COUNTY AGENDA REQUEST

Department:	Legal	Presenter(s):	Dennis Davenport / Steve Rapson
Meeting Date:	Thursday, November 14, 2013	Type of Request:	New Business

Wording for the Agenda:

Request for Fayette County to pay for legal representation for Ms. Marilyn Watts.

Background/History/Details:

A request has been made to the Fayette County Board of Commissioners by a sitting member of the Fayette County Board of Elections for the Board of Commissioners to authorize legal representation to her in a pending litigation matter.

State Law authorizes a county to purchase liability insurance insuring the members of the governing body and such supervisors, administrators, employees, or other elected or appointed officers against personal liability for damages arising out of the performance of their duties. Fayette County has routinely provided legal defense for employees and appointed officials where litigation occurs based upon the performance of their duties.

The Fayette County Board of Commissioners is being asked to consider providing legal representation for Ms. Marilyn Watts.

What action are you seeking from the Board of Commissioners?

A Board decision on whether to provide legal representation for Ms. Marilyn Watts.

If this item requires funding, please describe:

Dependent upon the Board's direction and action.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	Yes
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

LAW OFFICES
McNALLY, FOX, GRANT & DAVENPORT
A PROFESSIONAL CORPORATION
100 HABERSHAM DRIVE
FAYETTEVILLE, GEORGIA 30214-1381

WILLIAM R. McNALLY
PATRICK J. FOX
PHILIP P. GRANT
DENNIS A. DAVENPORT
PATRICK A. STOUGH
MEREDITH F. McCLURE

TELEPHONE: (770) 461-2223
FACSIMILE: (770) 719-4832
(770) 461-5863

MAILING ADDRESS:
POST OFFICE BOX 849
FAYETTEVILLE, GA 30214-0849

MEMORANDUM

TO: FAYETTE COUNTY BOARD OF COMMISSIONERS

FROM: McNALLY, FOX, GRANT & DAVENPORT, P.C. PAD

RE: LEGAL REPRESENTATION OF APPOINTED OFFICIALS

DATE: NOVEMBER 6, 2013

A request has been made to the Fayette County Board of Commissioners ("BOC") by a sitting member of the Fayette County Board of Elections ("BOE") for the BOC to authorize legal representation to her in a pending litigation matter.

State law authorizes a county to purchase liability insurance insuring the members of the governing body and such supervisors, administrators, employees, or other elected or appointed officers against personal liability for damages arising out of the performance of their duties. O.C.G.A. § 45-9-20. Fayette County has routinely provided legal defense for employees and appointed officials where litigation occurs based upon the performance of their duties.

Your Claims-Made Coverage for Government Risks identifies an insured as: "Your current … appointed officials, but only for the conduct of their duties as your … appointed officials." Section IV. State law and your Risk Coverage are tied to the actions at issue being in the performance of duty for coverage to be allowed.

The pending litigation at issue was commenced by the Fayette County Republican Party to remove Marilyn Watts from the BOE. Ms. Watts was appointed by the Fayette County Republican Party for a four-year term and can only be removed for cause. A copy of the petition is attached for your review. The reasons given in the petition as the bases for her removal are: 1. Her appointment was invalid because she was appointed by her son, who, at the time, was not a properly registered elector; 2. She failed to impartially and ethically discharge her duties through various acts of nonfeasance and misfeasance, to wit: a. she knew her son failed to meet his residency requirement; b. she failed to report his illegal registration; c. she obstructed the hearing by failing to comply with a subpoena; and d. she accepted service of an action by her son against the Board of Elections.

The question before the BOC is whether the action filed against Ms. Watts is based upon allegations which arise out of the performance of her official duties. Number 1 does not. The arguments provided in Number 2 are based upon the same allegations which were heard by the BOE in August of 2012, a hearing in which Ms. Watts did not participate in any way. It appears none of the allegations arise out of the performance of her official duties.

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

Scott Fabricius, as Chairman of the Fayette County Republican Party, and individually Petitioner v. Marilyn Watts, as Fayette County Republican Party Designee to the Fayette County Bourd of Elections Respondent	Civil Action File No. 2013 V-0816

FILED IN OFFICE
CLERK OF SUPERIOR COURT
FAYETTE COUNTY, GA.
2013 AUG 30 PM 2 43
SHEILA STUBBARD, CLERK

PETITION TO REMOVE MARILYN WATTS FROM THE FAYETTE COUNT BOARD OF ELECTIONS

COMES NOW the Petitioner in the above styled case, and petitions this court to remove Marilyn Watts as an official member of the Fayette County Board of Elections by showing this Court the following:

PARTIES TO THE PETITION

1. Petitioner, Scott Fabricius, is the Chairman of the Fayette County Republican Party, hereinafter, "FCRP." He is acting in his capacity as the Chairman of the party and individually.

2. Respondent is Marilyn Watts, appointee of the Fayette County Republican Party to the Fayette County Board of Elections. She is a resident of Fayette County, Georgia, and her attorney of record, John Sparks, has agreed to Acknowledge Service of Process.

JURISDICTION

3. Fayette County Superior Court is the proper jurisdiction and venue for this matter, pursuant to O.C.G.A 21-2-212, and the local legislation authorizing this particular board in 1994 H.B. No. 1669 assigns this case to the "senior judge in time of service" of the Superior Court.

a.) O.C.G.A. 21-2-212(a) states in part, that "the senior judge in time of service . . . shall appoint the recommendations of the grand jury . . . as county registrars." In addition, it further states, that "Except in the case in which the local Act creating a county board of elections and registration

specifically provides for the appointment and removal by another authority. ***such judge*** will have the right to remove one or more of such registrars at any time for cause after notice and hearing." (Emphasis added.)

b.) The local Act creating this board. Local legislation H.B. No. 1669 Section 5. states in part. "Each member of the board . . . shall be subject to removal . . . for cause after notice and hearing, ***in the same manner and by the same authority as provided for removal of registrars.***" (Emphasis added.) Therefore, the senior superior court judge has the right to remove said registrars and/or Board of Elections members.

AUTHORITY

4. O.C.G.A 21-2-212 and the local legislation H.B. No. 1669 (1994) and all subsequent reaffirming acts. authorizes such procedures for removal of Board of Elections members for cause after notice and a hearing by the Superior Court.

BASIS FOR REMOVAL

5. The removal of Marilyn Watts as the appointee of the Fayette County Republican Party to the Board of Elections ("Board") is predicated on the following grounds which will be proven by affidavits, documentary evidence, and additional sworn testimony procured through discovery:

6. The initial appointment of Ms. Watts was invalid. and she fails to recognize the legitimacy and the authority of the Fayette County Republican Party. and its leadership. as is indicated below:

a.) Ms. Watts was appointed by her son, Lane Watts, in his capacity as Chairman of the FCRP, despite the fact that at the time of the said appointment. Mr. Watts was not a properly registered elector.

b.) The County Committee of the FCRP has voted for the removal of Ms. Watts as the Party's representative to the Board, and has issued a Resolution to effectuate that removal.

7. Ms. Watts has failed to impartially and ethically discharge her duties as a member of the Board as required by her oath through various acts of nonfeasance and malfeasance as indicated below:

a.) Ms. Watts had full knowledge that then FCRP Chairman, Lane Watts, her son who was living with her. failed to meet residency requirements as an elector in the precinct in which he registered to vote.

b.) Ms. Watts. after being appointed by her son Lane Watts to the Board of Elections, in her sworn capacity as a member of the Board to uphold the Constitution and laws of the State of Georgia. failed to report his illegal registration.

c.) Ms. Watts attempted to thwart the official investigation into her son's illegal registration. in various ways, including obstructing the Board's official hearing on the matter. by her

failure to comply with a duly executed subpoenas to appear before the Board to provide sworn testimony.

d.) Ms. Watts, despite having been recused, further allowed herself, as a representative of the Board, to be "served" with legal papers, with this Superior Court, which was filed by her son's attorney (an attorney also representing her interests) which included affidavits containing falsehoods, which resulted in the Board waiving numerous defenses.

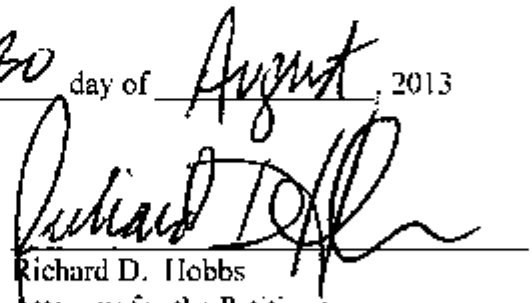
e.) The Board concluded, after hearing from several sworn witnesses establishing Lane Watts' false registration, that it had an ethical obligation to report their findings to the District Attorney, and did so.

f.) Although the District Attorney believed that this matter warranted further investigation and has referred it to the Office of the Secretary of State Investigation Division, this investigation does not circumvent or limit this Court's authority under O.C.G.A 21-2-212, et. al., to remove the Republican Party's designee to the Board of Elections for cause.

THEREFORE, the Petitioner moves this Court to authorize the use of subpoenas both for fact witnesses and production of documents that is in the full custody and control of Marilyn and Lane Watts and to subject them to be cross-examined under oath. That subpoenas be immediately issued, and that all Motions to Quash be made and ruled in an expeditious manner, in light of the Respondent's prior refusal to acknowledge and comply with same.

WHEREFORE, Petitioner prays that a hearing be scheduled to consider the merits of this petition, to establish the rules of discovery and to afford the Petitioner all of the rights allowed under Georgia Law.

Respectfully submitted this the 30 day of August, 2013



Richard D. Hobbs
Attorney for the Petitioner
State Bar number 358220
101 Devant St. Suite 403
Fayetteville, GA 30214
770-716-0200 office
770-716-6270 fax

Attached Statutes

O.C.G.A. 21-2-21(a)
establishing the venue and authority of the Senior Superior Judge.

Local Legislation H.B. No. 1669,
reaffirming that Board of Elections members are subject to being removed by the Senior Superior Court Judge.

O.C.G.A 21-2-21- Service and meetings of board of registrars (Georgia Code (2013 Edition))

(a) Except in the case in which a county has a board of elections and registration, the judge of the superior court in each county or the senior judge in time of service in those counties having more than one judge shall appoint in accordance with this Code section, upon the recommendation of the grand jury of such county, not less than three nor more than five judicious, intelligent, and upright electors of such county as county registrars. The grand jury shall submit to the judge the names of a number of electors equal to twice the number of persons to be appointed and the appointment shall be made therefrom and shall be entered on the minutes of the court. When making such appointments when appropriate, the judge will designate one of the registrars as chief registrar who shall serve as such during such registrar's term of office, and such designation shall likewise be entered on the minutes of the court. It shall be the duty of the clerk of the superior court to certify the appointments and designation to the Secretary of State within 30 days after the appointments and designation, and commissions shall be issued as for county officers. When certifying such names to the Secretary of State, the clerk of the superior court shall also list the addresses of the registrars. Except in the case in which the local Act creating a county board of elections and registration specifically provides for the appointment and removal by another authority, such judge will have the right to remove one or more of such registrars at any time for cause after notice and hearing. In case of the death, resignation, or removal of a registrar, the judge shall appoint a successor who shall serve until the next grand jury convenes, at which time the grand jury shall submit to the judge the names of two judicious, intelligent, and upright electors of such county; and the judge shall make an appointment from said list, such successor to serve the unexpired term of such registrar's predecessor in office. In the event the grand jury is in session at the time of any such death, removal, or resignation, such grand jury shall immediately submit the names of said electors to the judge for such appointment. Each such appointment or change in designation shall be entered on the minutes of the court and certified as provided in this Code section.

State of Georgia

1994

OFFICE OF SECRETARY OF STATE

I, Max Cleland, Secretary of State of the State of Georgia, do hereby certify that the seven pages of photocopied matter hereto attached contain a true and correct copy of an Act approved by the Governor on March 24, 1994 numbered Act Number 666 (H.B. No. 1669) and entitled: "An Act To provide for the re-creation of the board of elections of Fayette County; and for other purposes"; all as the same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 12th day of October, in the year of our Lord One Thousand Nine Hundred and Ninety-four and of the Independence of the United States of America the Two Hundred and Nineteenth.

Max Cleland

SECRETARY OF STATE.

EXHIBIT "B"

AN ACT

To provide for the re-creation of the board of elections of Fayette County; to define its powers and duties concerning primaries and elections; to provide a method for appointment, resignation, and removal of its members; to provide for qualifications and terms of its members; to provide for a chairperson, clerical assistants, and other employees; to provide for compensation for such persons and the members of the board; to provide for matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. There is created in Fayette County a board of elections which shall have jurisdiction over the conduct of primaries and elections conducted within the county.

Section 2. The board of elections for Fayette County shall be composed of three members, each of whom shall be an elector and resident of the county. Members of the board of elections in office on the effective date of this Act shall serve out their remaining terms. When their respective terms have expired, the process of appointment of new members to the board of elections shall occur consistent with the direction of this section. The three members of the board of elections authorized by this Act shall be appointed to the board as follows: one member shall be

Governor in the general election preceding the appointment of the member; one member shall be appointed by the political party which received the second-highest number of votes within the county for its candidate for Governor in the general election preceding the appointment of the member; and one member shall be selected by the county governing authority. Each of the above appointments from the political parties shall be made as follows: the member shall be nominated by the chairperson and ratified by the county executive committee of each of the above-designated political parties at least 30 days before the beginning of the term of office or within 30 days after the creation of a vacancy in the office. As each member serves his or her term, successors shall be appointed for terms of four years and until their successors are duly appointed and qualified. Appointments shall be made by the respective bodies which appointed the members of the board of elections originally. Terms of office shall begin on the first day of February following the expiration of the immediately preceding term of office. ~~The board shall select one of its members to serve as chairperson at the pleasure of the board.~~

Section 3. No person who holds elective public office shall be eligible to serve as a member during the term of such elective office, and the position of any member shall be deemed vacant upon such member's qualifying as a candidate for elective public office.

Section 4. Certification of the appointment of each member shall be made by the governing authority of the

county filing an affidavit with the clerk of the superior court, no later than 15 days preceding the date at which such member is to take office, stating the name and residential address of the person appointed and certifying that such member has been duly appointed as provided in this Act. The clerk of the superior court shall record each of such certifications on the minutes of the court and shall certify the name of each such appointed member to the Secretary of State and provide for the issuance of appropriate commissions to the members, within the same time and in the same manner as provided by law for registrars.

Section 5. Each member of the board shall be eligible to succeed himself or herself and shall have the right to resign at any time by giving written notice of his or her resignation to the appointing body and to the clerk of the superior court and shall be subject to removal from the board at any time for cause after notice and hearing in the same manner and by the same authority as provided for removal of registrars.

Section 6. In the event a vacancy occurs in the office of any appointed member before the expiration of his or her term by removal, death, resignation, or otherwise, the original appointing body shall appoint a successor to serve the remainder of the unexpired term as provided for in Section 2 of this Act. The clerk of the superior court shall be notified of interim appointments and record and certify such appointments in the same manner as the regular appointment of members.

Section 7. Before entering upon his or her duties, each member shall take substantially the same oath as required by law for registrars and shall have the same privileges from arrest.

Section 8. The board of elections shall, with regard to the preparation for, conduct, and administration of elections and primaries, succeed to and exercise all duties and powers granted to and incumbent upon the board of elections in existence on the effective date of this Act.

Section 9. The board shall be responsible for the selection, appointment, and training of poll workers in elections and such workers shall be appointed, insofar as practicable, from lists provided to the board by the county executive committee of each political party.

Section 10. The chairperson of the board of elections shall be the chief executive officer of the board of elections and shall generally supervise, direct, and control the administration of the affairs of the board of elections pursuant to law and duly adopted resolutions of the board of elections. The board of elections shall fix and establish, by appropriate resolution entered on its minutes, directives governing the execution of matters within its jurisdiction.

Section 11. Compensation for the members of the board of elections, clerical assistants, and other employees shall be such as may be fixed by the governing authority of the county. Said compensation shall be paid wholly from county funds. *

INCONSISTENT W/ LATER LAWS.

Section 12. The governing authority of the county shall provide the board with such proper and suitable offices and with such clerical assistants and other employees as the governing authority shall deem appropriate.

Section 13. The words "election," "elector," "political party," "primary," "public office," "special election," and "special primary" shall have the same meaning ascribed to those words by Code Section 21-2-2 of the O.C.G.A., as amended, unless otherwise clearly apparent from the text of this Act.

Section 14. This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

Section 15. All laws and parts of laws in conflict with this Act are repealed.

WATTS

AUSTIN & SPARKS ATTORNEYS

JOHN B. AUSTIN
JOHN T. SPARKS
ALFRED L. EVANS, III

AUTHOR'S E-MAIL:
JSPARKS@AUSTINSPARKS.COM

WWW.AUSTINSPARKS.COM

October 28, 2013

Via email (dadaven@bellsouth.net)

Dennis A. Davenport, Esq.
McNally, Fox, Grant & Davenport, P.C.
100 Habersham Drive
Fayetteville, Georgia 30214

Re: *Fabricius v. Watts*
Civil Action File No. 2013V0816
Fayette County Superior Court
(the "Marilyn Watts Action")

Dear Dennis:

This will confirm my telephone conversation with you on October 24, 2013, regarding the Marilyn Watts Action. Inasmuch as my client, Marilyn Watts, is being sued as a Member of the Fayette County Board of Elections, Ms. Watts sent a request that Fayette County pay for her defense cost in the Marilyn Watts Action. At your request, she also sent a photocopy of the Petition filed in the Marilyn Watts Action in a subsequent correspondence.

You advised that it would take a few days to get the matter on the agenda for a County Commission Board meeting and that you did not have time to get it on the agenda for the October 24, 2013, meeting. You agreed to have it placed on the agenda for the November 14, 2013, meeting.

I advised that the Response to the Petition in the Marilyn Watts Action was due October 29, 2013, and that I would prepare and file it. I will send you a photocopy for your files.

On a related matter, I believe that Commissioner Stephen D. Brown ("Commissioner Brown") must recuse himself, or be recused, from the vote on whether Fayette County should pay the defense costs in the Marilyn Watts Action. I base this on the following.

As you can see, the Petition in the Marilyn Watts Action is based upon an allegation that my client's son, Lane Watts, who was President of the Fayette County Republican Party, was not properly registered to vote at the time the Fayette County Republican Party nominated my client to an open seat on the Fayette County Board of Elections. These allegations are the same allegations made in a Challenge regarding Lane Watts' past voter registration filed by Richard Hobbs, Esq. and which were heard at the August 13, 2012, Board of Elections hearing. You will recall that the Board of Elections originally denied the Challenge but added superfluous matters to the Determination. Mr. Watts appealed the Determination and the Board of Elections ultimately entered a revised Determination merely denying the Challenge. That matter was concluded with the entry of a Consent Order in the Superior Court of Fayette County.

As you may or may not know, five (5) individuals, including Commissioner Brown, made written statements regarding Lane Watts' former voter registration in a letter dated September 1, 2012, which was published at a public meeting on September 8, 2012, of the Fayette County Republican Party (the "Defamatory Letter"). In the Defamatory Letter, the declarants, including Commissioner Brown, publically accused Mr. Watts of perjury.

On September 6, 2013, Lane Watts filed a lawsuit against the five declarants, including Commissioner Brown, alleging defamation *per se* based upon the statements contained in the Defamatory Letter (the "Defamatory Action").

Significant to the issue of payment of the defense costs in the Marilyn Watts Action is the fact that the Petition filed by Richard Hobbs, Esq. against Marilyn Watts in the Marilyn Watts Action is based upon the same allegations made against Lane Watts in the unsuccessful Challenge and in the Defamatory Letter.

Thus, Commissioner Brown, a named defendant in the Defamation Action, should be recused from any vote regarding payment of defense costs for Marilyn Watts in the Marilyn Watts Action.

Thank you for your consideration in this matter.

Very truly yours,

John T. Sparks, Sr.

cc: Client

L Watts

LAW OFFICES
McNALLY, FOX, GRANT & DAVENPORT
A PROFESSIONAL CORPORATION
100 HABERSHAM DRIVE
FAYETTEVILLE, GEORGIA 30214-1381

WILLIAM R. McNALLY
PATRICK J. FOX
PHILIP P. GRANT
DENNIS A. DAVENPORT
PATRICK A. STOUGH
MEREDITH F. McCLURE

TELEPHONE: (770) 461-2223
FACSIMILE: (770) 719-4832
(770) 461-5863

MAILING ADDRESS:
POST OFFICE BOX 849
FAYETTEVILLE, GA 30214-0849

October 22, 2013

Ms. Marilyn Watts
201 Patricia Lane
Fayetteville, Georgia 30214

Re: October 9, 2013 Letter requesting Legal Representation

Dear Ms. Watts:

I am in receipt of the above-referenced letter which you sent to the County Administrator, Mr. Steve Rapson. You are requesting the County provide you legal representation due to a petition being filed in superior court attempting to remove you from the Fayette County Board of Elections. Mr. Rapson has no knowledge of this lawsuit. Without further information to go on it is difficult to determine whether representation is available. Whatever you can share of the facts and circumstances alleged in the petition will be helpful in arriving at a determination whether representation is available.

Yours very truly,

Dennis A. Davenport
Interim County Attorney
Fayette County

DAD

Cc: Mr. Steve Rapson