

CHEROKEE BOARD OF ETHICS
Meeting Minutes

Date: April 23, 2015

Meeting Location: Cherokee County Conference Center at The Bluffs; Business Center

Board Directors:

Julie Cullins, Chairman	Present	Debra Frieden, Vice-Chairman	Absent
Gil Howard, Director	Present*	John Seufert, Director	Present
Phil Dodge, Director	Present	Gaylen Roberts, Director	Present
Natalie Green, Director	Present		

Others Present:

J. Marshall "Buzz" Wehunt, CCB_oE Attorney of Record
Laura Shoop, CCB_oE Secretary

**Arrived at approximately 6:25 p.m.*

- **Chairman Cullins called the meeting to order at 6:19 p.m.**
- **Approval of Minutes from January 29, 2015**
No changes were made to the minutes other than the amendment. Director Phil Dodge made a motion to accept the minutes as they stood, seconded by Director Natalie Green. Motion passed unanimously.
- **Public Hearing of Ethics Complaints**
Chairman Cullins opened floor for public hearing/discussion. No issues were brought forward, and no one present had been made aware of any ethics complaints. Motion for public hearing closed.
- **Discussion: Update of Ethics Legislation**
Attorney Wehunt reported that there were no issues with the update to the ethics legislation being passed. He had not received correspondence from Chairman Ahrens with the final draft but had received notice that it passed. He said that he would reach out to Chairman Ahrens for a final copy.
Chairman Cullins learned from an email from Rep. Mandi Ballinger that the ethics legislation (HB631) passed both houses smoothly and with no changes.
- **Discussion: Update of access through county email system**
Some Directors reported having trouble receiving their county email, and it was suggested that they speak with the informational technology professional for the county to get it resolved. The importance of communicating on the county emails alone due to Sunshine laws was reiterated. It was noted that CCB_oE members cannot discuss items that

are on the agenda for a meeting, make decisions, or conduct any activity that might look like meeting activity via email because that would violate open meeting laws.

- **Discussion: Round table discussion/education of tabled query brought up at January 2015 meeting by citizen Larry Mrozinski regarding possibility of the Cherokee Board of Elections falling under the purview of the Board of Ethics**

After a discussion among Directors regarding whether the Board of Ethics had the authority to extend its purview to the Board of Elections, with the majority of Directors being of the opinion that it does not, Chairman Cullins produced results of her research into the matter with the conclusion that the CCBBoE by law does not oversee the Board of Elections. Chairman Cullins called Ms. Kim Stancil, supervisor of elections and registrations in Cherokee County, who sent the CCBBoE a Memo from the county attorneys regarding the matter. Chairman Cullins also spoke with Ms. Ann Hicks, interim elections director for the state, who referenced the legal codes O.C.G.A. §21-2-31 and §21-2-32 that were also referenced in the Memo. According to all sources, the Board of Elections cannot be under CCBBoE purview because all county ethics complaints go to the state level elections committee, chaired by the Secretary of State of Georgia. The person or entity who oversees elections within a county (a judge in some counties, a Board of Elections in Cherokee) also has to guarantee and certify those elections. If the CCBBoE had purview over the Board of Elections, it would have to certify the elections. Ms. Hicks indicated that she was unaware of any county in Georgia that has an ethics board over an elections board.

Director Howard made a motion that as to Item 3 of the discussion items on our April 23, 2015 agenda, this item be acted upon based on the opinion letter from the county's attorney and based on advice of counsel here, and that no action is either appropriate or necessary on the part of the Board of Ethics and that the matter be concluded. Director John Seufert seconded. Motion passed unanimously with a note that the Memo from the county attorney be attached to the minutes.

- **New Business**

Secretary Shoop asked whether CCBBoE meeting notices submitted to the Cherokee Ledger should be put as an ad in classifieds, as recommended by the editor but rather expensive and not an appropriate section for the topic, or as an item in the "Spotlight" section, more appropriate but with no guarantee the notice would be published. All present determined that because the legal notice in the Cherokee Tribune satisfied the requirement of law, no further notices need be submitted to the Cherokee Ledger.

- **Next Meeting:**

The 3rd Quarterly Meeting of 2015 will be held on Thursday, July 23, 2015, at 6:00 p.m. at the Cherokee County Conference Center at The Bluffs.

- **Motion to Close:**

Director Roberts made a motion to adjourn. Motion seconded by Director Green. Motion carried unanimously. Meeting adjourned at 7:10 p.m.



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MEMORANDUM

To: Angela Davis
From: Sarah VanVolkenburgh
Date: April 17, 2015
Subject: Oversight of Cherokee County Board of Elections

QUESTIONS PRESENTED

We recently received an inquiry from the Cherokee County Board of Elections asking whether that body is subject to oversight by the Cherokee County Board of Ethics. You have asked for a memorandum addressing whether the Board of Ethics has authority to investigate or remove a member of the Board of Elections. Assuming the Board of Ethics lacks such authority, you have further asked that the memorandum describe the proper procedure for bringing complaints against or removing a member of the Board of Elections.

SHORT ANSWERS

The Board of Ethics lacks authority to enforce the Cherokee County Ethics Code against the Board of Elections. More specifically, the Ethics Code targets “public officials,” a term that does not include members of the Board of Elections. Although the Ethics Code contains language suggesting that the Board of Ethics has the authority to conduct investigations to determine whether “any person” has violated the Ethics Code, each of the Ethics Code’s provisions single out “public officials” as the proper subjects for oversight. In short, members of the Board of Elections are not subject to removal by the Board of Ethics.

Rather, the local act creating the Board of Elections provides that members of that body are subject to removal by the Cherokee County governing Body – the Board of Commissioners – for cause and after notice and a hearing. Although the State Elections Board retains authority to investigate violations of State election laws and regulations, it does not typically involve itself with complaints regarding individual members of county election boards, deferring instead to a local act’s investigation and removal procedures to address such concerns.

DISCUSSION

To begin, the Cherokee County Board of Ethics was created and empowered by local act, 1991 Ga. Laws, p. 411. Thus, we must consult this body's enabling legislation to determine the extent of its powers and authority. Pursuant to its enabling legislation, the Board of Ethics has broad authority to investigate and remove a "public official," as that term is defined in the County Ethics Code. See generally id. However, members of the County Board of Elections do not fall within the definition of a "public official," which specifically encompasses only:

the chairman and every member of the board of commissioners of Cherokee County; the county manager of Cherokee County; the chairman and every member of the Cherokee County Water and Sewerage Authority; the chairman and every member of the Cherokee County Airport Authority; and the chairman and every member of the Cherokee County Development Authority

Section 2(14) of the Cherokee County Ethics Code ("Ethics Code"), 1991 Ga. Laws at 414 § 2(14). Further, the Ethics Code's many provisions clearly target public officials, or members of the County Board of Commissioners specifically, as proper subjects for oversight by the Board of Ethics.¹ There is no mention of the Board of Elections anywhere in the Ethics Code.

It is true, of course, that the Ethics Code vests the Board of Ethics with the duty "[t]o make such investigations as it deems necessary to determine whether *any person* has violated or is about to violate any provisions of this Act." Section 9(e)(5) of the Ethics Code, 1991 Ga. Laws at 420 § 9(e)(5) (emphasis added). Nonetheless, several reasons counsel against interpreting this language to mean that the Board of Elections is subject to Board of Ethics oversight.

First, as noted above, the Ethics Code clearly aims to address ethical violations committed by specified public officials. In fact, the Ethics Code only provides for enforcement against such public officials. See Section 8(f) of the Ethics Code, 1991 Ga. Laws at 420, § 8(f) (providing for hearing and removal proceedings solely against public officials). Second, hearing and removal proceedings for members of the Board of Elections are already committed to a separate authority – the Cherokee County Board of Commissioners, as discussed further below. Third, to the extent that the Ethics Code addresses persons other than public officials, it is in the context of prohibiting public officials from engaging in prohibited conduct with such persons. Thus, the "any person" language appears to be a catch-all provision enabling the Board of Ethics to include other persons as part of their investigations where such persons participate in or benefit from actions that a public official is prohibited from taking.

¹ See Section 3 of the Ethics Code (prohibiting public officials from conflicts of interest); Section 4 of the Ethics Code (requiring public officials to disclose interests); Section 5 of the Ethics Code (requiring public officials to self-disqualify from official acts impacting businesses or activities in which the official is interested); Section 6 of the Ethics Code (prohibiting contracts with member of governing body or business in which member of governing body has interest); Section 7 of the Ethics Code (prohibiting contracts or acts favorable to former members of governing body); Section 8 of the Ethics Code (providing for liberal construction of the Ethics Code "to effectuate its purposes and policies and to supplement such existing laws as may relate to the conduct of a *public official*") (emphasis added).

The Georgia Code authorizes the General Assembly to create both county boards of elections and county boards of elections and registration by local act. O.C.G.A. § 21-2-140. Thus, like the Board of Ethics, the Cherokee County Board of Elections and Registration (“Board of Elections”) was also created and empowered by local law. See 1991 Ga. Laws, p. 3830, amended in part by 1999 Ga. Laws, p. 3755. Importantly, this enabling act vests removal authority with the Cherokee County Board of Commissioners. 1991 Ga. Laws at 3833, § 4. More specifically, the act provides that “[e]ach member [of the Board of Elections] shall be subject to removal from the board by the governing authority of Cherokee County at any time, for cause after notice and hearing, in the same manner and by the same authority as provided for removal of registrars.” *Id.* In turn, Georgia law likewise provides for removal of county registrars for cause after notice and a hearing (“in the same manner”), although the probate judge presides over the hearing and removal proceedings for registrars. O.C.G.A. § 21-2-212(a). Notably, the probate judge presides over such proceedings “[e]xcept in the case in which the local Act creating a county board of elections and registration specifically provides for the appointment and removal by another authority” *Id.*

Here, the local act creating the Board of Elections specifically vests the Commissioners with hearing and removal authority over the Board of Elections. It follows that the Board of Ethics (like the probate judge) lacks such authority. See *id.*; see also Alexander Properties Group v. Doe, 280 Ga. 306, 309 (2006) (“Pursuant to the principle[s] of statutory construction . . . the list of actions [in a statute] is presumed to exclude actions not specifically listed . . . and the omission of [a provision] is regarded by the courts as deliberate.”).

Before concluding, it bears noting that the State Election Board has authority to promulgate rules and regulations to ensure fair, legal, and orderly conduct of primaries and elections; this body also has authority to investigate, report, or prosecute (through the Attorney General) frauds and irregularities in primaries and elections or violations of the primary and election laws. O.C.G.A. § 21-2-31(1), (2), (5). Despite this broad authority, however, the State Election Board rarely, if ever, uses this authority to investigate individual members of county board of elections.² Instead, the State Elections Board defers to the hearing and removal procedures that the General Assembly has specified in the local acts creating such county boards.

SUMMARY

In sum, where a complaint arises regarding a member of the Cherokee County Board of Elections, the General Assembly has specifically vested the Cherokee County Board of Commissioners with authority to hold a hearing and, if cause exists for removal, to remove the member. As the Commissioners possess such authority, it follows that the Cherokee County Board of Ethics cannot simultaneously possess this authority. This is particularly true where the local act creating the Board of Ethics focuses on a specified list of public officials that does not include members of the Board of Elections.

² Discussion with Ann Hicks, Interim Director of the Elections Division of the Secretary of State’s Office (Apr. 15, 2015).