.

RITZ: I guess I have raised a question that is broader than this.

MULROY: That is correct. Currently, and this has already been explained, currently the Section 2.03(f) says if you are a county commissioner you cannot hold another elected office. And by implication maybe you could hold an appointed office. At one of the public hearings a citizen said well you know if you're going to change these things to appointed, will that be a loophole? So if you had an appointed County Clerk, could a commissioner say hey I want to be a County Clerk and take two county salaries. So, simply in response to that citizen complaint I was trying to close that loophole. But, as you raise, which is a valid issue but as you said is a broader issue about what about other broader offices that are not among these 5 that have always been appointed? Could a county commissioner serve there? Ms. Kinard is researching that question. When I looked through the Charter I did not see anything that would specifically address it. This by specifically saying you cannot hold an elected office sort of implies that maybe you could hold an appointed office. So, right now maybe the answer is theoretically a commissioner could say I want to be appointed IT Director, or I don't know.

LILLARD: Commissioner Chism is recognized. Ex Post Facto.

CHISM: (ha). What if a commissioner was appointed to serve, say Land Use Control Board on the city side? Had nothing to do with other than he might have the qualification to do so. It would be a service rather than anything else.

MULROY: Well currently under the current law I don't think there would be anything wrong with that because the current Charter only prevents you from serving in an elected office. And if Commissioner Brooks' suggestion is eventually adopted that would be changed to only an elected county office. Now, if my suggestion was adopted it would say well if the Clerk for example, if one of the 5 offices was currently elected was changed to be appointed, well you can't be that either. Nothing in current law or is being discussed by either Commissioner Brooks or myself, none of those things would prevent your scenario of someone serving in an appointed office that wasn't a county appointed

office, like a city appointed office. For that matter, I think even if it were a county appointed office as long as it wasn't one of the 5 currently elected offices that has been changed, I'm not aware of anything specifically that would prevent that, but Ms. Kinard is going to check on that. But with respect to a city appointed office I don't think anything under current law or under current discussion would prevent that from happening.

LILLARD: Let the chair suggest this. Going back to number 7 let's look at adopting that as part of the Register of Issues, then let's look at the second issue that's been raised here and discuss whether the Register of Issues should be amended to include a prohibition that commissioners cannot serve as a county employee, distinguished from an appointee to a board, which is an uncompensated thing as Commissioner Chism pointed out. But with respect to number 7 as it stated on the sheet there, is there any objection to adding that to the Register of Issues? Seeing none, so ordered.

Now again, should we consider at this point a new issue being placed on the Register of Issues which would say "should commissioners be prohibited from being appointed to a county position, or employed by the county in a compensated position.

CHISM: I don't want to get this thing so convoluted that people don't understand what they are doing, you know, what the choices are. I'm particularly concerned that we're trying to add so much here that people won't understand the choices they have. So, in saying that, I'm pretty well finished. I've been making a number of churches and a number of organizations to make sure they understand what they're voting on. I just hope we don't get so convoluted that we don't know what we're voting on.

LILLARD: Well again the chair will just note that this is for the issue of the Register of Issues. It may or may not make it out in the end. It may or may not be considered in the end. But is there any further discussion about whether to add a provision like the chair indicated about prohibiting commissioners from being employed or appointed to a compensated government position with the county.

MULROY: Just briefly. I think Commissioner Chism makes a good point. I have for a long time been concerned about what I call "issue clutter". Because we have to have the voters understand a large number of issues. First of all it might be that Ms. Kinard's research may find that it is already addressed and we didn't know that. Secondly, it hasn't been a problem to date. So I don't know if we need to have another constitutional amendment, if you will, to address it. Right now I'm not inclined to add it to the Register, but if someone else feels strongly the other way there's no harm in discussing things.

LILLARD: Is there further discussion on the issue at this point. The chair is in favor of adding it. I don't see what harm it does to add it to the Register of Issues, but on the other hand if the majority of the committee feels it is a clutter issue I understand.

RITZ: I too would like to see it added. Secondly, I think frankly when we get to the changes we agree to make, and we agree to number 7, we could easily combine it with 7A and you wouldn't notice any clutter. I agree with you. It may be at the end of the

day that we decide we really ought to do these things, but let's do them two years from now because we might just ... we might be smart to do that for some of these secondary issues.

MULROY: We could have another round of 13 public hearings.

RITZ: Without the round of 13 public hearings.

CHISM: If the chair wants it added simply for discussion I don't have a problem with that. I will probably be opposed to anything that's going to be considered to be so cumbersome ...

LILLARD: Without objection the committee will add an additional issue to the record to state, whether a commissioner can hold a position of compensated employment with county government. All right. Without objection that is so ordered. That will be added.

Number 8 – Should the Charter prohibit the duties of any current county officers that are changed by proposed Charter amendment to appointed offices from being diminished. Is there any discussion on whether that should be added?

CARPENTER: If I understand the proposal and I'm trying to articulate this so that it makes sense. Number 1 we're talking about that issue, those issues, the persons appointed or elected, whether duties have changed or on the Register of Issues. If I understand the proposal right, we're saying ... if we say we want to appoint the Trustee and voters approve that, we also say that we're prohibiting the duties of the Trustee from being changed. Well, the change of duties of any of these officers at any time requires a Charter amendment. So you could come back two years from now and change that in the Charter, to change their duties. See what I'm saying?

LILLARD: Right. No, the chair would agree with you. That issue is really assumed into what we've already got on the Register. I'm just following my duties as Chairman to bring to the committee. So I assume item number 8 will NOT go on the register as a separate issue. Any comment on that Ms. Kinard?

KINARD: I would just point out the reason that it was raised is that in Section 6.04 there is a provision that says the constitutional officers duties would not be diminished and I think Commissioner Bunker addressed whether or not we needed to have that provision amended to coincide with the possibility of having appointed officers, or if a new, similar provision needed to be enacted.

LILLARD: I appreciate the assistant county attorney pointing that out. That is an issue but on the other hand I think that is assumed into what is already what's on the Register. If the commission were to decide to diminish somebody's duties in the proposal we would have to propose amending that section as well. So number 8 will not, without objection, go on the Register of Issues. So ordered.

Number 9 – How should the salary of these officers be determined? This subject was brought up in the public hearing of February 11th.

CARPENTER: Mr. Chairman, I think if I recall, Ms. Kinard in the county attorney's office was going to look at that issue as to how they are appointed now. Was that your recollection Mr. Chairman?

LILLARD: Yes that's right.

CARPENTER: For the record, if it were allowable for us to establish these salaries I think it's worthwhile, and I'll just put all my cards on the table here, we set the mayor's salary and I don't know when the last time the mayor had a raise but I know it's been a while. ***. But my point being the previous commission has not been generous with giving the mayor a raise. The other issue here is as we struggle with the issue of salary petitions and as we struggle with the autonomy of these offices, and how we're held accountable for the budget at the end of the day, yet they don't always have to cooperate with our needs. But I think if we had some control over these salaries of these top officers and had some say in this process, I think we may get some additional cooperation.

LILLARD: Ok. So the issue really is to be stated differently than what is on here. It should be "Should the salaries for these 5 officers and possibly other officers of the county be set in the Charter rather than under some other authority?" is really what the issue was that the citizen was raising that day. There are a lot of state statutes that govern the Sheriff's salary, the Trustee's salary, but on the other hand I think it's going to turn out like we said at that public hearing, the commission right now can raise that salary but can't go below the state minimum. The question is from a legal standpoint whether if we put it into our Charter would it be controlled under the state statute. I don't know the answer to that. The county attorneys will have to keep looking at that I'm sure. The question is whether we put on our Register as number 9 "Should the Charter set the salaries of these 5 officers and possibly others rather than having it be set under another authority?"

CHISM: State statute does not allow us to change the Sheriff's salary, and I'm not picking on the Sheriff, I'm just saying if we reduced the duties of any constitutional officer, could we then bypass the state statute as to paying them with old paper?

LILLARD: That's in essence the issue the county attorney's office has to look at because it's been assumed up to now that the county has the right to give them a higher salary than set in state statute, but cannot go below what state statute does. So that's the legal issue. But again, divorcing that question, the question we're considering putting on the Register of Issues is "whether the salaries of these officials should be set under the Charter" and we'll leave to the future the discussion of whether it's even possible to do that. We'll have to discuss that after they've got their research done. So if you follow what I'm saying. You're right on there. Commissioner Chism's got the legal issue in mind.

MULROY: So the option of the salary is set in the Charter. The salary is somehow set by state law or the salary will be set by the commission. Is that right?

LILLARD: Yeah or in the Charter provision you can provide that the commission sets it, or you can actually set it. There are a lot of options in that regard.

MULROY: I guess that's what I'm unclear about. Are we talking about having a flat number dollar amount in the Charter and then we'd have to periodically adjust it for inflation or something, or are just talking about something that should say "the salary shall be set by the commission"?

LILLARD: Well we could be talking about all of those. The issue as I suggested it would not define that issue at this point. It would just simply give public notice to comment whether they would want it set in a resolution, or want it set in the Charter, or set by some other mechanism you can provide in the Charter. If we can control over state law, we could provide in the Charter the mayor sets their salary, I guess, if you wanted to.

MULROY: If that's the case, then perhaps the current way that it's written is the right way, so maybe we should just add for example, set in Charter, set by county commission.

LILLARD: Ok I'll suggest an amendment to that to say "should the salaries of these officers (and listing the 5 officers) and possibly other county officers be set in the Charter, AND how should the salary of these officers be determined?" because you are right, it's a compound issue. Is there any objection to adding this to the Register of Issues? Seeing none, so ordered to put on the Register of Issues.

The last issue I think we want to discuss that wasn't on our sheet here ... at the Germantown meeting it was brought up again the issue of the Lunt petition type thing where citizens now have to get 15% of the signatures of all registered voters in the county in order to put a citizen petition Charter amendment on the ballot. There was a request at that meeting that we consider adding to the Register of Issues the issue of whether that number would be dropped to 15% of those who voted in the last governor's race. In other words, restoring it back to the way it was in the Charter before state law changed it to a higher number. I'll open the floor for discussion about whether that should be added.

MULROY: A question and a comment. So applying it right now would reduce the number of signatures that you need from 91,000 something – do we know what the relative figure would be? It would be a reduction, we just don't know the number of the reduction.

KINARD: Yes it would be less.

LILLARD: We can go to the world wide web and it will tell us that on the Secretary of State website.

MULROY: Checking that as we speak.

CARPENTER: We haven't had 50% turnout in the governor's race in quite some time, so it would probably be half the number of signatures you're looking at.

MULROY: I guess my general inclination ... it certainly ought to be added to the Register of Issues I guess, and I might even be inclined to say on the merit side support it as long as it didn't reduce it to some ridiculously low number then we have what happens in California where 300 people get together and decide they want to make April 1st Britney Spears Day and suddenly that's on the ballot.

CARPENTER: What about Britney Spears?

MULROY: We decided that we want to make April 1st Britney Spears Day and you weren't there, so you missed the vote. So it's too late.

LILLARD: Any further discussion about this issue? I think I can find that number here but there's probably no objection to adding to the list of issues. So we would add to the Register of Issues the issue of "Amending the Charter to reduce the number of citizen registered voter signatures required to propose a citizen petition from the current state law requirement to be, to reenact what was in the Charter before, i.e. 15% of the voters who voted in the last governor's race." Is there objection to that? Seeing none, so ordered to be added to the Register of Issues.

Ms. Kinard, is there something on item 13 on your list of Register of Issues. You have that highlighted section and I'm not sure what that means.

KINARD: That is in relation to what you just voted on. It's the alternative to just putting in generic language.

LILLARD: Ok, we've already discussed that. Our next item is to discuss our Frequently Asked Questions. Clarifications on that. Ms. Kinard do you want to discuss that briefly here for us?

KINARD: Let me pull up the document real quick.

LILLARD: Clay, let me ask you. Do we have a copy of Ms. Kinard's memo on the Coordinator's opinions? We're going to need that in a few minutes.

RITZ: I think there was a question raised in the Bartlett or Germantown meeting about recall. Do we have recall of a county elected official in our Charter?

LILLARD: To my knowledge, there is no recall provision in our Charter.

KINARD: I don't think there's one in the Charter. I think it's controlled by state law.

RITZ: Is there a state law provision that county elected officials can be recalled?

LILLARD: There's a state law provision. I'm trying to remember what it says. It says something ... it's an overriding thing. It says if you have a recall provision in your Charter, municipal or county Charter, then these certain rules apply. It's one of those things. I've looked at it several times over the past years for various reasons as Election Commissioner but I do not recall with specificity what it says.

RITZ: Does it raise itself to a Secondary Issue by 5 of us? I'm not sure it does but you know, it was raised in the same context as some of these other things were raised.

LILLARD: Well I would think that would be subsumed into the issue of changing the citizen petition thing, unless you wanted to treat it as a separate issue, because ...

RITZ: No, I'm just ... it was raised.

LILLARD: Right. All right is there any discussion on that issue of adding recall to the Register of Issues?

BROOKS: Well I think Mr. Ritz raises an interesting question regarding the voter participation. If it's not specifically mentioned in the Charter and there's just a reference to it in the Code, and if it's not specific, I would be inclined to have it as an issue.

LILLARD: All right. Any other discussion on adding potential recall provisions? Thank you Commissioner Brooks. Any other discussion on that issue? Ok seeing none, then is it the will of the committee that we would add to the Register of Issues the issue of whether a recall provision should be inserted into the Charter? Is there any objection to that? Seeing none, that issue will be added to the Register of Issues.

I'm looking here at the results of the governor's race of November of 2006. I don't find the total county by county results on the Secretary of State's website, but it looks like to me that the top two vote getters, both Republican and Democrat, got 275,063 votes. There are a few other minor candidates who got a few thousand votes. So 10% of that number would be roughly 27,250 and its 15% so that'd be half again so that's around roughly 42,000 signatures would be required to get something on the ballot, based on my preliminary look. Again, that's not a complete number but it's a rough number.

CHISM: Because it's a subject for discussion I don't have any problem with it. But let me tell you something. I don't want to make it easy for anyone to go out there and have a petition drawn up in order to change the will of the majority of the people. I'm not about that. And you can rest assured I'm going to be speaking to that at every town hall meeting I go to.

LILLARD: All right. Then at this point I think we've finished our discussion about the Register of Issues. And with the FAQ's is there anything else about the FAQ's... I think we got sidetracked here with other issues.

KINARD: The second FAQ asked why does the Charter need to be amended, and we simply changed the language that was already there just to make it read more in a layman's terms instead of such legal ease. So nothing changed substantively.

LILLARD: All right. Is there anything else about the Frequently Asked Questions that we need to be notified about?

KINARD: We added FAQ number 10 which asks whether Section 4.06 of the Charter expressly creates the office of the Sheriff and assigns duties and functions of the office, and was added because lots of people have asked about it at the public hearings. We simply cited to what the Tennessee Supreme Court said in the Knox County case, because they had a section existing in the Shelby County Charter almost word for word; and the court said that that section simply makes a reference to the office but it did not specifically enumerate the functions of the office. In our opinion, we said that section was not sufficient based on that statement that the court made. So we added that for the public.

LILLARD: Ok. Anything else on the FAQ's? Commissioner Mulroy.

MULROY: I wonder if it would help to add to the FAQ's some information about like what are the arguments pro and con about appointed VS. elected, and what do other jurisdictions do with respect to appointed VS. elected. You know it's possible to write in the way it's neutral. Some people say XYZ and others say XYZ, then another question about what other jurisdictions do. There are different models. Some jurisdictions do it this way and some do it that way. Just so there's a little more context.

LILLARD: That might be the case. For instance on one side of it some citizens have pointed out that they believe there is greater accountability when people are elected. And they believe that gives them the sense of greater participation to be able to vote for the Sheriff or the Trustee. On the other side I know Commissioner Carpenter and you had pointed out that the Archivist of the U.S. was not elected, the Archivist of the state of Tennessee is not elected, they are appointed. This guy basically is keeping records. So there are two sides to the coin. Maybe we ought to ask our assistant county attorney to help us develop an FAQ and put it in the book that lists some of those arguments from both sides. Ms. Kinard if you would consult with Commissioners Mulroy and Carpenter in doing that, that would be good. All right. Assuming no objection we'll move on.

We have two more items for this committee. Let the record reflect Commissioner Ford has joined us. One is to discuss the vote requirement in this committee, to report out any item as a proposed Charter amendment. As ya'll know we're required to have 9 aye votes before the commission on three readings of an ordinance to propose an amendment to the Charter. It seems to the chair that we really ought to agree by unanimous consent that in committees that we're going to require 9 aye votes when we begin the final markup in other words of adopting something to be proposed as a Charter amendment or going to our document. Because if we don't, it doesn't really make sense to me because if you report something out of this committee by majority vote and it goes to commission as

an amendment; then if it can't get 9 votes there you're just back to the committee again. We need to figure out in committee what has enough support to actually survive support on the floor of the commission. That doesn't mean that a member can't change their mind for it. They can vote for it in committee, then change their mind and vote differently on the floor. Ok then by unanimous consent we'll adopt the fact that in our markup and in final adoption of amendments in this committee and in joint committee with General Government would require 9 aye votes.

CARPENTER: I think that makes sense except the only thing I wonder about is in the event we don't have 9 here.

LILLARD: The chair will say that I distinguish between preliminary markup where we're trying to work through things as opposed to approving a markup in a truly tentative form to become part of our Charter amendment, and we'll just have to feel our way along with that, but I do agree with you that if we're just working through a draft in preliminary stages trying to decide what we're going to put in the draft and what it might say. That's different from getting down to the final vote. You'll notice sometimes that I'll call for a final vote on something that we've had various considerations of it and everything and that's what my view is. When we get down to the final vote on a matter then we'll require 9 aye votes. If we're marking it up and doing preliminary, trying to draft and everything, we'll probably do that by majority vote. I think what we'll try to do is try to circulate to everyone in advance a notice, and have staff call you or something to say on this date we're going to try to take the following votes, which will require 9 votes and try to get people notice in advance to let people know when to be here and all that sort of thing. We'll try to keep those at a lesser number when proceeding with the markup. I think Commissioner Carpenter's point is well taken in that regard. Ok. So without objection, we'll adopt the requirement of 9 votes in committee and jointly with General Government for amendments on the matters we discuss.

MULROY: Chairman, if you have one of those votes that requires 9 and let's say there's only 9 people who show up and you know that from previously publicly stated comments that everyone that was absent that day would have been the 9th vote, then it fails. Under the rules you are not allowed to bring it back up again at any other process?

LILLARD: I don't think that rule applies in committee. It does on the floor of the commission. Chair's view is you could bring that back up at the next meeting. Ms. Kinard, do you have any thoughts about that? I think that applies to ordinances and resolutions, actual items before the commission in its sessions. I don't think that really applies to motions in committee and everything, is my view of it as chair. Especially in these circumstances.

KINARD: Unless Skip Jones – he's here. I'm going to ask him if he knows of anything.

JONES: I would not think it applied in committee, Mr. Chairman.

LILLARD: I think the committee by unanimous consent has that understanding. From chair's standpoint, this is very important, if you want to vote on something several times that's all right with me.

CHISM: I don't think we can assume because someone spoke in favor of an item in committee, that they would be doing the same thing on the floor. We found that in communicating with this body. So I'm not going to assume a person's vote is going to be the same when he gets to the floor. So, 99 is what I'm looking for.

LILLARD: You mean a commissioner may not necessarily mean what he or she says?

CHISM: You got that right. Ha.

LILLARD: Wow. What a revelation. Ha. I could be accused of that, so ... all right I think we understand that point. Let's move on to the next thing.

I have a little memo here from Christy Kinard. Brian Kuhn, County Attorney, and Christy Kinard, Assistant County Attorney, and I had a conference call with Beth Robertson who is a lawyer and actually is the chief deputy coordinator of Elections in Tennessee on February 4 to discuss some of the issues in just a preliminary fashion. This is not any kind of ruling from the Coordinator's office or anything. It was just a conversation between lawyers I guess about what their view of the statutes and the office policies are about this.

Point number 1 says the Coordinator's office has the statutory duty to approve the form of the ballot. The office verifies deadlines are met, procedures are followed as set forth in election laws.

Point number 2 the Coordinator's office does not review the substance or content of positions of ordinances pursuant to the Supreme Court and there's a case on this Ms. Kinard can recite. Any conflict on ballot should be resolved by fiduciary. This is one we discussed with them and I proposed various hypotheticals about this, for instance the Lunt petition gets the required number of signatures and is says all officers will be elected, and this commission decides that one of the officers will be appointed and our amendment we are proposing says something different with respect to that office. How would that work? Would both of those be allowed on the ballot? Would one be stricken by the Coordinator or somebody else because they are inconsistent or what? The Coordinator's Chief Deputy opinion was that they would go on the ballot, again to resolve any conflict between the two to be resolved after the election on August 7th. They pointed out of course that just because they go on the ballot does not mean that both of them won't pass, or both may fail in which case there would be no reason for any court case. But that was the point that they raised. I'll go through these pretty quick.

Number 3 For each ballot referendum a separate ordinance is required.

Now this came up and Ms. Kinard can help me because she was on the call. This came up in the context that if the commission wishes to divide the question down, in

other words we proposed the hypothetical of well you know if we wanted to have one matter dealing with the Sheriff's office, we would say the Sheriff is elected or appointed, whichever it is, the Sheriff's duties are as follows, the Sheriff will have term limits or will not have term limits, and the salary will be set accordingly. If we wanted to have that as one item, how should it be framed? You know we have yes or no to all those things. Or, if we wanted them divided out into separate questions. If we wanted to have elected or appointed Sheriff as the first one, yes or no on the ballot. The second would be should the Sheriff have term limits, yes or no on the ballot. Then so on down the line. They pointed out if you wanted to do the second of those, dividing them out, you would have to pass a separate ordinance with respect to each question. Wasn't that our discussion Ms. Kinard?

KINARD: That's correct.

LILLARD: Ok. So that's something for each commissioner to think about because that enters into a lot of issues of what can get 9 votes and what cannot, the parliamentary procedures surrounding it, you know, how the ordinance is drafted, and all the other matters. If we had 50 different questions on the ballot, Lord knows we hope we wouldn't have that many. But if we did we'd have to pass 50 different ordinances is what the bottom line is. On the other hand, if we just had every question lumped together on the 5 basic offices, we would have 5 ordinances. Or you could put it all together as one thing. You could have the Sheriff, Trustee, or any combination thereof in one amendment and that would be one ordinance. Commissioner Mulroy.

MULROY: I think I understand, but just to get clear. We could not then pass one ordinance that says the following three separate questions shall be on the ballot. That's not an option for us?

LILLARD: Is that your understanding Ms. Kinard?

KINARD: They won't go into the ordinance and segregate out the different questions. They are all on one item.

LILLARD: So each of those under Commissioner Mulroy's would have to be a separate ordinance if it were to be a separate question on the ballot. Yes or no for each question, and again if you want to lump them all together in one yes/no you put it in one ordinance was what their position was. So any further questions or discussion about that?

All right. The other thing is item number 4, the deadline for submitting a petition ordinance for the November 4, 2008 election is approximately September 5, 2008. Ms. Kinard I'm going to ask you to talk about this a little bit. Let me just introduce this by saying we raised the question to the Deputy Coordinator about what happens if something this essential fails in August and we feel there's reason to have further amendment in the language in the county Charter about regular county elections is the only place, early election, where you can have the Charter amendment. And County Attorney Kuhn went into his view of how that would be construed and then we had a discussion with her about whether the Coordinator's office would view the November

election as the appropriate election to put this on the ballot. Do you want to talk about this Ms. Kinard?

KINARD: Well whenever we first inquired about having the amendment on the Presidential Primary the Coordinator of Elections said that the General Election would have to be for August. They did not know at that time whether November would be a possibility. Then like you said, during our conversation she said that it was. Since that time we've had someone question that, and are considering getting something in writing on it. It appears that the explanation on it even though it says the General Election in the county, it may be that it's not just the county election that occurs in August, but the November election also because everyone in the county can vote in that election. We believe that's the rationale behind it.

LILLARD: As a follow up to our conversation with the Coordinator and the considerations Ms. Kinard and I had about it, I would like to propose to the committee that we ask the County Attorney to seek a written opinion from the Coordinator of Elections on this issue, and further for the County Attorney's office to determine whether their opinion is that they will follow and be controlled by the opinion of the Coordinator of Elections on this issue. And the reason I say this is because the Coordinator of Elections in Tennessee pursuant to statute IS the interpreting authority of all election laws in the state. Now, the way the Coordinator views that I know from past experiences, the language is in the statute, but the Coordinator does yield to Attorney General opinions. So, as part of this request with the Coordinator we should ask the Coordinator to coordinate with the Attorney General's office to be sure that office is in accord with that opinion. We don't want a situation where we get a Coordinator's opinion and someone goes to the Attorney General, a legislator does, and we end up in a different situation. I know they do that sort of on an informal basis but we need sort of a coordinated opinion to be sure that we get a final authority from the legal interpretive officers of the state. Even though we may get something coordinated with the AG and that's the AG's opinion as well that November is an ok election to put something on the ballot, that doesn't mean a citizen can't run out and file a Chancery Court lawsuit and some judge decide differently at some point in time. Just so we all know I wanted to state that for the record. Coordinator's opinions and AG opinions are not the law in Tennessee; they are very persuasive in courts but that's as far as it goes. Ms. Kinard do you have any other comments?

KINARD: I would add that whenever we obtained an opinion from the Coordinator on whether or not the amendment can go on a Presidential Primary. They did cite to an AG opinion as to the definition because there was a Charter provision that talked about that as well as far as the city that inquired about it. And it was their opinion that the General Election and the City Charter should be construed also to include other General Elections as defined in 211046, which defines Election as "a general election for which membership in a political party in order to participate therein is not required."

LILLARD: Ok so that would tend to show that the November election is in fact an election that Charter members are **** but the chair feels and I think the committee will

agree with me that we need some definition on this point. So as soon as we can we need to submit a request to the Coordinator for a written opinion and ask them in that request that they coordinate their opinion with the Attorney General's office and clear it with them in effect so that we know that we're not going to have a different opinion from the AG or anyone in the future. Any objection to that course of action with respect to this?

CARPENTER: I had a comment on that Mr. Chairman, something for the committee to think about. I know we're all weary of this discussion but we're also concerned about that ballot being too complicated. With that said, if the opinion from the Election Coordinator and the Attorney General is that November is an appropriate time, I wonder if we would want to divide the Primary and Secondary issues, deal with our de facto government issues in August, because that is the most critical one, and then consider putting some Secondary issues on the ballot in November. My fear is not only that it's going to be complicated, but with the short time frame that we're also going to be rushed through this and some of these we're not going to get to consider to the level we'd like to. So in fact if November is the time to do it, that might be the time to deal with the Secondary issues. I know we don't know until we get the opinion, but I think it's worth thinking about.

LILLARD: Well I think it's something to keep in mind at this point. It's hard to tell at this point what would be the best thing to do. Commissioner Brooks, then Commissioner Ritz.

BROOKS: Thank you Mr. Chairman. If I recall correctly, I believe when we had just initial discussion with the University of Memphis, the issue came up about community education about what we were doing, the process. We talked about the public hearing to explain to the public why we need to do this and to get input from the public, then we talked about public education to let the public understand what's going to be on the ballot, or the HELP the public understand about what this meant. I guess my question here would be, are we going to look at public education?

LILLARD: I think it is. My own view is that it is. I think we stated that at a previous meeting. But we will have voter education about whatever we're reporting. The committee will discuss that at a future date when we get closer to that time. That was good of you to remind us of that and keep that in the forefront of our minds. Thank you, Commissioner Brooks. Commissioner Ritz.

RITZ: Assuming that the Attorney General and the Coordinator of Elections can confirm there may be a backup there with the Presidential election in November, the requirement for an ordinance to put an item on the ballot, three readings, would that mean quite frankly that we ought to contemplate the possibility of having to meet on September 2, 3rd and 4th, which happens to be is a Friday, Saturday and Sunday?

LILLARD: Well the problem is there's a law requirement about how many days, minimum 10 days between the Second and Third Readings, is that right Ms. Kinard?

KINARD: Seven days between First and Third.

LILLARD: Ok. I mean you can tell from looking at the memo, item number 4, from Ms. Kinard about the Coordinator's conversation with us that it would be a rocket docket situation to go from August 7 to having a new amendment prepared by September 5th. We would have to have some really tight committee meetings, and then some really tight special meetings of the commission to consider the proposed ordinance. That's the point you're implicitly raising?

RITZ: Yes it is.

LILLARD: We couldn't have the commission though meet on Friday, Saturday and Sunday before September 5 and adopt an ordinance because of those requirements, and also just from the requirement of trying to have adequate public notice and input you know at the meetings. But let's just feel our way along the wall about that as we get closer to that date, you know. At this point we're so far out from it. But I think it's good for everyone to note item 4 in this memo which says that the deadline that we have to have something to the Election Commission would be September 5, 2008 for the election to be held on November 4, 2008 and the August election is August 7th; so you're talking less than 30 days between the election itself and the date it has to be to the Election Commission; so everyone can see in their minds how tight that is, you know. One last thing I'll say in regard to the current process. We've only got a couple more weeks here of the public hearings, so I would urge every member who has an interest in a particular amendment that is on our Register of Issues, if you have a particular interest in that or whatever, to begin discussions with Ms. Kinard about crafting an amendment for you that you want to propose in that regard, because the more definition we have the quicker we can deal with it. Rather than going through two committees to discuss it in concept and then finally getting to drafting and all that. Like on Commissioner Ritz's Emergency Preparedness issue, if you have some particular language that you have in mind that you want in the Charter in that regard, then it'd be better for Ms. Kinard and her assistants that work with her to draft that now. There's no sunshine problem with you sitting down privately with the County Attorney and going through this and preparing it and getting it ready so that we can more quickly deal with that than dealing with concepts for a meeting or two. We won't blow a lot of time dealing with concepts. Some of these things we'll be able to vote up or down pretty quickly because the concept is either acceptable or not acceptable by commissioners. But to the extent you could get any real language drafted, that helps us a lot I think. It means Ms. Kinard may have to stay up late working on things, but other than that. All right. Anything else for the committee at this point on Shelby County Charter amendments? I appreciate everyone's participation. I will remind you that we have the remaining public hearings. We have one tonight at the Anointed Temple of Praise Outreach Ministries, 3930 Riverdale Road at 6:30 p.m. We have it in commission district 5, either just inside or just outside the commission district 5. And there are three remaining meetings beyond that. Chair is going to be looking at the issue of whether we're going to have a meeting in Collierville. I've gotten calls from various people and *** Perry also wants to know if we're going to reschedule that because it had to be cancelled because of the storms, but we'll just see about that.

Anything else for the committee? Seeing none, the Ad Hoc Committee on Charter Amendments stands adjourned.

10:51 a.m.

End