Minutes

Special Called Meeting
Board of Commissioners
January 29, 2013
5:30 P.M.

Notice: A complete audio recording of this meeting can be heard by accessing Fayette County's Website at www.fayettecountyga.gov. Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Open Session for a Special Called Meeting on January 29, 2013 at 5:30 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Steve Brown, Chairman Charles Oddo, Vice Chairman David Barlow Allen McCarty Randy Ognio
Staff Present:	Steve Rapson, County Administrator Floyd L. Jones, County Clerk Dennis Davenport, Interim County Administrator

---

Call to Order

Chairman Steve Brown called the January 29, 2013 Special Called Board of Commissioners meeting to order at 5:33 p.m.

Commissioner David Barlow introduced Mr. John Harding, the presiding minister and Mission President of the Georgia Atlanta Mission for the Church of Jesus Christ of Latter Day Saints. Commissioner Barlow asked Mr. Harding to offer the Invocation, and Mr. Harding did so.

Commissioner Allen McCarty led the audience in the Pledge of Allegiance.

Acceptance of Agenda

Commissioner Oddo moved to accept the Agenda. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously.

NEW BUSINESS:

1. Discussion of Fayette County's Ethics Ordinance.

Chairman Brown stated that since he was embroiled with an issue at the moment he would officially recuse himself from the discussion, that he would leave the meeting, and that he would turn the meeting over to Vice Chairman Charles Oddo. Chairman Brown then stepped down from the dais and left the room at 5:36 p.m. Chairman Brown did not return at any point for the duration of the meeting.

Vice Chairman Oddo read his personal notes concerning a change the Ethics Ordinance.

[*The following is a full transcript of Commissioner Oddo's opening comments and personal notes as read to the audience. This transcript was requested by Commissioner Oddo and begins at 5:36:13 of the recording.]*

Vice-Chairman Oddo: Well, thanks everybody for coming. Please bear with me; this is my first shot at this, so I hope you don't shoot back. We are here to discuss the ethics, an issue with the Ethics Ordinance we have tonight. I'm going to, by the way, I never know if my microphone is working. It seems to be working now, the first two or three meetings my wife kept telling me I wasn't talking loud enough. I'm talking just as loud as I always do, but it seems to be getting back there, so if anybody has a problem hearing me please let me know. I'm going to take a little liberty before we actually start, because the matter concerns me greatly, and this is an opportunity for me to express to you folks my feelings on, not necessarily what happened last week, but going forward. So, there will be a little bit of both. If you will bear with me, and this really won't take as long, I just, I made this real big so it's easy to read because my eyes aren't that great. And you will have to forgive me for using my Teleprompter. The President has his and I have mine; they both work the same. But I do want to thank everybody for coming, these are my personal notes, my personal statement here. This evening we've all gathered to consider a change to our Ethics Ordinance. Due to the nature of the change, the Commissioners agreed that a special meeting was in order. Before we begin, again, I'd just like to share some personal observations and my take on results of last week. I have not shared this statement with anybody, any elected or appointed official. Nobody knows what I am about to say here; until this moment. And you will all hear for the first time. Because of the very serious nature of our Ethics Ordinance and its implementation, and as your Commissioner, as one of your Commissioners, I believe I have an obligation to all of you to publically share with you my thoughts. We are all aware this past Wednesday evening the Fayette County Ethics Board conducted a hearing into ethics complaints filed by former Commissioner Robert Horgan against current Commissioner Steve Brown. Commissioner Brown was found to have violated the Fayette County Ethics Ordinance on two occasions. What we witnessed, I believe, is how well-intentioned Ethics Ordinance can be used in such a manner that it is contrary to the intent and spirit of the ethics it is intended to uphold. It is my feeling that this flaw, sort to speak, in and of itself, can create opportunities for unethical actions. Without assuming to know the reasons why the ethics complaints were filed in these two instances, and I am referring to these two instances only, it was stated by the Ethics Board, essentially, that intent was not used as a basis for the decision. As perhaps many of you, of those who witnessed the proceedings tried to do, I did my best to rationalize how a violation of ethics could have occurred when the intent of the respondent's actions and questions were for the very purpose of upholding ethical standards. As found by members of the Ethics Board, Commissioner Brown's intent was not for personal gain. Nor did they believe he intended to violate the Ethics Ordinance. It is my belief, in fact, evident in the complaints that Commissioner Brown was attempting to act in the best interest of the citizens. And to ensure he and the County he represents were acting in accordance with rules and regulations. At no time was Commissioner Brown's intent in question. He was, in fact, practicing the very thing he was found to have violated. Ethics. For my own benefit, I looked up the definition of ethics

in the *Merriam- Webster Dictionary*. Here is what the very first entry says: *The discipline dealing with what is good and bad and with moral duty and obligation.* In the two instances cited in the complaints against Commissioner Brown, I found it puzzling how Mr. Brown could have been construed to have been acting in any way other than by the very definition of ethics; dealing with what is good and bad and with moral duty and obligation. One further reference to ethics, of which there's many, according to Dr. Linda Elder, the Foundation for Critical Thinking: *Most people confuse ethics with behaving in accordance with social conventions, religious beliefs, and the law, and don't treat ethics as a stand alone concept.* It is my belief that an Ethics Board must be charged with upholding the spirit of the law, rather than only the letter of the law; because law, or ordinance in this case, cannot and should not assume to govern each and every single instance, action, thought, and breath. Ethics, by its very nature, is intuitive. It is intangible. It is the capacity of the human mind to know right from wrong and to act accordingly. Ordinance is the instrument we use to attempt to quantify right and wrong. But an ordinance is incapable of accounting for every situation. Therefore, the purpose of the Ethics Board should be to determine good from bad and right from wrong. In situations when applying an ordinance places ethics and ordinance in conflict, I believe ethics should prevail. It was my feeling that ethics did not prevail last Wednesday. The result last Wednesday was to the contrary. It was the upholding of the letter of the law over the spirit of the law. Lest anyone assume otherwise, in no way am I attempting to cast aspersions on the members of the Ethics Board who voted to find Commissioner Brown in violation. Each member voted his or her conscious in dealing with an ordinance that allowed them no leeway in consideration of circumstances or intent. My difference with the ethics decision lies in the authority I believe the Ethics Board members should have to rule on whether ethics were or were not violated. My opinion does not diminish the work of the Board members, nor the immensely difficult job the Ethics Board members faced; especially in light of peripheral events to the players in this story. And in fact, the Ethics Board members themselves asserted that they did not believe Commissioner Brown intended to act for personal gain, which clearly would have been a violation of ethics. To their credit, the members chose not to, to pursue no admonishment and no further action regarding Commissioner Brown. If a Board could reverse its decision, I would wholeheartedly recommend that the Ethics Board reverse its decision of last Wednesday, January 23 to find Commissioner Brown not guilty of any ethics violations. But be that as it may, I am concerned greatly, as are my fellow Commissioners, and as I believe a many citizens, as to how we go forward ensuring to the best of our ability, that our Ethics Ordinance and our Ethics Board have the singular goal and capability to use good judgment when the written word conflicts with intent. If an Ethics Ordinance can be used to find a county official has violated that same Ethics Ordinance, while that official is acting ethically, then we are possibly playing a game of "Gotcha", which must have no place in an ethics hearing. And we have, potentially, a problem with potentially serious consequences. If that problem is not addressed, situations as we have recently witnessed will most surely arise again, and we could find ourselves, we could find the very application of the Ethics Ordinance itself to be unethical. That is why this special meeting was called tonight, and that is the immediate concern we will address tonight. Our goal tonight is to not completely rewrite the Ethics Ordinance, nor revise the rules composing the Ethics Board. That is a massive task that cannot be done this evening. But we wish to start. With your input, we hope to begin our process. Especially directed towards a particular section in the Ethics Ordinance that we will be addressing tonight. And if we could hand out those flyers. *(County Administrator Steve Rapson handed printouts to each member of the audience.)* We've prepared a copy for your folks so you can see exactly what we we're talking about and what we, what our intentions to changes this evening. And again, for technical reasons, we're going to confine ourselves to a small change this evening. If you like, Mr. Davenport can explain the more technical reason for it, but this is not just the appropriate time to be talking about the entire ordinance. So that you all know, my personal philosophy is not to dwell on the past but to learn from it. History is history. The past is past and what is done is done. What today is and tomorrow will be are what are important. This Board of Commissioners and future commissioners and county officials must have the opportunity to govern in the best interest of the community in as much as governing in the best interest of the community is their

solemn pledge, duty and obligation. This Board of Commissioners and future commissioners and county officials should not be preoccupied with worry over whether or not they have crossed a fine line. If they are truly dealing with what is good and bad and with moral duty and obligation. So, with my feelings known, I would like to begin this meeting and begin the discussion. So, if am in order, we have a motion, we have a motion to proceed?

Interim County Attorney Dennis Davenport: You certainly can ask for a motion to proceed at this time, or, if it is appropriate for Commissioners to provide their comments at the same time; however you want to proceed is fine Mr. Chairman.

[The transcript ends at 5:47:05 of the recording.]

A copy of the printout distributed to the audience, identified as "Attachment 1", follows these minutes and is made an official part hereof.

Commissioner Barlow mentioned that Fayette County had a previous Ethics Ordinance that was changed by majority vote of the previous Commission. He stated that former County Attorney Scott Bennett authored and reviewed the revised ordinance, and he asked Interim County Attorney Davenport if that was correct. Mr. Davenport replied that he presumed that was correct. Commissioner Barlow said he was in attendance at the Ethics Hearing for Chairman Brown, and he heard all three Ethics Board members say how disappointed they were with the latest version of the Ethics Ordinance. He further stated that former Commissioner Horgan admitted under oath that Chairman Brown did have the right to seek legal counsel and the right to bring what he believed to be an illegal or unethical actions to the proper authorities, however, Chairman Brown was still found guilty, and he asked Mr. Davenport if that was correct. Mr. Davenport replied that, if the question is "whether he was found guilty", then he believed the answer was correct. Commissioner Barlow stated that, as things currently stand, if the men's restroom next to his office were to run out of toilet paper, and he called Buildings and Grounds Department Head Greg Ownby, who is in charge of janitorial service, to ask for more toilet paper, then anyone could cite him for an ethics violation. Mr. Davenport replied that it would be an instruction by Commissioner Barlow to a Department Director and that it would be a violation. Commissioner Barlow asked if a constituent shows an interest with assisting in the County's Special Olympics program, or has a child who wants to play basketball, and asks Recreation Department Head Anita Godbee to send them some information for them, then could anyone cite him for an ethics violation. Mr. Davenport replied that Commissioner Barlow is a Commissioner directing a Department Director to do something, so that would be a violation. Commissioner Barlow concluded that he found the examples ridiculous, and said Ethics Ordinances are in place to ensure the property operation of democratic government and that public officials be independent, impartial, and responsible to the people. He added that Ethics Ordinances are in place to ensure public offices are not used for personal gain. He said it was obvious that there were former elected officials who want to distort the County's ordinances to the point where Commissioners cannot ask for toilet paper for the men's restroom. He said the Ethics Ordinance should not be a tool to force public officials away from servings the citizens, and he said he supported the change to the ordinance so that Commissioners can handle the basic task of communicating with the County's top members while servicing the taxpayers.

Commissioner McCarty commented that in doing his duties to represent the citizens of Fayette County, sometimes he needs information that he does not have at hand. He said if he went to County Clerk Floyd Jones, or to the secretarial staff, or any other Department Head in Fayette County, and ask for information and

if they could provide him with a budget item that would also be a violation of the Ethics Ordinance. He said he was one-hundred percent for making a change to make the Ethics Ordinance a viable ordinance that will work for the citizens of Fayette County while keeping things the way they should be.

Commissioner Ognio stated that he reviewed the minutes of 2012, and he did a search for the word "suggest." He reported that the word "suggest" or "suggestion" was printed in the minutes ninety seven times. He concluded that even in the Board of Commissioners meetings, the Commissioners could be cited for making a suggestion to Department Heads. He said the Board would have to make a change so that the Commissioners could communicate with Department Heads and have a working conversation.

Interim County Administrator Dennis Davenport stated that at this time it would be appropriate to entertain a motion from one of the Commissioners.

Commissioner Ognio moved to delete the second sentence of Section 2-209(n) of the Fayette County Ethics Ordinance. Commissioner Barlow seconded the motion.

Public Comment:

Vice Chairman Oddo opened the floor for Public Comment.

Bob Ross: Mr. Ross pointed out some final suggestions for the final rewording of Section 2-209(n) as printed on the handout distributed during Vice Chairman Oddo's speech. He said he did not know if the word "refrain" was directive or suggestive in its verbiage, and he suggested the words "shall not interfere" to substitute the words "shall refrain". He said the language speaks of the "daily administrative affairs of departmental directors", and he said the Board may want to consider leaving the word "daily" out of that phrase since there could only be some affairs that are done on a quarterly or an annual basis, and they have not been included by limiting the wording to "daily administrative affairs". He pointed out the language that reads: "not make recommendations regarding the hiring, firing, or disciplining." He said there were a number of other actions that a Commissioner could take that would be deemed unethical such as contracting, work assignments, and relationships, and he thought the suggested wording was limiting the Ethical Ordinance to a three, very specific activities. He thought the Board should consider broadening the language a little. He suggested that the section should also read: "Commissioners shall not make *unethical* recommendations". He said putting the word "unethical" in the language allows judgment and allows people to separate the suggestions that Commissioners would make on a regular basis by opening up the opportunity to get away from a very black and white language. He said this would also allow a convening Board to have some latitude in terms of judgment. He suggested that an office should be established within the County government where an employee could go if they thought they received an unethical request from a higher authority.

County Administrator Steve Rapson interjected that the County Administrator was the person designated for employees to go to if they thought they had unethical requests or suggestions.

Ray Watt: Mr. Watt began saying he agreed with Vice Chairman Oddo's opening statement, and he commented on the structure of the Ethics Ordinance. He spoke about Section 2-209(e) and suggested how it could be reworded. Mr. Watt also commented on Section 2-209(h) and the recent issue concerning the County's software and hardware. He stated that the language of the Ethics Ordinance should allow for common sense, pointed out changes Forsyth County recently made to its Ethics Board, and made recommendations on how appointments should be made for the Ethics Board.

Pat Hinchey: Mr. Hinchey stated that he has particular experience with the Ethics Ordinance in Fayette County going back several years, and that he supported and understood the immediacy and need to "get this done now on this particular item." He begged the Board to not drop the issue with the immediate fix since the Ethics Ordinance needed to be completely reviewed. He mentioned that Fayette County's original Ethics Ordinance was very strong, but the current Ordinance was ensured to be very restrictive in terms of what a Commissioner could be found guilty. He said the original Ethics Ordinance worked very well.

Angela Bean: Ms. Bean commended Vice Chairman Oddo on his comments and added that she agreed wholeheartedly with what all of the Commissioners said. She spoke about the "ethics challenge" that everybody is facing; even in the Georgia General Assembly where they are looking at revising their Ethics Code. She said the challenge facing the Georgia General Assembly is the same challenge Fayette County would find itself in, namely refining the Ethics Ordinance so much that the "Gotcha Code" comes into existence. She agreed with Mr. Hinchey that there should be a review of the Ethics Ordinances very carefully to make sure there are no more opportunities for "Gotcha" on Ethics violations. She also publically called on the Ethics Board to consider reversing their decision.

Dawn Oparah: Ms. Oparah thanked the Board for taking the time to listen to the public, and she appreciated Vice Chairman Oddo's comments in that he spoke about the spirit of the law and its intent. She thought that was important because sometimes people abuse their power, and that the law should be written in such a way that power is not abused while allowing someone to do their job and be true servants to the community. She said she was concerned that the Ethics Ordinance was flawed and the flaws were broader than a particular issue. She suggested that a committee be formed to look at the Ethics Ordinance and review it. She reiterated her desire for the Board to appoint someone to look at a new Ethics Ordinance and bring it to the Board. She also stated that training for the Ethics Board is important and she speculated that if the Board members had been better trained and truly understood intent that they may have had a different outcome. She agreed with Ms. Bean saying she wanted the Ethics Board to reverse its decision since it was not fair for people who do not truly understand what they are doing to make a decision that sticks.

Simon Marks: Mr. Marks said he thought the current Ethics Board was doing the best job they know how, but he said Commissioner Oddo brought up some points that they were not considering. He suggested that they should be some education and training for the Ethics Board. He said that everyone thinks they know ethics, but when someone looks at the true definition of it, oftentimes people miss that it involves moral obligations and interpreting the spirit of the law. He thought while people will get up and do the best job they can, he thought there should be some formalized training to ensure that the people on the Ethics Board do fully understand what "ethics" truly means.

Alice Jones: Mrs. Jones said she has lived in Fayette County since 1997 and that she has followed the Commissioners "to the letter" since moving to the County. She applauded the Board for addressing this issue. She said when she first learned of the ethics complaint brought against Commissioner Steve Brown, and the source that brought it, she was shocked. She said the shock came about resulting from some previous engagement that another speaker addressed earlier with the marijuana charge. She added "if that is not ethics you tell me what is." She said she was embarrassed to say that, after reading the content of what was presented, the Board has it on queue that this issue needs to be addressed. She agreed that the Ethics Ordinance needs to be reviewed in a larger scale to ensure it is meaningful and to ensure there is a Board in place that can address it effectively without political connections.

Bill Gainey: Mr. Gainey suggested that when an ethics complaint is received that perhaps the complaint could be referred to the State Court, or perhaps the Chief Judge of the State Court. He suggested that a pool of fifteen or twenty people could be created and educated, so that if a complaint is received the judge could pull a certain number of people from the trained pool of educated members, and those people could hear the complaint.

Arnold Martin: Mr. Martin thanked the Board for taking up this issue. He observed that he has witnessed twice in Ethics meetings where there has been a decision about when the next hearing would be and where everybody starts pulling their calendars out, including the accused, to figure out when their schedule works. He asked who was in charge, and suggested that there should be a set time for hearings so that people know and do not have to look at their calendars what works for the accused. He also pointed out that when meetings are scheduled there are many citizens who would like to be involved in the process but are not able to make it at 5:30 p.m.

Public Comment effectively closed at this time.

Interim County Administrator Dennis Davenport spoke about the modification or changing of the ordinance, spoke about the current problems Fayette County has due to not codifying its ordinances in 6 ½ years, and the difficulty to revamp the entire Ethics Ordinance at the same time that it is revamping the entire Code of Ordinances. He acknowledged that while the timing was good and that this effort was "a small bite", but he also acknowledged that small bite was about all that could be done in light of revamping the Code of Ordinances. County Administrator Steve Rapson added some clarifying remarks to Mr. Davenport's comments, and he answered a question from the audience. Mr. Don Rehwaldt and Mr. Davenport also briefly spoke about the time it took to recodify the Town of Tyrone's ordinances and the benefits.

Commissioner Ognio restated his motion to delete the second sentence in Section 2-209(n) of the Fayette County Ethics Ordinance. Commissioner Barlow once again seconded the motion. No further discussion followed. The motion passed 4-0-1 with Chairman Brown being absent.

Commissioner Barlow: Commissioner Barlow reminded the citizens that the current Board is dedicated to inclusivity, and it is interested in the citizens' involvement and input. He also said he wanted to reach out to the "community of faith" saying the County has been fortunate to have folks from various churches come to the meetings. He reiterated that the Board is looking for volunteers from the churches to offer the Invocation, and he asked that those volunteers contact him so he could visit with them.

Commissioner McCarty: Commissioner McCarty said everyone needed to understand that in the past he was one of two votes and there were a lot of things he just could not do. He said there were some things he wanted on the Agenda that did not get on the Agenda. He stated that "that door is closed, we have a new door" and that the Board was here for the best interest of the citizens of Fayette County. He concluded that the Board wanted to fix what has been broken.

Commissioner Ognio: Commissioner Ognio thanked the citizens, said the Board has heard their comments, and stated that Mr. Rapson had made notes of their comments. He said that the Board would see that each comment would be addressed.

Vice Chairman Oddo: Vice Chairman Oddo said he echoed the Board's sentiments and he thought that it was appropriate to bring Chairman Steve Brown back into the meeting. Chairman Brown did not return to the meeting since he left the building earlier. Vice Chairman Oddo thanked the audience for coming to the meeting and said he really appreciated it.

ADJOURNMENT:

Commissioner Barlow moved to adjourn the January 29, 2013 Special Called Board of Commissioners meeting. Commissioner McCarty seconded the motion. No discussion followed. The motion passed 4-0-1 with Chairman Brown not present.

The January 29, 2013 Board of Commissioner's Special Called Meeting was adjourned at 6:26 p.m.

_____ _____

Floyd L. Jones, County Clerk Steve Brown, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 14th day of February 2013.

_____

Floyd L. Jones, County Clerk