



May 22, 2020

SENT VIA EMAIL

Mr. Jesse Evans, Chairperson (evans.jesse.accboe@gmail.com)
Mr. Charles Knapper, Vice Chairperson (knappercq@msn.com)
Ms. Willa J. Fambrough, Secretary (icook_ieforyou@bellsouth.net)
Mr. Rocky Raffle (rockyaffle@gmail.com)
Ms. Patricia A. Till (patricia.till@accgov.com)
Athens-Clarke County Board of Elections
P.O. Box 1868
Athens, Georgia 30603

SENT VIA EMAIL

Ms. Charlotte Sosebee (charlotte.sosebee@accgov.com)
Director of Elections and Voter Registration
Athens-Clarke County Unified Government
P.O. Box 1868
Athens, Georgia 30603

Re: Public Notice for March 9, 2020 Special Called Meeting of the Board of Elections

Dear Athens-Clarke County Board of Elections Members and Director Sosebee:

As director of UGA's First Amendment Clinic which is committed to protecting expressive freedoms and fostering an informed citizenry, I write to express concern regarding the public notice that the Board of Elections (the "Board") provided for its March 9, 2020 Special Called Meeting and to encourage the Board, going forward, to utilize non-burdensome supplemental notice methods to ensure that principles of open and transparent government are upheld.

The March 9, 2020 Special Called Meeting (the "Meeting") involved a vote by the Board on the significant legal and fiscal matter of whether to retain outside counsel to represent them at a March 11, 2020 State Election Board hearing regarding the Board's decision to use paper ballots in the 2020 presidential preference primary. The Board voted 3-2 in the affirmative, resulting in the retention and payment of an outside attorney. Although the Board may have technically satisfied the minimum notice requirements for the Meeting under Georgia's Open Meetings Act, O.C.G.A. § 50-14-1, *et seq.*, the practical reality is that few, if any, members of the public could have received the notice because of how it was executed (discussed more specifically below). The lack of effective notice deprived the general public

of the ability to exercise their right to attend, publicly comment, or report on the Meeting until after it, and the Board vote it entailed, had concluded.

This outcome is contrary to the spirit and purpose of Georgia’s Open Meetings Act which “was enacted . . . to protect the public . . . from ‘closed door’ politics”¹ and which exists to provide “the public with the information needed to participate in the democratic process and to insist that government officials are held accountable for their actions.”² Effective notice of the Meeting could readily have been achieved through such non-burdensome supplemental measures as posting notice on the Board’s social media and website pages, emailing local journalists directly, and/or submitting a meeting announcement to be read on the local public radio station. While the Open Meetings Act does not require these specific forms of notice for special called and emergency meetings, they are fully consistent with the underlying principles of the Act and ensure that the notice given is effective, as opposed to merely perfunctory.

I therefore urge the Board to utilize such alternative notice methods in the future to ensure that Athens-Clarke County residents have a full and fair opportunity to engage with their local government, even in circumstances where time is short.

Timeline of Relevant Events

On March 3, 2020, the Athens-Clarke County Board of Elections voted 3-2 to use paper ballots in the presidential preference primary, rather than Georgia’s digital voting system. County Attorney Judd Drake subsequently warned the Board that the state would challenge its action and, indeed, the State Election Board promptly set a hearing for March 11, 2020, to review the Board’s decision. In response, Drake authorized hiring government law specialist Thomas Mitchell to represent the Board at the hearing.³ Notwithstanding Mitchell’s hiring, Board of Elections Chairperson Jesse Evans took steps to retain another outside attorney, Bryan Sells, to also represent the Board. On Saturday, March 7, 2020, Chairperson Evans notified Board of Elections Director Charlotte Sosebee that he intended to hold a special called meeting at 9 a.m. on Monday, March 9, 2020, in order for the Board to approve hiring Mr. Sells. Chairperson Evans instructed Director Sosebee to provide public notice of the Meeting. Accordingly, Director Sosebee placed a notice on the front door of the Athens-Clarke County Elections Office on Sunday, March 8, 2020, a day that the office was closed.

¹ *Atlanta Journal v. Hill*, 257 Ga. 398, 399, 359 S.E.2d 913, 914 (1987).

² *Sunshine Laws: A Guide to Open Government in Georgia*, GEORGIA FIRST AMENDMENT FOUNDATION (6th ed. 2019).

³ Lee Shearer, *Athens-Clarke elections board ran up \$40K legal bill in failed paper ballot move*, ATHENS BANNER-HERALD, Apr. 9, 2020, <https://www.onlineathens.com/news/20200409/athens-clarke-elections-board-ran-up-40k-legal-bill-in-failed-paper-ballot-move>.

Additionally, at 7:29 p.m. on, Saturday, March 7, 2020, a Board of Elections administrative assistant e-mailed to the classified sales manager at the Athens Banner-Herald a notice for the Meeting to be held at 9 a.m. on Monday, March 9, 2020. The email stated, "Run this wherever you can please. Thank you." The classified sales manager first responded to this request on Monday, March 9, 2020 at 10:46 a.m. -- over an hour after the 9 a.m. Meeting had ended and the Board had voted 3-2 to approve hiring Mr. Sells.

On March 11, 2020, the State Election Board voted 5-0 to overturn the Board's paper ballot decision that Attorney Sells was hired to defend. He later submitted a bill for \$23,617.72, which has since been approved to be paid. This was in addition to the \$18,015.28 billed by government law specialist Thomas Mitchell, for a total of \$41,633 in legal fees associated with unsuccessfully defending the Board of Election's paper ballot decision.

Ineffective Notice Amounts to No Notice

As noted above, Georgia's Open Meetings Act exists to protect against closed-door politics and to facilitate both the public's participation in the democratic process and citizens' ability to hold government officials accountable for their actions. None of these goals are served by technical compliance with the Act's notice requirements if the practical result is that the public is not actually notified. But that is precisely what happened with the March 9, 2020, Special Called Meeting.

For special called meetings, the Open Meetings Act requires that at least 24 hours in advance of the meeting, written or oral notice be given to the newspaper that serves as the legal organ for the county, and notice must be posted at the regular meeting place. *See* O.C.G.A. § 50-14-1(d)(2). Here, notice of the Monday, March 9, 2020, meeting was sent to the Athens Banner-Herald, which is Athens-Clarke County's legal organ, on Saturday evening, March 7, 2020. Additionally, a notice was posted on the Elections Office door sometime on Sunday, although it is unclear if this was done a full 24 hours prior to the Meeting. Even if these forms of notice technically complied with the Open Meetings Act's requirement, they did not practically serve to inform the public. With the Elections Office being closed on Sundays, it was unlikely that members of the public would travel there and see the notice posted on the door in time to attend the Meeting at 9 a.m. on Monday. Additionally, the notice sent to the Athens-Banner Herald never ran because it was emailed to the classified sales manager at 7:39 p.m. on Saturday evening, March 7 -- an unlikely time for the sales manager to be working, either then or the next day which was a Sunday. By the time the sales manager had prepared the notice for publication on Monday morning, the Meeting was already over. As such, members of the public received no actual notice of the Meeting, unless they happened to travel to the closed Elections Office on Sunday, or before 9 a.m. on Monday morning, and saw the notice posted on the door.

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The Meeting held on March 9, 2020 was brief but contentious, based on the audio-recording made publicly available after the fact, and undoubtedly involved issues of public concern. In a total of 16 minutes, the Board voted 3-to-2 to hire additional outside counsel -- a decision that ultimately cost the county an additional \$23,617.72 for a case where the Board was already represented and in a case that was ultimately lost. Regardless, however, of the merits of the Board's decision on March 9, members of the public had the right to be present when it was made. Lack of effective notice that the meeting was occurring foreclosed the exercise of this right.

To ensure that principles of open government and transparency are protected going forward, I again urge the Board to adopt non-burdensome supplemental methods of notice, particularly for special called and emergency meetings, such as posting notice on the Board's social media and website pages, emailing local journalists directly, and/or submitting a meeting announcement to be read on the local public radio station. These steps will ensure that the notice provided is actually effective, and will allow the public to exercise their right to participate in local democracy.

Sincerely,

Clare R. Norins

Clare R. Norins
Director, First Amendment Clinic
University of Georgia School of Law

Cc. Mayor Kelly Girtz (via email)
kelly.girtz@accgov.com