

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

THE ASSOCIATED PRESS, KIMBERLEE KRUESI, CHATTANOOGA PUBLISHING COMPANY, GANNETT GP MEDIA, INC., MICHAEL ANASTASI, GOULD ENTERPRISES, INC., MEMPHIS FOURTH ESTATE, INC., MEREDITH CORPORATION, JEREMY FINLEY, SCRIPPS MEDIA, INC., BEN HALL, TEGNA, INC., JEREMY CAMPBELL, LISA LOVELL, TENNESSEE ASSOCIATION OF BROADCASTERS, TENNESSEE COALITION FOR OPEN GOVERNMENT, INC., and TENNESSEE PRESS ASSOCIATION,

Plaintiffs,

v.

THE TENNESSEE REGISTRY OF ELECTION FINANCE,

and

PAIGE BURCHAM-DENNIS, HANK FINCHER, DAVID GOLDIN, PAZ HAYNES, TOM LAWLESS, and TOM MORTON, in their Official Capacities as Members of the Tennessee Registry of Election Finance,

and

BILL YOUNG, in his Official Capacity as Executive Director of the Bureau of Ethics and Campaign Finance,

Defendants.

No. _____

COMPLAINT TO ENFORCE THE TENNESSEE OPEN MEETINGS ACT

Plaintiffs The Associated Press and its reporter Kimberlee Kruesi, Chattanooga Publishing Company, Gannett GP Media, Inc. and its editor Michael Anastasi, Gould Enterprises, Inc., Meredith Corporation and its reporter, Jeremy Finley, Memphis Fourth Estate, Inc., Scripps Media, Inc. and its reporter Ben Hall, TEGNA, Inc. and its news directors Jeremy Campbell and Lisa Lovell, the Tennessee Association of Broadcasters, the Tennessee Coalition for Open Government, Inc., and the Tennessee Press Association (collectively, “Plaintiffs”), for their complaint to enforce the Tennessee Open Meetings Act against the Tennessee Registry of Election Finance, its members, in their official capacities, Paige Burcham-Dennis, Hank Fincher, David Goldin, Paz Haynes, Tom Lawless, and Tom Morton, and Executive Director of the Bureau of Ethics and Campaign Finance Bill Young, in his official capacity, state as follows:

PARTIES, JURISDICTION, AND VENUE

1. This matter arises under the Tennessee Open Meetings Act (“OMA”), Tenn. Code §§ 8-44-101 to 8-44-201.

2. Plaintiff The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. AP has employees in Tennessee, has offices in both Memphis and Nashville, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Kimberlee Kruesi is a reporter with the AP in Nashville, Tennessee. Ms. Kruesi resides in Nashville, Tennessee.

3. Plaintiff Chattanooga Publishing Company (“Chattanooga Publishing”), owns and operates the *Chattanooga Times Free Press*, a daily newspaper in Hamilton County, Tennessee; three weekly newspapers in Tennessee; and three magazines in Tennessee. Chattanooga Publishing is a Tennessee corporation with its principal place of business in Chattanooga, Tennessee.

4. Plaintiff Gannett GP Media, Inc. (“Gannett”) is the publisher of the Nashville-based daily newspaper *The Tennessean*. Other Gannett-affiliated publications in Tennessee include *The Commercial Appeal* (Memphis), *Columbia Daily Herald*, *The Daily News Journal* (Murfreesboro), *The Jackson Sun*, *The Knoxville News-Sentinel*, *The Leaf-Chronicle* (Clarksville), and *The Oak Ridger* (Oak Ridge). Gannett is a Delaware corporation with its principal place of business in McLean, Virginia. Gannett, either directly or through subsidiaries or affiliates, has employees in Tennessee, has multiple offices in Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Michael Anastasi is the Vice President and Editor of *The Tennessean*. Mr. Anastasi resides in Franklin, Tennessee.

5. Plaintiff Gould Enterprises, Inc., d/b/a Main Street Media TN (“Main Street Media”), is the publisher of eleven weekly newspapers in middle Tennessee. Main Street Media is a Tennessee corporation with its principal place of business in Gallatin, Tennessee.

6. Plaintiff Memphis Fourth Estate, Inc. d/b/a Daily Memphian (“Daily Memphian”) is a nonprofit daily online publication covering news in the Memphis area. The Daily Memphian is a Tennessee nonprofit corporation with its principal place of business in Memphis, Tennessee.

7. Plaintiff Meredith Corporation (“Meredith”) owns and operates WSMV-TV, a television station based in Nashville, Tennessee. Meredith is an Iowa corporation with its principal place of business in Des Moines, Iowa. Meredith, either directly or through subsidiaries, is licensed by the FCC to broadcast from Nashville, Tennessee, has employees in Tennessee, has an office in Nashville, Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Jeremy Finley is the Chief Investigative Reporter for Meredith’s WSMV television news station in Nashville, Tennessee. Mr. Finley resides in Nashville, Tennessee.

8. Plaintiff Scripps Media, Inc. (“Scripps Media”) owns and operates WTVF-TV, a television station based in Nashville, Tennessee. Scripps Media is a Delaware corporation with its principal place of business in Cincinnati, Ohio. Scripps Media, either directly or through subsidiaries, is licensed by the FCC to broadcast from Nashville, Tennessee, has employees in Tennessee, has an office in Nashville, Tennessee, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Ben Hall is an investigative reporter at WTVF-TV. Mr. Hall resides in Nashville, Tennessee.

9. Plaintiff TEGNA Inc. (“TEGNA”) owns and operates WBIR-TV, a television station based in Knoxville, Tennessee, and WATN-TV and WLMT-TV, television stations based in Memphis, Tennessee. TEGNA is a Delaware corporation with its principal place of business in Tysons, Virginia. TEGNA, either directly or through subsidiaries, is licensed by the FCC to broadcast from Knoxville and Memphis, has employees in Tennessee, has offices in Knoxville and Memphis, is registered to do business in Tennessee, and conducts business in Tennessee. Plaintiff Jeremy Campbell is the News Director for WBIR. Mr. Campbell resides in Knoxville, Tennessee. Plaintiff Lisa Lovell is the News Director at WATN-TV and WLMT-TV. Ms. Lovell resides in Cordova, Tennessee.

10. Plaintiff the Tennessee Association of Broadcasters (“TAB”) is the trade association for radio and television broadcasters in Tennessee. The TAB is a Tennessee nonprofit corporation with its principal place of business in Nashville, Tennessee.

11. Plaintiff the Tennessee Coalition for Open Government, Inc. (“TCOG”) is an organization dedicated to promoting citizen access to public records and meetings in Tennessee. TCOG is a Tennessee nonprofit corporation with its principal place of business in Nashville, Tennessee.

12. Plaintiff the Tennessee Press Association (“TPA”) is the trade association for 126 Tennessee newspapers. The TPA is a Tennessee nonprofit corporation with its principal place of business in Knoxville, Tennessee.

13. Defendant the Tennessee Registry of Election Finance (the “Registry”) is an independent entity of the Tennessee state government, created by Tenn. Code §§ 2-10-202 to 2-10-203. Pursuant to Tenn. Code § 2-10-101(d) and § 2-10-301(b), the Registry is responsible for the enforcement of laws governing campaign finance disclosure requirements and campaign contribution limits.

14. Defendants Paige Burcham-Dennis, Hank Fincher, David Goldin, Paz Haynes, Tom Lawless, and Tom Morton (collectively, the “Registry Members”) currently serve as the six members of the Registry, having been duly appointed to five-year terms as required by law. They are only being sued in their official capacities.

15. Defendant Bill Young (“Director Young”) currently serves as Executive Director of the Bureau of Ethics and Campaign Finance, of which the Registry is a division. He is only being sued in his official capacity.

16. This Court has jurisdiction in this action pursuant to Tenn. Code §§ 8-44-106(a), 16-1-101, and 16-11-101.

17. Venue for this action is proper in this Court.

THE TENNESSEE CONSTITUTION AND OPEN MEETINGS ACT

18. Article 1, Section 19 of the Tennessee Constitution provides:

That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak,

write, and print on any subject, being responsible for the abuse of that liberty.

19. The Tennessee Supreme Court has explained that “in the first two sentences of th[is] section, the Constitution provides freedom of the press, open government and freedom of speech.” *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). “Clearly, the Open Meetings Act implements the constitutional requirement of open government.” *Id.*

20. The General Assembly has declared “it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” Tenn. Code § 8-44-101(a).

21. The OMA requires that “[a]ll meetings of any governing body . . . be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code § 8-44-102(a).

22. The Tennessee Supreme Court has explained that a “governing body” under the OMA includes “any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.” *Dorrier*, 537 S.W.2d at 892.

23. A “meeting” is defined under the OMA to be “the convening of a governing body of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter.” Tenn. Code § 8-44-102(b)(2).

24. Email communications may be a meeting under the OMA if the email communications constitute “either an intentional or inadvertent ‘convening . . . for which a quorum is required’ for the purpose of making a decision.” *Johnston v. Metro. Gov’t of*

Nashville & Davidson Cty., 320 S.W.3d 299, 310 (Tenn. Ct. App. 2009) (citing Tenn. Code § 8-44-102(b)(2)).

25. Meetings are required to be properly noticed under the OMA. Tenn. Code § 8-44-103.

26. “All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed.” Tenn. Code § 8-44-104(b).

27. Moreover, “[n]o . . . informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of” the OMA. Tenn. Code § 8-44-102(c).

28. Tennessee Governor Bill Lee has suspended specific, limited portions of the OMA during the ongoing COVID-19 pandemic in Executive Order No. 16. But Executive Order No. 16 “does not in any way limit existing quorum, meeting notice, or voting requirements under law” Ex. 1 at 3 (Exec. Order No. 16 at ¶ 1(b) (Mar. 20, 2020)).

29. Suit may be brought by “any citizen of this state” to enforce the OMA. Tenn. Code § 8-44-106(a).

30. The remedies available to a citizen who brings a complaint to enforce the OMA include, among other things, a permanent injunction and court supervision of the violating parties for a period of one year. Tenn. Code § 8-44-106(c)–(d).

THE REGISTRY’S EMAIL VOTE

31. On or about April 1, 2020, Director Young contacted the six members of the Registry by email and/or telephone, asking each Registry Member for his or her vote on whether to approve a settlement offer made by State House Representative Joe Towns to resolve outstanding civil penalties levied by the Registry.

32. On or about April 1, 2020, the Registry voted to approve a settlement offer from Representative Towns in the amount of \$22,000 by sending emails to Director Young. The \$22,000 was offered to settle fines of \$65,000 owed to the Registry and \$1,100 owed to the Tennessee Ethics Commission. Pursuant to the agreement, the Ethics Commission is to be paid the entire amount owed it, whereas the Registry will receive \$44,100 less than it was owed for the civil penalties it levied against Representative Towns.

33. Registry Members Paz Haynes, Paige Burcham-Dennis, Hank Fincher, and David Goldin voted, via email, in favor of approving the proposed settlement with Representative Towns.

34. Registry Members Tom Lawless and Tom Morton voted, via email, against approving the proposed settlement with Representative Towns.

35. In an email sent to Registry Members and Tennessee Ethics Commission Board Chair Charles Traugher on the morning of April 2, 2020, Director Young explained the events that led to the settlement, including that he “polled each member of the Registry Board regarding whether to accept the settlement offer” from Representative Towns and that “[t]he Registry Board has now voted via email 4-2 to accept Representative Towns’ counsel’s settlement proposal.” Ex. 2 at 1.

36. In an email dated April 2, 2020, Registry Member Tom Morton said the following regarding the email vote: “[t]his was a roll call vote the results of which with details should be made public.” Ex. 3 at 1.

37. The only details that have been made public are the fact of the email vote and the “official tally” of the email votes. Ex. 2 at 1; Ex. 3 at 1. The Registry Members’ emails constituting the vote have not been made public and other details about the email vote—

including who moved to accept the settlement and who seconded the motion—are also not available to the public.

38. In an on-the-record interview, Defendant Tom Lawless, Chairman of the Registry, said regarding the Registry’s April 1, 2020 email vote: “I do not feel that it was an appropriate meeting and was not an appropriate action under open meetings (law).” Ex. 4 at 1 (Sam Stockard, *Email Vote for Towns’ Settlement Draws Dissent*, DAILY MEMPHIAN (Apr. 7, 2020)).

39. Because the Registry’s vote occurred via email, rather than in a properly noticed public meeting, its actions violated the OMA.

COUNT I

VIOLATION OF TENNESSEE OPEN MEETINGS ACT

40. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–39 above.

41. The Registry is a “governing body” within the meaning of Tenn. Code Ann. § 8-44-102(b)(1)(A).

42. The Registry voted via email to approve the settlement offer made by Representative Towns on or about April 1, 2020.

43. The email vote was conducted in secret, a violation of Tenn. Code § 8-44-101(a).

44. The email vote was a “meeting” pursuant to Tenn. Code § 8-44-102(b)(2) because it constituted the convening of the Registry for which a quorum was required for the purpose of making a decision regarding the settlement offer from Representative Towns.

45. The meeting was not public, a violation of Tenn. Code § 8-44-102(a).

46. The email vote was not made by public vote, public ballot, or public roll call, a violation of Tenn. Code § 8-44-104(b).

47. The email vote was not made in a properly noticed public meeting, a violation of Tenn. Code §§ 8-44-102(a)-(b).

48. The email vote was made in violation of Tenn. Code § 8-44-102(c), which provides that “[n]o . . . informal assemblages, or electronic communications shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.” Tenn. Code § 8-44-102(c).

49. The Registry’s email vote therefore violated the OMA.

50. No adequate remedy exists at law to protect the rights of Plaintiffs and other members of the public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Pursuant to Tenn. Code § 8-44-106(b), file written findings of fact and conclusions of law holding that the Defendants’ email vote constitutes a violation of the Tennessee Open Meetings Act;

B. Pursuant to Tenn. Code § 8-44-106(c), enter a permanent injunction enjoining Defendants from any future violations of the Tennessee Open Meetings Act, including but not limited to the use of email to circumvent the OMA by voting on, deciding, and/or deliberating on public business;

C. Pursuant to Tenn. Code § 8-44-106(d), retain jurisdiction over the parties and subject matter for a period of one year from the date of entry of its final judgment, and order Defendants to report in writing semi-annually to the Court on compliance with the Tennessee Open Meetings Act;

D. Grant Plaintiffs an award of their reasonable expenses and costs incurred in this action to the fullest extent allowed under law or statute; and

E. Grant such other relief as the Court deems just and proper.

Dated: April 29, 2020

Respectfully submitted,

By: /s/ Paul R. McAdoo _____
Paul R. McAdoo
Tennessee BPR No. 034066
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
6688 Nolensville Rd., Suite 108-20
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Phone: 615.823.3633
Facsimile: 202.795.9310
pmcadoo@rcfp.org

Counsel for Plaintiffs

EXHIBIT 1



STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

No. 16

**AN ORDER ENSURING GOVERNMENT CONTINUES TO FUNCTION
OPENLY AND TRANSPARENTLY DURING THE COVID-19 EMERGENCY WHILE
TAKING APPROPRIATE MEASURES TO PROTECT THE HEALTH AND SAFETY
OF CITIZENS AND GOVERNMENT OFFICIALS**

WHEREAS, on March 12, 2020, I issued Executive Order No. 14, which declared a state of emergency and waived certain laws to facilitate the response to Coronavirus Disease 2019 (COVID-19), and on March 19, 2020, I issued Executive Order No. 15, which superseded Executive Order No. 14 and, in addition to reiterating the existence of a state of emergency, took a number of additional measures in furtherance of the treatment and containment of COVID-19; and

WHEREAS, the findings in Executive Order No. 15 are incorporated herein by reference; and

WHEREAS, it is critical to limiting the community spread of COVID-19 that private and governmental entities of all types eliminate large public gatherings and conduct business remotely by electronic means to the greatest extent possible; and

WHEREAS, to this end, guidance from the White House and Centers for Disease Control and Prevention (CDC) advises that Americans should “avoid social gatherings in groups of more than 10 people” and advises that older persons and persons with serious underlying health conditions should remain at home; and

WHEREAS, state, county, and municipal governing bodies must continue to meet to carry out essential functions, including, but not limited to, considering annual budgets or special budgetary items in response to COVID-19 or measures providing regulatory flexibility or other means to treat and contain COVID-19; and

WHEREAS, in accordance with state and federal guidance, during this continuing emergency, the interest of public health and safety requires avoiding large gatherings of people in the same physical location; and

WHEREAS, despite these constraints on holding public meetings, maintaining open, public access to government proceedings, as guaranteed by Article I, Section 19 of the Tennessee Constitution and the Open Meetings Act, codified in Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is of critical importance; and

WHEREAS, in a March 20, 2020, letter, the Tennessee Coalition for Open Government acknowledged the need to balance these interests, stating that, in light of the COVID-19 outbreak, governing bodies should be able to meet electronically regarding essential business, so long as they provide electronic access to the public and reasonable safeguards to ensure transparency; and

WHEREAS, other state entities have recently taken measures balancing the protection of public health and safety with the need to ensure that government continues to function and remains open to the public, including:

On March 13, 2020, the Supreme Court of Tennessee issued an order suspending in-person court proceedings through March 31, 2020, subject to certain narrow exceptions for essential proceedings, and, even in those exceptional cases, limited attendees to attorneys, parties, witnesses, security officers, and other necessary parties. The Supreme Court's order further "urged [judges] to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing" and suspended "[a]ny Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact."

Beginning March 16, 2020, the Lieutenant Governor and Speaker of the House of Representatives limited access to the Cordell Hull Building, while ensuring that the General Assembly's proceedings remained open to the public through the livestreaming services on its website, and I announced that the State Capitol would likewise be closed to tours and visitors; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107(e), provides that during a state of emergency, the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with the emergency, utilize all available state and local resources and state departments and personnel to combat the emergency, order evacuations, make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, the temporary suspension of selected state laws and rules and the other

measures contained herein are necessary to facilitate the response to the current public health emergency.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, in light of the continuing state of emergency to facilitate the response to COVID-19, do hereby order the following:

1. As a reasonable measure to protect the safety and welfare of Tennesseans while ensuring that government business may continue in a manner that is open and accessible to the public, the provisions of Tennessee Code Annotated, Title 8, Chapter 44, Part 1, are hereby suspended to the extent necessary to allow a governing body, as defined in Tennessee Code Annotated, Section 8-44-102, to meet and conduct its essential business by electronic means, rather than being required to gather a quorum of members physically present at the same location, if the governing body determines that meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak, subject to the following conditions:
 - a. All governing body meetings conducted by electronic means under this Order shall remain open and accessible to public attendance by electronic means, as follows: Each governing body must make reasonable efforts to ensure that the public access to the meeting via electronic means is live access, but if the governing body cannot provide such live public access despite reasonable efforts, the governing body must make a clear audio or video recording of the meeting available to the public as soon as practicable following the meeting, and in no event more than two business days after the meeting; and
 - b. This Order does not in any way limit existing quorum, meeting notice, or voting requirements under law, and governing bodies are urged to provide the public with clear notice of the meeting agenda and how the public can access the meeting electronically at a time and location reasonably accessible to all members of the public; and
 - c. The provisions of Tennessee Code Annotated, Section 8-44-108(c), remain in effect; and
 - d. All such meetings shall be conducted in a manner consistent with Article I, Section 19 of the Tennessee Constitution.
2. Pursuant to Tennessee Code Annotated, Sections 58-2-107 and 58-2-118, I hereby authorize all governing bodies, state departments and agencies, and political subdivisions of the state, and other agencies designated or appointed by the governor to make, amend, and rescind orders and rules as necessary to conduct electronic meetings adhering to the provisions and spirit of the Tennessee Constitution and Open Meetings Act.

3. Given the findings underlying, and general applicability of, this Order, Tennessee Code Annotated, Section 8-44-108(b)(3), which requires each governing body to provide findings to the Secretary of State concerning the need for a meeting where a quorum is not physically present, is hereby suspended.
4. Any law, order, rule, or regulation inconsistent with this Order is hereby suspended.
5. This Order shall remain in effect until 12:01 a.m., Central Daylight Time, on May 18, 2020, at which time the suspension of any state laws and rules and my authorization pursuant to Tennessee Code Annotated, Section 58-2-118, shall cease and be of no further force or effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 20th day of March, 2020.



GOVERNOR

ATTEST:



SECRETARY OF STATE



EXHIBIT 2

On April 2, 2020 at 9:49 AM William Young <William.Young@tn.gov> wrote:

Registry Board Members and Ethics Commission Chair Traugher---Per the below emails in red, I polled each member of the Registry Board regarding whether to accept the settlement offer of \$22,000 from Representative Towns' counsel to resolve outstanding civil penalties owed by Representative Towns of \$65,000 owed to the Registry Board and \$1,100 owed to the Ethics Commission. I also spoke by phone with each Registry Board member on this matter both in my capacity as Executive Director as well as acting legal counsel for the Bureau of Ethics and Campaign Finance ("Bureau"). Finally, I have fully discussed this matter with Janet Kleinfelter with the Tennessee Attorney General's Office.

The Registry Board has now voted via email 4-2 to accept Representative Towns' counsel's settlement proposal. Of the \$22,000 to be paid by Representative Towns, \$1,100 would be allocated to completely pay off the civil penalties owed to the Ethics Commission, thereby negating the need for the Ethics Commission to approve this settlement proposal, The remaining \$20,900 would be applied to resolve the outstanding \$65,000 in civil penalties owed to the Registry Board. As you know, Representative Towns is now current on all filings due with the Bureau and has pledged to remain current on a going forward basis.

General Kleinfelter will work out the details with Representative Towns' counsel, including establishing a date certain when this settlement amount will be paid to the Bureau. In the meantime, based on the Attorney General's advice and because this matter is now resolved, Janet Williams with our Office will advise both the Shelby County Election Commission and the Secretary of State that Joe Towns is no longer disqualified from running for re-election to his Tennessee House seat.

Please let me know if you have any further questions. And please all stay safe out there in these troubling times. Bill

EXHIBIT 3

Janet Kleinfelter

From: William Young <William.Young@tn.gov>
Sent: Thursday, April 2, 2020 10:43 AM
To: George Morton; THOMAS LAWLESS
Cc: David Golden; Paige Burcham; Paz Haynes; henry@henryfincherlaw.com; Charles Melvin; Janet Williams; Janet Kleinfelter; Lance Frizzell
Subject: RE: [EXTERNAL] Re: Settlement Offer from Representative Joe Towns

Tom M---As we discussed you are wanting the official tally of who voted yea and nay. The votes were:

AYE

Paz Haynes
Paige Burcham-Dennis
Hank Fincher
David Goldin

NAY

Tom Lawless
Tom Morton

All—Please let me know if you need anything further. Bill

Bill Young
Executive Director, Bureau of Ethics and Campaign Finance
404 James Robertson Pkwy., Suite 104
Nashville, TN 37243
615-741-7959

From: George Morton <gtmortonjr@yahoo.com>
Sent: Thursday, April 2, 2020 10:32 AM
To: THOMAS LAWLESS <tomlawless@comcast.net>
Cc: William Young <William.Young@tn.gov>; David Golden <david@goldengroupllc.com>; Paige Burcham <burchampaige@aol.com>; Paz Haynes <whaynes@bonelaw.com>; henry@henryfincherlaw.com; Charles Melvin <charlesmelvin213@yahoo.com>; Janet Williams <Janet.Williams@tn.gov>; Janet Kleinfelter <Janet.Kleinfelter@ag.tn.gov>; Lance Frizzell <Lance.Frizzell@tn.gov>
Subject: [EXTERNAL] Re: Settlement Offer from Representative Joe Towns

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

This was a roll call vote the results of which with details should be made public .
Tom Morton

Sent from my iPhone

EXHIBIT 4



Email vote for Towns' settlement draws dissent

By [Sam Stockard](#)

Updated: April 07, 2020 4:40 PM CT | Published: April 07, 2020 4:40 PM CT

A Tennessee Registry of Election Finance member is questioning the validity of an email vote the board took in the midst of the COVID-19 pandemic to consider a settlement for civil penalties levied against state Rep. Joe Towns.

Tom Lawless, a Republican appointee to the board, said Monday, April 6, he disagrees with the way the vote was conducted, even though Registry members were asked individually to cast email votes on a \$22,000 civil penalty for Towns in an agreement reached between his attorney, state Rep. Mike Stewart and the Attorney General's Office.

Registry of Election Finance cuts Towns \$44,100 break



"I do not feel that it was an appropriate meeting and was not an appropriate action under open meetings (law)," Lawless said.

"More importantly, the whole purpose of our entity is transparency and openness to the public, the media and the Legislature, and I don't like the way it happened."

State Rep. Joe Towns Lawless was one of two board members who voted against a settlement with Towns in a 4-2 decision that let him knock about \$45,000 off civil penalties totaling \$66,100 from the Registry of Election Finance and Ethics Commission.

The Attorney General's Office advised Registry of Election Finance Executive Director Bill Young the vote would be appropriate.

"And to be quite honest, it's one of those things, I don't know how it cannot be the right thing to do," Young said. "I wish we hadn't gotten the settlement offer when we did. I wish we'd had more time to consider it. I wish we weren't in the middle of a coronavirus, which has caused us a hard time to get together."

Towns faced a total of \$66,100 in civil penalties by the Registry and the state's Ethics Commission, mainly for refusing to file campaign finance reports for the 2018 election. He brought all of his reports up to date before the March 6 meeting, where he apologized to the board and said he would not make the same mistake again, calling himself "the prodigal son."

Towns faced a noon deadline April 2 to pay his penalties and qualify for the 2020 election ballot. Democratic candidate Dominique Primer has also qualified to run for the District 84 seat in Memphis.

Asked what rationale it used to advise the board it didn't need to advertise a meeting or conduct a meeting - even a conference call - to hold a vote, Attorney General's Office spokeswoman Samantha Fisher said in an email statement: "I know that seems confusing, but the Registry does not need to meet for a settlement offer."

Likewise, Stewart, a Nashville Democrat, said he felt the board's action was "completely legal."

"To me, I don't think that even requires a formal meeting," Stewart said.

Registry member Paz Haynes, a Democratic appointee who voted in favor of the settlement, said he feels the board took the email vote based on Attorney General

Herbert Slatery's advice it would comply with "relevant" open meeting statutes.

"I think as a whole, the board relied on our legal opinion and voted on the settlement of a dispute that was in litigation or was headed toward litigation," Haynes said.

However, he said board members should come back at a later meeting and, without revealing any attorney-client privilege information, explain their rationale.

Lawless, though, isn't sure the board's decision would stand up if someone filed a legal challenge. And, he contends, the Attorney General's Office shouldn't be representing the Registry of Election Finance as its attorney for collections.

Before the Registry members voted last week, Wednesday night and early Thursday, April 1-2, quite a bit of back and forth took place between the AG's Office, Stewart and the Registry.

According to Lawless, the Registry was offered settlements of \$5,000, \$10,000, \$12,000 and, finally, \$20,000, before the matter was put to a vote. Young confirmed several offers were made.

Lawless even acknowledged he and Registry member David Golden discussed their views that initial offers were too low in a phone call. Such a discussion itself could be considered a violation of open meetings laws, too, because members aren't supposed to deliberate toward a decision outside public meetings.

Though he admitted talking to Golden about another matter, Lawless, a Nashville attorney, said he was under the impression the Attorney General's Office was prepared to do whatever it wanted because it was representing the Registry, and that irritated him.

“I don’t think they can. And, by God, they’d better not or Herbert Slatery’s gonna have an opportunity to sit in the chair across from me,” Lawless said.

Lawless was also upset that Stewart threatened to file a lawsuit if the Registry didn’t vote on the matter. Stewart said he “personally” didn’t threaten legal action.

Haynes and Young declined to comment on whether Stewart was prepared to file suit, citing attorney-client privilege.

Despite disagreement within the Registry, Tennessee Coalition for Open Government Executive Director Deborah Fisher sees a clear violation of the state’s open meetings law.

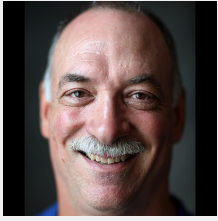
Governor signs executive order on electronic local government meetings

Fisher said she doesn’t understand the legal reasoning of the Attorney General’s Office and pointed out the settlement paid by Towns could be challenged. She noted such an email vote would not be allowed under the executive order made by Gov. Bill Lee during the COVID-19 pandemic.

“I don’t believe that the action that the board took in violation of the Open Meetings Act is valid. I just don’t think the board can vote and take action outside of a meeting,” Fisher said.

TOPICS

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