

## **MEMORANDUM**

**TO:** The Polk County Commission

**FROM:** The Polk County Ethics Committee, The Rev. John Ragland, Chairman; Mr. Travis Ragsdale and Mr. Ron Ray members

**DATE:** July 29, 2016

**REGARDING:** Alleged Ethics Violations by Commissioner Jason Ward

On July 19, 2016, Mr. Matt Denton brought to our attention alleged violations of the Polk County Ethics Code by County Commissioner Jason Ward raised by County Commissioners Scotty Tillery, Ray Barber and Jennifer Hulsey.

We met with Mr. Denton at the Polk County Administrative building in Cedartown at 10:30 a.m. Present at this meeting were Mr. Matt Denton, Mr. Jason Ward, the three members of the Ethics Committee and a representative of the radio press and the newspaper. Mr. Denton placed in our hands the following materials:

1) The request from Commissioners Scotty Tillery, Ray Barber and Jennifer Hulsey directed to the County Attorney Brad McFall regarding "Ethics Code Review of Possible Violations"

2) The response from County Attorney Brad McFall to the above request

3) The request that the ethics committee review the matters referenced in 1) above

4) A copy of the Code of Ethics for elected Polk County officials

County Commissioner

5) Jason Ward was present and presented the Ethics Committee with his written response to 1) above.

Mr. Denton explained to us that our deliberations were closed to the public while all other matters, such as receiving testimony, and our final determination in the matter open to the public.. At this point all parties were dismissed and the Ethics Committee commenced to evaluate and discuss the matter before us.

6) During the course of our meeting we asked Mr. Denton for a copy of the minutes of the Special Called Meeting of June 28, 2016 and for a copy of Polk County GA Code of Ordinances section 2-23.

### **History and Findings of Fact**

June 28, 2016 during a called special meeting of the Polk County Commission, Commissioner Hulsey moved to amend the original motion to adopt the 2017 budget as presented to remove the position of Assistant County Manager and the secretarial position once held by one Tessie Lott Payton and money from these positions be given as an additional 1.25% pay raise across the board to all employees. This amendment was adopted by the Commission by a vote of 3 -2, with Commissioners Hulsey, Barber and Tillery voting in the affirmative and Commissioners Thaxton and Ward in the negative.

Commissioner Tillery queried the County Attorney, Brad McFall about the appropriateness of Commissioner Ward voting on a motion to eliminate a position for which he had applied. Mr. McFall replied that it was his legal opinion, which had been stated in a previous email to the Board, that Commissioner Ward was free to vote on any matter before the Board, except the selection of the candidate for the position of Assistant County Manager.

Chairman Burford informed the members she was vetoing the amendment.



On July 6, 2016, Commissioners Tillery, Barber and Hulsey forwarded via email their concerns about possible ethics violations to the County Attorney, Mr. Brad McFall.

On July 7, 2016, Mr. McFall responded to their concerns with a Memorandum, addressed to Mr. Matt Denton, and Commissioners Tillery, Hulsey, Barber, Burford, and Thaxton.

On July 15, 2016, Commissioner Hulsey on behalf of herself and Commissioners Tillery and Barber sent an email to Mr. Denton requesting an Ethics Committee review of the matters brought to Mr. McFall's attention.

On July 15, 2016, Mr. Denton contacted Chairman, John Ragland to call a meeting of the Polk County Ethics Committee, which subsequently occurred on Tuesday, July 19, 2016 at the County Administrative Building in Cedartown, GA.

### **Questions before the Ethics Committee**

1. Did Commissioner Jason Ward violate Polk County Code of Ethics Section 2-79 "*A county official shall not vote on an ordinance or amendment in a meeting that would directly affect his private business, business interests or property, nor such interests of his immediate family.*"?
2. Is an alleged violation of Polk County GA Code of Ordinances Section 2-23(c)(6) "*Commissioners, officials, employees and other persons who attend executive session are prohibited from discussing or in any other way disclosing information, legal advice or legal strategy discussed in the executive session unless: a. The disclosure is required by law; b. The disclosure is a part of a judicial or formal administrative procedure; or c. The majority of the board authorizes the disclosure.*" a matter to be considered by the Polk County Ethics Committee?
3. Did Commissioner Jason Ward violate Polk County Ethics Code Section 2-116 "*No elected official, appointed officer, or employee of the county or any agency or political entity to which this division applies shall knowingly engage in any business or transaction or have any financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which would tend to impair his independence of judgment or action in the performance of his official duties.*"?
4. Did Commissioner Jason Ward violate Polk County Ethics Code Section 2-74 (3) "*It is the intent of this section that county officials avoid any action whether or not specifically prohibited by section 2-73 which might result in, or create the appearance of the following: (1) Using public office for private gain; (2) Impeding government efficiency or economy; (3) Affecting adversely the confidence of the public in the integrity of the government; or (4) Purposefully or intentionally violating laws involving moral turpitude or defined by state law.*"? (Underline to identify the particular violation alleged by complainants.)



### **The Committee's Judgment**

As to question 1: No. (Unanimous)

As to question 2: No. (Unanimous)

As to question 3: No. (Unanimous)

As to question 4: No (Unanimous)

### **Reasoning and Opinion of the Committee**

1. Did Commissioner Jason Ward violate Polk County Code of Ethics Section 2-79 "*A county official shall not vote on an ordinance or amendment in a meeting that would directly affect his private business, business interests or property, nor such interests of his immediate family.*"?

We concur with the legal opinion of the County Attorney Brad McFall, and the General legal counsel for the Association of County Commissioners of the State of Georgia, Kelly Pridgen, that Commissioner Jason Ward should recuse himself from voting on motions before the County Commission that involve the selection of a candidate to hire for a position in the county for which he has applied, other than that, it is business as usual for Commissioner Ward.

We concur with their legal opinion especially because of the language of Code of Ethics Section 2-79 "*A county official shall not vote on an ordinance or amendment in a meeting that would directly affect his private business, business interests or property, nor such interests of his immediate family.*" (Underlining added for emphasis and clarity). We find Commissioner Ward's vote against the amendment on June 28 not to directly affect his interests or the interests of his immediate family since it did not directly involve the selection of an individual for a position for which he himself had applied. For example, if candidate B was presented for hire for the position applied for by Mr. Ward then it would be a clear conflict of interest if he voted on candidate B. But this was not the case.

We further find the absence of ethics violation all the more evident in view of the fact that all Commissioners, including Mr. Ward, understood he lacked a majority support of the Board of Commissioners to hire him for the position that was the subject of elimination. In effect Mr. Ward was no longer a viable candidate for the position. He knew it and the rest of the commissioners knew it. Therefore, there was absolutely no conflict of interest and no violation of Polk County Code of Ethics section 2-79. We find that Mr. Ward was within his rights as a duly elected representative of the people of Polk County serving as a member of the Board of Commissioners to vote on the budget for 2017 and any amendments with respect to it.

And, finally, we find and it is our opinion that the complainants have misapplied Section 2-79 to the matter of Mr. Ward's vote on June 28. Section 2-79 defines ethical conduct by a county official with respect to voting on an "*ordinance or amendment*" (to an ordinance).. Mr. Ward's vote on June 28 with regard to the budget and an amendment to the motion regarding the 2017 budget was not a vote on an ordinance or an amendment to an ordinance.

2. Is an alleged violation of Polk County GA Code of Ordinances Section 2-23(c)(6)

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strategy discussed in the executive session unless: a. The disclosure is required by law; b. The disclosure is a part of a judicial or formal administrative procedure; or c. The majority of the board authorizes the disclosure.” a matter to be considered by the Polk County Ethics Committee?

We find complainants in their complaint incorrectly label Polk County GA Code of Ordinances Section 2-23(c) as “Polk County **Ethics Code 2-23 c:**” An alleged violation of Polk County GA Code of Ordinances Section 2-23(c) is not a matter to be handled by the Ethics Committee.

We find rather and it is our opinion that Polk County GA Code of Ordinances section 2-23(c)(7) provides the proper remedy: *“Any commissioner, official, or employee that divulges, has previously divulged, or has threatened to divulge information, legal advice, or legal strategy discussed in an executive session may be excluded from participation in executive sessions by majority affirmative vote of the board of commissioners. A commissioner that divulges executive session information may be publicly sanctioned by a majority affirmative vote of the board of commissioners.”*

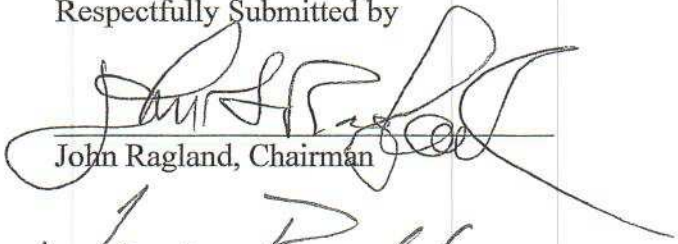
3. Did Commissioner Jason Ward violate Polk County Ethics Code Section 2-116 *“No elected official, appointed officer, or employee of the county or any agency or political entity to which this division applies shall knowingly engage in any business or transaction or have any financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which would tend to impair his independence of judgment or action in the performance of his official duties.”?*

We find and it is our opinion that Commissioner Ward was within his Constitutional rights of free speech to make the public statements alleged by complainants to be violations of Polk County Code of Ethics Section 2-116. Commissioner Ward as an elected representative of the people of Polk County to the Board of Commissioners is within his rights to express disagreement and to express his evaluation of actions by the Board of Commissioners made in open meetings. The other members of the Board have the right and access to the press to express a different perspective.

4. Did Commissioner Jason Ward violate Polk County Ethics Code Section 2-74 (3) *“It is the intent of this section that county officials avoid any action whether or not specifically prohibited by section 2-73 which might result in, or create the appearance of the following: (1) Using public office for private gain; (2) Impeding government efficiency or economy; (3) Affecting adversely the confidence of the public in the integrity of the government; or (4) Purposefully or intentionally violating laws involving moral turpitude or defined by state law.”?*

We find and it is our opinion that Commissioner Ward’s public comments with respect to the action or inaction of the members of the Board regarding the 2017 budget made in an open meeting is completely within his rights as an elected official and member of the Board of Commissioners of Polk County. Our system of governance encourages and allows for public debate, and disagreement. It’s part of our process of reaching consensus and resolution of matters. If Polk County Ethics Code Section 2-74(3) were applied as complainants allege, then all disagreement by the members of the Board with the other members of the Board would be stifled with the unwanted result of dictatorship by the majority, incursion upon, if not the elimination of the rights of the minority, with a resulting totalitarianism that puts an end to dissent.


Respectfully Submitted by



John Ragland, Chairman



Travis Ragsdale



Ron Ray