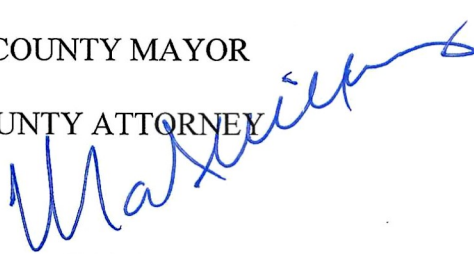




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MEMORANDUM

TO: MEMBERS OF THE COFFEE COUNTY COMMISSION
CC: DENNIS HUNT, COFFEE COUNTY MAYOR
FROM: MARK A. WILLIAMS, COUNTY ATTORNEY
DATE: APRIL 8, 2026
RE: COMMISSIONER JOSEPH MICHAEL HODGE

A handwritten signature in blue ink, appearing to read 'Mark Williams', is written over the 'FROM' and 'DATE' lines of the memorandum.

At the duly called meeting of the Coffee County Commission (the “Commission”) held on May 13, 2025, a significant majority of the members in attendance voted to refer a very serious concern regarding the then recent actions of Commissioner Joseph Michael Hodge (“Commissioner Hodge”) to me for the investigation into his possible removal from office (a/k/a ousted from office). More specifically, it was alleged that Commissioner Hodge solicited the aid of the Mayor’s Administrative Assistant to help him remove certain documents from the County Mayor’s Office without the Mayor’s knowledge or approval, while the Mayor was out of the office and without going through the proper procedures (i.e., FOIA or simply asking the Mayor).

As I have previously mentioned on several occasions, ouster proceedings may only be instituted by the Attorney General, District Attorney General, or County and City Attorneys, within their respective jurisdictions.¹ The Commission is not authorized by statute to bring, or supervise, ouster proceedings against county officials.² Similarly, the County Mayor is not authorized under the ouster statutes to bring, or supervise, an ouster suit.³ With respect to counties in Tennessee, County Attorneys have a duty to investigate any complaint made in writing alleging that a county officer is guilty of any of the acts, omissions, or offenses set out in T.C.A. § 8-47-101, and upon determination of reasonable cause, to institute a proceeding in the appropriate court to oust such official.⁴ County Attorneys are also authorized to institute such actions on their own initiative without any complaint having been made.⁵ Thus, the determination of whether or not to bring an ouster falls solely on the specific one of these four (4) Attorneys investigating the complaint about the official.

¹ T.C.A. § 8-47-102 & 103.

² See T.C.A. 8-47-102 & 103; *Duncan v. Cherokee Ins. Co.*, 1987 WL 11329 (Tenn.Ct.App. 1987).

³ *Id.*

⁴ T.C.A. § 8-47-103. See Op. Tenn. Atty. Gen. 07-169 (December 21, 2007); Op. Tenn. Atty. Gen. 00-126 (August 7, 2000).

⁵ T.C.A. § 8-47-102

At least one member of the Commission has attempted on a number of occasions to place this matter on the Commission's agenda for discussion and/or suggesting that the legislative body should just vote to either oust, or not to oust, Commissioner Hodge. Given the Commission's lack of authority in the removal from office process, it is my opinion that such a vote would be contrary to the law, ineffective and, therefore, inappropriate.

Inasmuch as no ouster suit has been filed against Commissioner Hodge, it would seem to me that the lack of an ouster suit being filed would lead to the logical conclusion that one was not going to be brought. Nevertheless, to resolve any questions by any member of the Commission regarding the status of this matter, and in the interest of complete transparency with the Commission and the public at large, Mayor Hunt requested that I write a memo to you briefly explaining the ouster process as well as a brief summary of the reasons why I chose not to file an ouster suit against Commissioner Hodge.

I. RELEVANT LAW

1. Reasons for Ouster from Office

Article 7, Section 1 of the Tennessee Constitution provides that county officers shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly. "The terms 'malfeasance' and 'neglect of duty' are comprehensive terms and include any wrongful conduct that affects, interrupts, or interferes with the performance of official duty."⁶ Pursuant to T.C.A. § 8-47-101, county officials shall be ousted from office for:

1. Knowing or willful misconduct in office;
2. Knowing or willful neglect of duties required by law;
3. Voluntary intoxication in a public place;
4. Engaging in illegal gambling; or
5. Committing any act violating any penal statute involving moral turpitude⁷.

The actions of Commissioner Hodge which were complained of appeared to me to potentially fall under either numbers 1 or 5 of this list.

2. Burden of Proof Required to Remove an Official from Office

Ouster is purely a civil proceeding.⁸ In order to institute an action to oust an official, the individual investigating the complaint only needs to determine that there is reasonable cause to believe that an such an act has occurred.⁹ The level of proof required to successfully remove an

⁶ State ex rel. Complainant v. Ward, 43 S.W.2d 217, 219 (Tenn. 1931).

⁷ Moral turpitude is generally defined as an offense or a crime that is illegal but also shows a person's baseness and depravity. Examples of crimes involving moral turpitude include fraud and theft.

⁸ State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

⁹ T.C.A. § 8-47-102

official from office, however, is that of clear and convincing evidence.¹⁰ While this standard is less than beyond a reasonable doubt as required in criminal proceedings, it is a heightened burden over the typical standard in civil cases of preponderance of the evidence.¹¹ This heightened burden reflects the seriousness of removing a public official from office and ensuring that such actions are supported by highly reliable and compelling evidence.¹² The ouster statute does not require that a person be convicted of such an act, only that they committed the act. Thus, since ouster is purely a civil proceeding with a required burden of proof less than that required for a criminal conviction, a public official can still be ousted from office for violating the provisions of T.C.A. § 8-47-101 even if their actions are not prosecuted through the criminal justice system.

3. Committing an Act Violating any Penal Statute Involving Moral Turpitude

The Tennessee Court of Appeals has stated that “[m]isconduct that would sustain an indictment ... would support a proceeding under the Ouster Law.”¹³ Accordingly, if someone is indicted for an offense, that would appear to be sufficient reasonable cause for filing a proceeding for removal. The District Attorney General opined, however, in the local news media that, in his opinion, no crime had been committed by Commissioner Hodge and he did not intend to pursue a criminal case against him. The District Attorney General’s opinion would generally appear to remove number 5, although that does not completely end the analysis. Reasonable minds of jurors could differ on whether Commissioner Hodge’s actions violated any penal statute involving moral turpitude. Given the publicity in the local media over the DA’s statements, however, coupled with the standard of proof required to remove an official from office, I discounted the ability to pursue an ouster proceeding under number 5. The primary question then to me was, did Commissioner Hodge’s actions constitute knowing or willful misconduct in office?

4. Knowing or Willful Misconduct in Office

The terms “knowing” and “willful” as used in the ouster statute have been defined by the Tennessee Court of Appeals as encompassing “a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder.”¹⁴ The court also noted that the terms “knowingly” and “willfully” as used in ouster proceedings are “not confined to a studied or deliberate intent to go beyond the bounds of

¹⁰ State ex rel. Wolfenbarger v. Moore, 2010 Tenn. App. LEXIS 109 (2010).

¹¹ Id.

¹² Id.

¹³ State ex rel. Carney v. Crosby, 255 S.W.3d 593, 597 (Tenn.Ct. App. 2008).

¹⁴ Tennessee ex rel. Leech v. Wright, 622 S.W.2d 807, 817 (Tenn.1981) (citing Jordan v. State, 217 Tenn. 307, 397 S.W.2d 383, 398 (1965)).

the law.”¹⁵ The Court further said though that, it requires more than “simple negligence” to constitute willful or knowing misconduct.¹⁶

In a similar vein, the Tennessee Supreme Court has said that, “[p]roceedings under the Ouster Act should never be brought unless there is a clear case of official dereliction. This is a very drastic statute and should not be invoked except in plain cases that can be certainly proved.”¹⁷ In a different case, the Tennessee Supreme Court similarly said that, “[t]hese derelictions should amount to knowing misconduct or failure on the part of the officer if his office is to be forfeited; mistakes in judgment will not suffice.”¹⁸ As a result, even if one found reasonable cause (the lowest standard of proof) to institute an ouster proceeding against a county official, the Tennessee Supreme Court would seem to say that it should not be brought unless it is clear that the heightened level of clear and convincing proof could be satisfied.

II. ANALYSIS

It was clear to me from the statements provided by witnesses that Commissioner Hodge certainly intended to remove documents from the Mayor’s office without the Mayor’s knowledge or consent. It was also clear that this actual removal of the documents was to take place while the Mayor was out of the office and that Commissioner Hodge solicited the assistance of the Mayor’s Administrative Assistant in this effort. In his attempt to obtain the documents there was also no effort by Commissioner Hodge to follow an appropriate or accepted procedure, such as filing a FOIA request or simply asking the Mayor to see them. In fact, the solicitation of help from the Mayor’s Administrative Assistant to remove the documents when the Mayor was not there would suggest a clear intent to avoid proper process. Even though there is no evidence that the removal of the documents actually took place and the documents at issue ended up being innocuous¹⁹, the fact remained that some action had been taken in furtherance of the end goal.

My concern was that even if this was sufficient to constitute reasonable cause, it might not rise to the level of clear and convincing proof that would be required to prove clear case of official dereliction. Certainly, if the planned removal of the documents had occurred, it would have been both willful and considered by many to be misconduct, and would most likely constitute reasonable cause. It was not clear to me though that the actions taken by Commissioner Hodge up to the point the effort was discovered would rise to the level articulated by the Courts to justify his removal from office. When viewed in the light most favorable to Commissioner Hodge the attempted action could have been seen as simply a mistake in judgment, which as noted by the Tennessee Supreme Court, is not enough to oust someone from office.

¹⁵ Jordan, 397 S.W.2d at 399.

¹⁶ Id. (holding “simple negligence in discharging the duties of an officer does not constitute or amount to an officer acting knowingly or willfully”).

¹⁷ State ex rel. Wilson v. Bush, 208 S.W. 607, 609 (Tenn. 1919). See, e.g., McDonald v. Brooks, 387 S.W.2d 803, 806 (Tenn. 1965) (ouster suits should be brought only where the evidence of official dereliction is clear and convincing).

¹⁸ Vandergriff v. State ex rel. Davis, 206 S.W.2d 395, 397 (Tenn. 1937) (emphasis added).

¹⁹ The opening of the “box” of papers was broadcast live on social media by local news outlets.

The filing of an ouster suit would also have been both an expensive and distracting effort for the County. In addition to my attorney fees, if an ouster suit was filed and the effort to remove him from office was unsuccessful, the County would be required to reimburse Commissioner Hodge for his reasonable attorney fees.²⁰ Likewise, if either side appealed a judgment this would further have increased the cost to the County. Given the ongoing debate within the Commission over the appropriateness of bringing an ouster suit, I also believed that it would have also created continued a significant distraction to the effective operation of the Commission (more so than it already has), and would not have served the citizens of District 4, or of the County as a whole, in a meaningful way.

III. CONCLUSION

After considering the facts as applied to my understanding and interpretation of the law, the burden of proof required to be shown as well as the potential costs to the County together with the wellbeing of the County as a whole, I chose to take no action and not to file a suit seeking the removal of Commissioner Hodge from his office of County Commissioner. I understand that this memo will probably bring it all back up again in the local news media, but given the continued questioning regarding the status, the Mayor felt it was necessary. In the end, I believe it is up to the citizens of District 4 to decide if they want him to continue to represent them in the Commission. That is why we have elections. I hope this memo answers any questions you may have regarding this matter.

Lastly, while I am not privy to the exact health issues he currently faces, it is my understanding that Commissioner Hodge has some serious medical concerns. Accordingly, I would offer my prayers to him for a swift and complete recovery as well as for strength, peace and comfort to him, his family and friends while they navigate this difficult course together. I hope each of you will join me in that regard.

²⁰ See T.C.A. § 8-47-121