

## BOARD OF MAYOR AND ALDERMEN

July 6, 2012

A special called meeting of the Board of Mayor and Aldermen was held on July 6, 2012 at 4:00 p.m. in the Council Chambers of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Mark Billingsley, Ernest Chism, John Drinnon, Greg Marcom, and Mike Palazzolo. Staff present: Patrick Lawton, Tom Cates, George Brogdon, Stacy Ewell and Dotty Johnson.

### **Call to Order**

Mayor Sharon Goldsworthy called the meeting to order.

Mayor Goldsworthy stated the meeting had been called, on the advice of counsel, to discuss and consider involvement regarding certain school matters that have entered into litigation at the federal court level.

City Attorney Tom Cates came forward and addressed the Board.

Mr. Cates stated he had explained, during the closed session of the Board held previous to this meeting, the options that were available to the Board. He gave some background as to the options.

There had been litigation pending for many months involving the existing school systems in Shelby County and now that litigation is becoming focused as to whether the six municipalities can form their own districts. Several days ago Shelby County, through the action of its commission, authorized filing of a lawsuit directly attacking the Norris/Todd Act (Public Act I) primarily on two basis. One that it was special class legislation in that it was only applicable by its function to Shelby County and this is a violation of the Tennessee Constitution. Second, that by the authority of granting under that act, if the municipalities were to create their own school system, it would be based upon an act of the State General Assembly that was unconstitutional because it would result in the lack of diversity that is presently in the municipal systems.

Mr. Cates stated his view was that there was very adequate reasons why that position is wrong and the issue for the Board to consider is whether or not to allow the State Attorney General, which was sued by Shelby County Commission, to represent the City as the Attorney General in this litigation and defend the constitutionality of the acts that are charged. If the Board chose to do this, there would be nothing else to do but read about it. The second option would be to authorize lawyers on the City's behalf, which he had suggested be Burch, Porter and Johnson, of which he is a member, to move to intervene in the case which would say to the Court, "Our interests are effective, we need and want to be heard on the issues that are going to affect our community."

Mr. Cates stated the one thing that will be presented in a very short period of time is the motion that Shelby County Commission has brought before the Court, asking that the Court enjoin or stop the election that is set for August 2. That election being to ask our citizens in Germantown whether or not they authorized the creation of a new municipal school system in Germantown and are willing to spend a certain amount of money to support it.

The position of the firm of Burch, Porter and Johnson, as was expressed to the Mayors of the six municipalities, has been that there was urgency about this matter. If delayed, our interests might not be heard, would not be heard and the Court could do something before we had a chance to even ask to be heard, and this is what happened. Because of various logistical reasons, the municipalities were not able to make a decision about getting their own lawyers, if that was what they wanted to do and Judge Mays, by increment of an order last night, without anyone being heard on it, ruled that the Shelby County Commission's motion would be granted and Judge Mays has set a status conference in this case for next Monday night at 5:00 p.m. Mr. Cates stated he expected, at that meeting, the Judge will listen to the

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parties and ask their schedules and then set a hearing on whether or not the issue, injunctions, to stop the elections. If the Board authorizes the law firm to file the papers seeking to intervene so that the City of Germantown, through counsel, can be heard Monday and also enter the motion before the injunction is set.

Mr. Cates stated Collierville had a special called meeting earlier in the day and they had authorized the retention of Burch, Porter and Johnson. He also stated that the balance of the other six municipalities, will want to take this action and will agree to share in the expense incurred with attorney's fees, expert witnesses and costs for the occasion.

If the City goes forward and wishes to retain this counsel, the motion should state that the Mayor would be authorized to negotiate with those other municipalities to share in an arrangement with the fees so that it does not have to come back to the Board. The practice has been to share the fees either on a straight per capita basis or on population basis.

Motion by Mr. Marcom, seconded by Mr. Drinnon, to employ Burch, Porter and Johnson, PLLC to represent the City in the litigation now pending involving schools to bring the City into that litigation so it may assert its interests in that litigation at the rates set forth in the schedule presented to this meeting with the Mayor to be authorized to reach an agreement with the other municipalities which employ Burch, Porter and Johnson to share the fees and expenses of this litigation.

Alderman Marcom stated he had faith in the State Attorney General to represent the state in its interest in his case. He felt it was important for the City of Germantown to have its own representation there and that is why he made the motion.

Alderman Billingsley echoed Alderman Marcom's comments. He supported our Attorney General but he stated he felt we had a vested interest in this paramount decision and he felt the voters of Germantown should be allowed the opportunity to vote on municipal schools. The citizens want and need to be heard.

Alderman Drinnon stated the citizens need to know that we did not start this but we are trying to do what is best for the children of this area.

Mayor Goldsworthy stated she also echoed what had been said. She stated we had been on this journey for a good amount of time and we had come to a point where not all the decisions are in our hands by any means. It is in the interest of the community that these specific impacts and implications of the Court decision of whether it is more immediate to enjoin with the election as scheduled, or to the questions that are brought in this suit, that it simply makes a lot of good sense for us to have representation employed by our municipality and in conjunction with the other municipalities as well.

ROLL CALL: Marcom--yes, Drinnon-yes, Palazzolo-yes, Billingsley-yes, Chism--yes. Motion approved.

**ADJOURNMENT**

There being no further business to be brought before the Board, the meeting was adjourned.

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Sharon Goldsworthy, Mayor

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Dotty Johnson, City Clerk/Recorder