
**MEMORANDUM OF FINDINGS AND REPORT TO
THE HARTSVILLE/TROUSDALE COUNTY COMMISSIONERS**

TO: HARTSVILLE/TROUSDALE COUNTY COMMISSION

**FROM: BRANDEN BELLAR, HARTSVILLE/TROUSDALE COUNTY
ATTORNEY**

SUBJECT: COMPLAINT AGAINST MAYOR CHAMBERS

DATE: DECEMBER 7, 2021

On September 27, 2021, I received a complaint hand delivered to my attention in the form of a written complaint signed by the following Trousdale County Commissioners:

Jerry Ford
Bill Ferguson
Lonnie Taylor
Richard Harsh
David Nollner
Coy Dickey
Gary Claridy
Rachel Jones
Rick Davis
Steve Whittaker
Dwight Jewell

The Complaint alleged potential criminal, ethical and unlawful (legal infractions) committed by Mayor Stephen Chambers during a Special Called Commission Meeting on or about July 19, 2021. Pursuant to the direction of the Hartsville/Trousdale County Commission, my office was directed to investigate and pursue any legal recourse necessary against Mayor Chambers.

Based upon the plain reading of the Complaint, there appears to be two (2) basic allegations against actions taken by Mayor Stephen Chambers. These allegations relate to actions taken by Mayor Chambers on July 19, 2021, at the Special Called Meeting regarding a vote over Resolution 2021-18-7222 involving Water Department construction of a building at 328 Broadway, Hartsville, Tennessee. First, the Complaint in its broadest sense states Mayor Stephen Chambers “threatened legal action” against the Hartsville/Trousdale County Board of Commissioners for violation of the Open Meetings Act. Second and more specifically, the Complaint alleges Mayor Chambers “threatened to take this to the Water Board and assist them in filing suit against the County Commissioners” in reference to the Open Meetings Act violations. The allegations in the

Complaint aver some members voted for the project by intimidation and coercion as a result of the “threatened litigation”.

Regarding the two (2) basic allegations and county commissioners’ directions instructing the county attorney to investigate the matters alleged in the complaint, the county attorney chose to break down into the following allegations:

I. CRIMINAL ACTS

Specific to item number one, the signers summarized their belief a criminal act had potentially occurred pursuant to T.C.A. § 39-16-402, T.C.A. 39-16-403, and T.C.A. 39-16-404 which states as follows:

39-16-402. Official misconduct.

- (a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:
 - (1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;*
 - (2) Commits an act under color of office or employment that exceeds the servant's official power;*
 - (3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;*
 - (4) Violates a law relating to the public servant's office or employment; or*
 - (5) Receives any benefit not otherwise authorized by law.**
- (b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.*
- (c) It is a defense to prosecution for this offense that the benefit involved was a trivial benefit incidental to personal, professional or business contact, and involved no substantial risk of undermining official impartiality.*
- (d) An offense under this section is a Class E felony.*
- (e) Charges for official misconduct may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.*

39-16-403. Official oppression.

- (a) A public servant acting under color of office or employment commits an offense who:
 - (1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or*
 - (2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful.**

(b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity.

(c) An offense under this section is a Class E felony.

(d) Charges for official oppression may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.

39-16-404. Misuse of official information.

(a) A public servant commits an offense who, by reason of information to which the public servant has access in the public servant's official capacity and that has not been made public, attains or aids another to attain a benefit.

(b) An offense under this section is a Class B misdemeanor.

The County Attorney does not handle prosecution of criminal cases. This is a primary function of the 15th Judicial District Attorney's Office. Due to this fact, the County Attorney expeditiously turned over video/audio recordings, minutes, and collateral documents to the District Attorney's Office for opinion. On or about November 18, 2021 County Attorney, Branden Bellar, received a response from the District Attorney General and attaches the same for reference and incorporates the findings as his own, deferring to the District Attorney's opinion as to any violations under Tennessee Criminal Law. As you will note, after an extensive and thorough review of the record, District Attorney General Jason Lawson found no evidence a criminal act has occurred.

Therefore, concurring with the opinion of General Jason Lawson and adopting the report of the District Attorney General, the County Attorney recommends no criminal action be taken against Mayor Chambers.

II. ETHICAL VIOLATIONS

Specific to item number two, a copy of the Hartsville/Trousdale County Ethics Policy is attached for reference. As you will note in your review of the policy, none of the allegations are on point with any ethical violation nor fall squarely into any one of the statutes which the applicable are cited as follows:

1. Conflict of Interest.

Conflict of interest—T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest—T.C.A. § 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest—T.C.A. § 5-14-114 applies in counties that have adopted

the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest--T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest—T.C.A. §§ 5-5-112 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements—T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying; activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

At no point has there been any allegations and/or facts suggesting Mayor Chambers bid, took money, had a financial interest, voted in a particular manner, or otherwise did anything violating any statute and/or policy provided that would create a conflict of interest directly or indirectly.

2. Official Misconduct.

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Bribery for votes—T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

As previously covered in part by General Jason Lawson, and to the extent the allegations of criminal acts involved official misconduct, the County Attorney finds no fact or evidence supporting bribery, misuse of official information, solicitation, or any other criminal act that may also be an ethical violation.

3. Gifts.

Gifts—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria—T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Further, there have been no gifts bestowed upon Mayor Chambers or Honoraria for contracts, purchase orders, spreads and/or articles or otherwise for his office of County Mayor, directly or indirectly.

FINDINGS

For the record, all signers were given opportunity to express any other facts that would lead to a contrary conclusion as presented in these findings. Each were interviewed and allowed ample opportunity to present evidence outside the parameters of the complaint.

Without committing to an overly detailed analysis of the ethical policy, the complainants do not allege that Mayor Chambers received economic gain, economic enhancement or economic advantage based on his alleged conduct. Moreover, there is no allegation or proof that anything that he said or did prior to the vote included an economic benefit for any person and in whose welfare Mayor Chambers would be interested. There is no evidence Mayor Chambers received a financial benefit, or that he intended anyone else receive a financial benefit as a result of his words or actions. Therefore, there were no ethical violations according to Hartsville/Trousdale County policy.

With regard to the allegations of criminal conduct, the analysis and report provided by the 15th Judicial District Attorney's Office clearly lays to rest any potential or actual criminal misconduct concerning Mayor Chambers' words or actions. I concur with General Jason Lawson's report and opinion and incorporate the same as my findings and concurrent opinion.

Concerning statements made by Mayor Chambers taken in context, every County Mayor has a duty, as do all public officials, to ensure that all meetings comply with the Open Meetings Law. He or she has an obligation to execute the lawful and valid motions and resolutions of the legislative body but puts the county at risk if he or she knows those resolutions may be in contradiction of the law. Simply put, the audio/video recordings, when taken in context, do not

rise to a level of a threat. The language utilized by Mayor Chambers, when taken into context, falls under a class of speech that legislative and executive branch actors must be compelled to voice for their constituents or advisory for the proper function of government under mandate of law. The bulk of the proceedings were found squarely on curative measures as advised by County Attorney in order to assure government proceeded in a direction that would not violate the Open Meetings Act.

Further, one of the ideas behind the Open Meetings Act is to prevent governmental officials from utilizing insider information to gain financial benefit and/or bolster public confidence decisions are made in an open forum. Many of the examples typically seen are situations where a county entity is going to buy land and a county official using insider information obtains an option on the property or has a third party purchase it on their behalf knowing that it will ultimately be sold to the governmental entity at a lucrative price or a decision made outside the eye of public scrutiny that simply affects the life, liberty and property rights of individuals within the jurisdiction of local government. With the clarity of hindsight, Mayor Chambers took actions to make sure that all information was made public and that a proper public vote was taken on the issue before the commission. Therefore, the intent in context through the deliberations of all commissioners and the Mayor curtailed any “potential” or “actual” violations of the Open Meetings Act.

CONCLUSION AND RECOMMENDATION

It is the conclusion of the County Attorney that Mayor Stephen Chambers did nothing to violate the law criminally or by any ethical violations. It is further recommended the complaint be dismissed and the findings and report be read into the minutes.



BRANDEN BELLAR

Attorney for the Hartsville/Trousdale County
Government

CODE OF ETHICS

HARTSVILLE/TROUSDALE COUNTY, TENNESSEE

Section 1. Definitions.

- (1) "County" means Hartsville/Trousdale County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.
- (2) "Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county.
- (3) "Personal interest" means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official's or employee's spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

Section 2. Disclosure of personal interest in voting matters. An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's or employee's vote on the measure. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from voting on the measure.

Section 3. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from the exercise of discretion in the matter.

Section 4. Acceptance of gifts and other things of value. An official or employee, or an official's or employee's spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

Section 5. Ethics Complaints. A County Ethics Committee (the "Ethics Committee") consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official or employee charging any violation of this Code of Ethics or may undertake an investigation on its own initiative when it acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the Committee's judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

Conflict of interest—T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest—T.C.A. § 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest—T.C.A. § 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest—T.C.A. § 54-7-203 applies in all counties that are governed by the

County Uniform Highway Law. It prohibits officials and employees in the highway department and members of the county legislative body from having any personal interest in purchases of supplies, materials, machinery, and equipment for the highway department.

Conflict of interest—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest--T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest—T.C.A. §§ 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements—T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying; activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

The Committee may:

- (1) refer the matter to the County Attorney for a legal opinion and/or recommendation for action;
- (2) in the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;
- (3) in the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;
- (4) in a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

Section 6. Applicable State Laws. In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position

and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control. Following is a brief summary of selected state laws concerning ethics in county government. For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance--T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression—T.C.A. § 39-16-403 prohibits abuse of power by a public servant.

Bribery for votes—T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law—T.C.A. § 8-47-101 sets out conduct that is punishable by ouster from office, including misconduct in office and neglect of duty.

Gifts—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria—T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Private use of public property—T.C.A. § 54-7-202 applies in counties that are governed by the County Uniform Highway Law. It prohibits the private use of equipment, rock, and other highway materials.

Court sales—T.C.A. § 39-16-405 prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties.

Rules of the Supreme Court— Rule 10, Canon 5 (Code of Judicial Conduct) establishes ethical rules for judges and other court personnel when exercising judicial functions.

Fee statutes—T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials—T.C.A. §§ 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.

Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

DEPUTY DISTRICT ATTORNEYS GENERAL

BRIAN W. FULLER, LEBANON, TN
THOMAS H. SWINK, MT. JULIET, TN
JAMES LEA, LEBANON, TN
JUSTIN G. HARRIS, WATERTOWN, TN

ASSISTANT DISTRICT ATTORNEYS GENERAL

ANITA HOLDEN, WATERTOWN, TN
JAVIN R., CRIPPS, CARTHAGE, TN
LAURA BUSH, MT. JULIET, TN
JACK BARE, CARTHAGE, TN
IAN D. BRATTON, HARTSVILLE, TN
DAVID ROSEBERRY, LEBANON, TN
BILL CALLA, MT. JULIET, TN
WAYNE SUTTER, OLD HICKORY, TN
KAREN CASEY, WATERTOWN, TN
SAMANTHA KEY, CARTHAGE, TN



ADMINISTRATIVE ASSISTANT

CONNIE BUTLER

VICTIM / WITNESS COORDINATORS

RENEE ARMES
CLARA WOODMORE
INVESTIGATORS
BILLY SHARER
BOB BRADSHAW

LEBANON OFFICE

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615-443-2863 615-443-2870 (FAX)

HARTSVILLE OFFICE

P.O. BOX 178, HARTSVILLE, TN 37074
615-374-2604 615-374-2084 (FAX)

November 17, 2021

Mr. Branden Bellar
County Attorney
Trousdale County, Tennessee

Re: Consideration of comments by Mayor Chambers at July 19, 2021, special called meeting of the Hartsville-Trousdale County Commission

REPORT OF THE DISTRICT ATTORNEY GENERAL

This matter was referred to the Office of the District Attorney for the Fifteenth Judicial District by the county attorney of Trousdale County due to allegations by the members of the county commission of Trousdale County that Mayor Stephen Chambers had committed "ethical violations" and "violations of Tennessee Code Annotated 39-16-402, 39-16-403, and 39-16-404."

It is first incumbent upon the writer to delineate that the office of the District Attorney is not the proper body to determine whether an ethical violation has occurred, as the office of the District Attorney has singular authority to determine whether violations of the criminal code have occurred.

OVERVIEW

During the July 19, 2021 special called county commission meeting, the county mayor brought to the attention of the county commission that five commissioners had met together outside of the county commission meeting and had discussed a number of considerations relating to the construction of a building by the county which was the topic of the agenda for the special called meeting. He further stated that he had consulted the county attorney about this private meeting, and had been advised that such a meeting outside of the regular county commission meeting would likely violate the Tennessee open meetings law. He further asserted that the county attorney had advised that if the same discussions were held during the course of an advertised and public county commission meeting, then the defect would be cured and the county would be immune from action for the violation of the law.

During the meeting, one county commissioner asked for clarification of why this discussion was necessary, and the mayor answered by saying that if the county commission did not have the discussions, then he could go as a member of the water board and make a motion that the water board 'files an open meetings act violation against the county commission' and 'the county attorney had already told me I got a good case.' It is these statements and others cited below that is asserted by the official complaint to have violated Tennessee Code Annotated 39-16-402, 39-16-403, and 39-16-404.

ALLEGATIONS RAISED

In this matter, the allegations are raised in an official complaint, signed by ten commissioners, and are quoted as follows:

Paragraph four of the official complaint:

"[Mayor Chambers] stated that this was a violation of the open meetings act, and that he had a recording of those conversations, and threatened legal action against the commissioners."

Paragraph five of the official complaint:

"During the ensuing discussions Mayor Chambers threatened to take this to the Water Board and assist them in filing suit against the county commissioners."

Paragraph six of the official complaint:

"Our concern is, during the meeting, Mayor Chambers led us to believe that we as commissioners were under the threat of litigation regarding a violation of the "Open Meetings Act." On two occasions he alluded to the fact that we were under said threat. Even though he knew there was a possible remedy to any potential violation being proposed. The mayor as a member of the water board, said he would turn over evidence to them and advise them to pursue legal action against the commission."

Paragraph seven of the complaint:

"The threat evidently resulted in some members to vote for the project, simply because they were intimidated and coerced to do so, to avoid the county being involved in litigation against itself."

Paragraph nine of the complaint:

"We believe Mayor Chambers actions were nothing more than an overt attempt to influence the vote. This resulted in possible "Official Oppression" by him, in possible violation of T.C.A. 39-16-403. Also T.C.A. 39-16-404 states "a public servant commits an offense who, by

reason of information...attains or aids another to attain a benefit.”
Further T.C.A. 39-16-402, “a public servant commits an offense who, with the intent to obtain benefit or ham another knowingly” These and any other statutes that were possibly violated need a thorough and serious investigation.”

Paragraph ten of the complaint:

“placing the mayor’s office and the commission in an adversarial position due to these litigious threats.”

ADDITIONAL INFORMATION AS STATED IN THE COMPLAINT:

Paragraph four of the official complaint states as follows:

“Attorney Bellar stated that it could be perceived by some as having a potential violation, he further stated that if the things discussed were also discussed in another open and advertised meeting that would remedy any possible violations.”

INVESTIGATION

It is of great benefit in this investigation that all Hartsville-Trousdale County Commission meetings are video recorded, and as such, the comments are easily ascertainable. The District Attorney has reviewed the video recording at issue and has transcribed the relevant portions. They are as follows:

At 6:06 into the meeting:

MAYOR CHAMBERS: “Mr. Chairman, I have something, before we get started on this. Before the education committee on July 8th there was a discussion about the water board meeting. It went on for seven minutes and seven seconds. That was not a called meeting, it was discussing something that was in front of this body. That is an open meetings act violation. There was deliberation, courses of action were discussed, I spoke with the county attorney about this, he is here to answer any questions, I don’t want to put words in his mouth, he agrees with me, that was an open meetings act violation. **To cure that violation we need to have these same discussions at this meeting tonight.** [items discussed were then read from a list]. So it is my assertion that that was a violation of the open meetings act, it was two or more commissioners having an unofficial meeting discussing or deliberating on courses of action, I have sent that video to the county attorney, he has reviewed it, and he is here

tonight and he agrees with my assertion that was an open meetings act violation, so, **I wanted to bring this out to cure that** so that there are no issues going forward, that this gets discussed tonight and gets decided tonight and that it is not something that is hanging out there that could possibly throw a wrench into it, so, I had a discussion with the county attorney, again he is here if you want to ask him some questions and have that meeting again out here in public so every commissioner can have their input on it. And I'll go ahead, Mr. Bellar, am I correct in my assessment?

[County attorney Bellar then opines that the discussion would rise to the level of a deliberation, and that such would violate the open meetings act.]

ATTORNEY BELLAR: "Now, **in order to cure that**, if you'll also, my letter would also indicate, **you need to have those discussions out in an open meeting itself such as what we have here tonight**. The reason you do that is because an action could be brought and any action that you take tonight could be declared void, null and void or there could be potential for injunctive relief. **So that is the curative aspect of the open meetings act** and the opportunity to do that tonight. Any questions for me tonight?

CHAIRMAN: So if we have a list of these things that were discussed and we discuss each one, **that is curative?**

ATTORNEY BELLAR: **You need to have a deliberation on those issues** and have those discussions--obviously those concerns were there, and everyone has a part as far as that, but it needs to be out in the open--is what this particular meeting is called for, okay? So **that would be curative** for it and I would say that looking at it from the standpoint of a court of equity, court of law, that **would be a defense** to that, and I think that you wouldn't run into any issues at that point.

[each item was then raised point by point as had been reported to have been discussed in the private meeting, and the county commission discussed each point publicly].

At 26:00 into the meeting:

[in response to a question by a commissioner about whether the issues discussed outside of a public meeting had likewise been discussed in prior public meetings]

MAYOR CHAMBERS: “Whether they were discussed or not you had a group of five commissioners went outside a meeting and deliberated towards a course of action on July 8th, **this is to cure that**. I could, okay **if you don’t cure it** I could go into the next water board meeting and play this video and say its my, it’s my, make a motion that the water board files an open meetings act violation against the county commission based on that video and your county attorney has already told me I got a good case. I’m trying to get this issue done, get it over with, address these issues going forward so nobody can say it wasn’t discussed in an open meeting. If you have five commissioners speaking on something and the other fifteen are not there, they don’t get to participate in that discussion. The public doesn’t get to participate in that discussion because they didn’t know it was being held. So this is to address that issue. Whether you’ve talked about it in ten other meetings, you go outside of it and start having those discussions and deliberations, you’ve violated the open meetings act, so this is what I wanted to bring it here today, make sure we get it addressed, it’s put to bed, we go forward, there’s a decision made, there is no coming back on it.

At 1:31:36 into the meeting:

[As part of a discussion of whether the special called meeting was for the purpose of discussing the possible violations of the open meetings act.]

MAYOR CHAMBERS: No sir it was not. It was specifically called to address this resolution that is the construction of the proposed water department building. **I brought up the open meetings act violation to get it cured** because these discussions happened outside of any specific meeting. That was not an item on the agenda that was to get the discussion points in the discussion of this resolution, make sure that it was out there, get it addressed **so that there is no possible legal action that could be taken in the future**. That was not an agenda item that was part of the discussion of this resolution.

At 1:33:19 into the meeting:

[As part of the discussion of whether the discussion about the possible open meetings act violation was an amendment to the agenda of the special called meeting.]

MAYOR CHAMBERS: First of all, again, that is not an amendment to the agenda discussion, that, discussing what was talked about in that meeting. **That is curing a violation of this particular issue** that is the specific reason for the meeting... The problem was, I wanted to make sure the discussion that was held on July 8th pertaining to this resolution and construction of this building was brought out to the public, addressed here, and any possible violation of the open meetings act addressed. I contacted the county attorney, he agreed with me that that was a violation of the open meetings act, I brought it up at the beginning of this meeting, the topics that were discussed were particularly on point for this resolution, so my point still stands that was not an amendment to the agenda, that was specific to the item on the agenda and those discussions were relevant to that topic. As a matter of fact there have been questions that have been asked to myself, to you I am guessing, because I am getting the same questions you are, so no that was not an amendment to the agenda that was a discussion of the item that was on the agenda itself.

At 1:35:40 into the meeting:

[As continued discussion about the scope of the agenda item].

MAYOR CHAMBERS: [The agenda] it does not mention open meetings act violation. I brought that up because there were discussions had about the issue that was being addressed in this special called meeting that needed to be brought out, **discussed again to cure any possible violation.** That is not an amendment to the agenda, **that is curing a violation** on the topic that was specifically given notice for and on the agenda itself.

LAW & ANALYSIS

The official complaint cites several criminal statutes that the complainants request evaluation in light of the Mayor's comments. These statutes will be considered in turn.

OFFICIAL MISCONDUCT

The first statute cited, in order of its appearance in the Code, is Official Misconduct, T.C.A. 39-16-402. It is cited as follows:

39-16-402. Official misconduct.

(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

(1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

(2) Commits an act under color of office or employment that exceeds the servant's official power;

(3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;

(4) Violates a law relating to the public servant's office or employment; or

(5) Receives any benefit not otherwise authorized by law.

It is beyond question that the county mayor qualifies under the code's definition of a public servant.

Regarding the interpretation of the statute, the law requires the application of the plain and ordinary meaning of the terms of the statute to ascertain the legislative intent in passing the law.

The first mechanism of official misconduct requires the unauthorized exercise of official power. A statement made by a public official in an official meeting advising of the *potential* consequences of failing to take a specified action (which had been recommended by the county attorney), for the **curative** purpose of coming into compliance with the Tennessee Open Meetings Act, is not an unauthorized exercise of power. It is noticed by the District Attorney that each time Mayor Chambers talked about his purpose for repeating the discussions which were the potential basis for the alleged violation of the open meetings act, he used the word 'cure.' On each occasion he told the county commission that his goal was to 'cure' the violation and therefore *avoid* the litigation. These comments are not fairly interpreted as a threat of litigation, but rather taking curative action to protect the county commission from litigation.

The second mechanism of official misconduct requires an act that exceeds the servant's official power. The comments at this meeting, being a recommendation to put the potentially impermissible comments on the record and further explaining the potential consequences if the body failed to put the comments into the public discussion is not an excess of the mayor's power.

In fact, it seems that he is taking the appropriate curative measure to protect the county from the litigation which he warns could be a consequence for failing to cure the private meeting.

The third mechanism requires the mayor to refrain from performing a duty that he is required by law or inherent in the office to be performed. One could actually argue the opposite is implicated in this matter—had the mayor not attempted to cure the error created by the private meeting, and in so failing, opened the county up to litigation—that failure to correct could be perceived as refraining to perform a duty of protecting the county that is inherent in his office as the county mayor. Thus, his action to seek the curative measure actually was required by this section of the statute, and thus could not be the basis for a violation of the law.

The fourth mechanism is that the public servant violated a law relating to his employment. No such law was violated, and thus this mechanism does not apply.

The final mechanism would apply if he received a benefit not authorized by law. The District Attorney could not find evidence of any such benefit.

As a result, the crime of official misconduct was not committed by the mayor's actions.

OFFICIAL OPPRESSION

The next statute that has been requested for review by the District Attorney is Tennessee Code Annotated 39-16-403, the crime of official oppression. It is cited as follows:

39-16-403. Official oppression.

(a) A public servant acting under color of office or employment commits an offense who:

(1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or

(2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity.

Regarding the crime of official oppression, as stated earlier, the language of the statute will be given its plain and ordinary meaning to determine the legislative intent in the passage of the statute.

Unquestionably, the actions taken occurred while the public servant was acting under the color of his office. Therefore, the question turns on whether the mayor committed one of the violations enumerated in subsection (1) or (2).

Subsection one states that in order to be guilty of a crime, the mayor must have intentionally subjected another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful. None of the listed actions occurred. The mayor did not subject anyone to arrest, or detention, or stop, or frisk, or halt, or search, or seizure, or any dispossession, or any assessment, or any lien, or any mistreatment by his actions at the meeting. Such allegation is not supported by the facts.

Even had one of those actions occurred, the law additionally contains a scienter requirement that the mayor must have *known* at the time of his action that his conduct was illegal. A fair viewing of the statements at the meeting likewise establishes this not to be the case, as the mayor repeatedly asserts that he is following the county attorney's advice to cure the potential violation.

Thus, the determination of whether official oppression occurred turns on whether the actions of the mayor violated subsection (2) of the statute, which states that the public servant intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful. The assertion in the official complaint is that the mayor's comments 'evidently resulted in some members to vote for the project' and that 'Mayor Chambers actions were nothing more than an overt attempt to influence the vote.' However, this is inconsistent with the context of the overall conversation and of the statements.

First, it should be noted that the focus of criminal law is the act of the accused, and it must be an intentional act under this particular statute. The assertion that the mayor's comments 'evidently resulted in some members to vote for the project' is of little consequence unless the State can establish that this was the mayor's intent. From the context of the statements, it appears that the mayor's intent was to prevent the county from facing litigation for a potential past violation of the open meetings act by putting the private information into the public meeting, not to force any commissioner to vote for or against the construction proposal. Even if the statement of the mayor had such an effect on a commissioner, this is insufficient under the criminal law unless the State can prove that it was the mayor's intent to have that particular effect, that is, to deny or impede their right to vote freely. The evidence in this case does not establish any intent to deny the vote, impede the vote, or force an outcome. The evidence seems to be as stated on its face—the mayor's intent was to protect the county by remedying the violation by putting the private conversations into the record. There is no evidence to the contrary. Had the mayor told the commissioners that they must vote a certain way, then the evidence would exist of his intent to influence a vote. But such is not the case.

As shown by the precise comments quoted earlier, when the mayor spoke on this issue, he always explained that the problem was that some commissioners had held deliberations or discussions outside of a public meeting and that the solution to this problem was, as recommended by the county attorney, to repeat these private discussions into the public hearing. Never at any time did he state that solution to the problem was to approve the construction of the building or to vote in any particular way. In fact, at no time in the hearing did the mayor ever tie any risk of litigation to the construction project vote.

It is worth evaluating, in context, exactly what the mayor said on the issue:

MAYOR CHAMBERS: "Whether they were discussed or not you had a group of five commissioners went outside a meeting and deliberated towards a course of action on July 8th, this is to cure that. I could, okay if you don't cure it I could go into the next water board meeting and play this video and say its my, it's my, make a motion that the water board files an open meetings act violation against the county commission based on that video and your county attorney has already told me I got a good case. I'm trying to get this issue done, get it over with, address these issues going forward so nobody can say it wasn't discussed in an open meeting. If you have five commissioners speaking on something and the other fifteen are not there, they don't get to participate in that discussion. The public doesn't get to participate in that discussion because they didn't know it was being held. So this is to address that issue. Whether you've talked about it in ten other meetings, you go outside of it and start having those discussions and deliberations, you've violated the open meetings act, so this is what I wanted to bring it here today, make sure we get it addressed, it's put to bed, we go forward, there's a decision made, there is no coming back on it.

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From the context of these statements, it is easily seen that any discussion about potential litigation was in reference to the potential violation of the open meetings act, and that the cure for this potential violation according to the county mayor was to place the private discussions held into the record of a public meeting. Never at any point was the threat of litigation made if a commissioner did not vote for or against the construction of the building, or, for that matter, connected to any other 'vote' of the commissioners. As such, nothing about the mayor's efforts to cure the potential violation of the public meetings act by placing the private discussions into the public record can be fairly said to constitute a denial or impediment to the exercise of a right by the commissioners.

Indeed, the official complaint itself does not allege as much. Instead, it stops short of those allegations by stating that the mayor's purpose was to 'influence' the vote. 'Influencing' a vote does not rise to the level of 'denying' or 'impeding' a right to vote as is required of the criminal law. Nonetheless, the facts of this case do not even make out that the mayor's comments influenced any vote, even had that been the law, as, despite what is asserted, the comments never actually threatened any civil litigation. His reference to civil litigation was by way of example if the commission did not cure the potential violation of the open meetings act by having the impermissible discussions again in the public forum.

Additionally, although both topics were discussed that night, the District Attorney notes from watching the video that the discussion of the potential violation of the open meetings act and the proposed solution was easily understood by anyone observing or participating in the meeting. When it came to matters of voting, the chairman of the meeting was superb in assuring that the commissioners knew exactly what the issues presented were, what the motion before the

commission was, what effect an affirmative vote would have, what effect a negative vote would have, and assuring that there was not any confusion among the commissioners.

Lastly, it is also highly relevant that this subsection likewise requires the scienter requirement that the mayor *knew* that his conduct was illegal at the time he committed it. Even had some right or power been denied or impeded, there is no evidence that such was done with any knowledge of impropriety. The absence of this element alone would likewise prevent a finding that the statute was violated, even had the other elements been found present.

For these many reasons, the crime of official oppression is not established by the comments of the mayor.

MISUSE OF OFFICIAL INFORMATION

The final statute alleged by the official complaint to have been implicated by the mayor's comments is Tennessee Code Annotated 39-16-404, misuse of official information. It is cited as follows:

39-16-404. Misuse of official information.


A public servant commits an offense who, by reason of information to which the public servant has access in the public servant's official capacity and that has not been made public, attains or aids another to attain a benefit.

The official complaint utilizes this statute to assert that the attainment of a benefit can be a benefit for another. However, in evaluation of criminal statutes, the State of Tennessee is required to prove each element of an offense beyond a reasonable doubt to obtain a conviction. Thus all elements of a statute must be present to declare a law violated. In this case, there is no allegation that the mayor possessed information which had not been made public. Without the existence of the non-public information, this statute is not implicated.

CONCLUSION

For the foregoing reasons, the comments of the mayor at the county commission meeting did not violate any criminal statute, and thus no criminal prosecution is warranted based upon this conduct.

Having respectfully answered the request in full, I submit this report as my official findings and opinion.



JASON L. LAWSON
DISTRICT ATTORNEY GENERAL
15TH JUDICIAL DISTRICT, TENNESSEE

9-27-2021

To County Commission Chairman Jewell, and Hon Branden Bellar County attorney,

We are compelled to file a formal complaint against Mayor Stephen Chambers concerning his actions at the Special called Commission meeting on **7/19/2021**. This letter is that complaint and request for an official investigation. We also request this be read and spread on the minutes of the commission meeting.

The 7-19-2021 special called meeting was to have discussion and possible vote over resolution: **2021-18-7222**, regarding the Water Department proposed construction of a building at 328 Broadway, behind the Administration Building on County property.

The Water & Sewer Department previously stated an urgency for this meeting to meet their deadlines. Thus, the purpose and sole purpose was for a decision by the commission on this issue.

Chairman Jewell convened the meeting, and immediately the meeting was interrupted by Mayor Chambers. He stated that a few commissioners had engaged in conversation about said building prior to the beginning of a Education committee meeting. Mayor Chambers was present at the time and never voiced any concern or objection to the conversations. He stated that this was a violation of the open meetings act, and that he had a recording of those conversations, and threatened legal action against the commissioners. He stated that County attorney Bellar had reviewed the recording. Chairman Jewell asked Attorney Bellar if it was a violation, he stated that it could be perceived by some as having a potential violation. He further stated that if the things discussed were also discussed in another open and advertised meeting that would remedy any possible violations.

Mayor Chambers read a list, complete with times, of the conversations prior to said meeting. During the ensuing discussions Mayor Chambers threatened to take this to the Water Board and assist them in filing suit against the County commissioners. Chairman Jewell asked to be provided the list of allegations, but Mayor Chambers refused saying it was for his use only. Chairman Jewell acting on Mr Bellar advice asked the Mayor to state each of his allegations and they were discussed to the Mayors satisfaction one at a time.

Our concern is, during the meeting, Mayor Chambers led us to believe that we as commissioners were under the threat of litigation regarding a violation of the "Open Meetings Act". On two occasions he alluded to the fact that we were under said threat. Even though he knew there was a remedy to any potential violation being proposed. The mayor as a member of the water board, said he would turn over evidence to them and advise them to pursue legal action against the commission.

This threat evidently resulted in some members to vote for the project, simply because they were intimidated and coerced to do so, to avoid the county being involved in litigation against itself.

Also, there was the topic of a utility extension having been completed prior to the commission's final approval of the project, with the mention of "who was going to reimburse the Water Department for it if it was not approved". We believe this and other concerns that were voiced, and the building being built by a county department on county property, necessitated the attention and vote of the commission, not just the mayor's approval.

We believe mayor Chambers actions were nothing more than an overt attempt to influence the vote. This resulted in possible "official oppression" by him, in possible violation of T.C.A. 39-16-403. Also T.C.A. 39-16-404 States "a public servant commits an offense who, by reason of information... attains or aids another to attain a benefit." Further T.C.A. 39-16-402 "a public servant commits an offense who, with intent to obtain benefit or harm another knowingly." Theses and any other statutes that were possibly violated need a thorough and serious investigation.

Our concern, these actions by the mayor resulted in the outcome of a million dollar plus project possibly being affected. Also placing the mayor's office and the commission in an adversarial position due to these litigious threats. Therefore, we officially request the county attorney investigate these actions for any ethical or legal infractions and pursue any legal recourse necessary against Mayor Chambers.

Respectfully requested the undersigned Hartsville/Trousdale Commissioners,

Jerry C. Ford
W. Ferguson
Alice R. Ford
Richard Foych
Darl Walker
Cory R. Dismore
Mary Clardy
Rachon Jones
Phil Davis
Steve White

Received 9-17-21
D. J. Arnold
Chair