

# Haywood County “Toeprints”

April 25, 2010

Vol. #1 Issue #5 (Subject: **Special Edition** - County Attorney Opinions at April 19<sup>th</sup> Board Meeting)

## What’s Happening?

The purpose of this newsletter is to inform Haywood County Taxpayers of what transpires at the bi-monthly County Commission Meetings. This newsletter will be written from the perspective of a casual observer, myself. Any **opinions** expressed will be mine or the County Attorney’s.

## Transcript of Chip Killian’s Opinions at Board of Commissioners meeting, April 19<sup>th</sup>, 2010.

Agenda Item, April 19, 2010: IV. Legal Comments –Issues Concerning Referendum and Political Statement – Leon M. “Chip” Killian, III, County Attorney.

County Attorney Chip Killian - [re: 4/19/10 video of meeting, [www.haywoodnc.net](http://www.haywoodnc.net) ] “I’ll take the easy one first, if you don’t mind, that would be the question of the referendum. A lot has been said the county engaging in certain borrowing activities without a vote of the people, and this is simply not what the constitution of the state says. The constitution says that the general assembly or counties shall not enact general laws related to the borrowing of money pledged by full faith, secured by and pledged by the faith and credit and contracting of other debts by counties without a vote of the people. So it’s the full faith and credit, which of course interpreted by the general assembly as meaning general obligation bonds.

The general assembly has the ability, of course, the lawful authority to approve other kinds of borrowing, and have done so, and there are a number of other kinds of borrowing including limited general obligation bonds which in some cases are required to be approved by voters and in some cases are not, and there are other kinds of security which is offered to secure debts that do not require a vote of the people. But more importantly not only is it not required, it is not even authorized.

And there is a case by the North Carolina Supreme Court which *Tucker vs State Board of ABC* which, interestingly, was offered by Judge Sam Erwin, which made it clear - it’s never been overruled, that vote such as this, sometimes known as straw votes, are not authorized are a nullity. So, it’s accepted law that local governments cannot call for referendums or elections without the authority of the general assembly, without a state law that authorizes them to do that.

These various voting, these various barring techniques and laws simply do not require or votes even authorize for these kinds of barings, other than a general obligation bond. So that’s I think the easy one, and that’s fairly clear.

The other one is not as easy, and that’s the question of political comments. I’m going to discuss this issue more from the standpoint of what I know the law would be if a case came before a court. I’m satisfied it would be. More so than to tell you that I found a black letter law that says one thing

or the other, but I can tell you that any court faced with the question of whether or not in a public meeting such as this, a regular meeting, where business of the county is being discussed and voted upon by the board, where members of the board were using that forum at taxpayer expense to make political speeches if you will political comments, answer questions concerning political issues, that would simply not be authorized.

For a number of reasons. I think most everyone could see that. If questions come to this board, of course, the procedure that’s been followed in the past has been that at the conclusion of the Public Comment Session, in the beginning of the meetings, the Chairman will typically summarize and try to answer, as best he can, the questions that have been raised, and will offer and afford other members of the board the opportunity to speak if they choose to, but that’s not the purpose of the Public Comment Session. That’s not even mentioned in the statute, which by the way was not passed until 2005, but Haywood County as been doing this for many prior to that. I’m not sure exactly how many years prior to that, but Haywood County has having a Public Comment Session at the beginning of the meeting for a good number of years, probably ten years or more.

And doing it twice a month. The statute only requires it to be done only once a month. But these Sessions are very much like public hearings that the intention and the purpose of this for the board to hear what people want to say. In other words, to express their first amendment rights to speak on whatever issue they want to speak to that involves the county. Now if something doesn’t involve the county, the chairman will call that speaker out of order, because that’s not what the purpose of the meeting is. But as far as the board is concerned, the board is sitting as a board, for purposes of conducting county business, not politicking to get elected again.

And I think they would unfair to the other members of the board, it would be unfair to the other candidates, for them to do that. So for that reason, the informal rule of this board has been simply not to allow that. I even asked a friend of mine who was the lieutenant governor of North Carolina, what would happen in the general assembly if this sort of conduct persisted. He said, well, of course you do get political comments from time to time, but they are kind of veiled and they aren’t really out and out political questions, and speeches, and if anyone engages in that sort of activity, I would call them out of order, and if they persisted, I would have them removed from the chamber. So it simply cannot be permitted in a business meeting such as this. The county can have public forums if they choose, and they have done that in many times in the past to discuss particular issues, to hear from the public, to answer questions, to have a two way exchange, and those kinds of things, but the purpose of these

meetings, these regular meetings of the board of county commissioners are to conduct county business and not to politick.”

Commissioner Mark Swanger -

“Just to clarify, if a member of the public asks a commissioner or candidate a purely political question, the commissioner should not answer that question.”

County Attorney Chip Killian -

“In my **opinion**, he should not, of course that’s really up to the chair, and the questions cannot be asked to individual members anyway. That would be out of order for a member of the public to ask an individual commissioner a question, unless that commissioner chose to want to answer that question in which I believe that would be in the chair’s prerogative whether of not to allow that commissioner to answer that question, but again, if it was a political question of a political nature, **everything you all do is of a political nature**, but if a question is asked that they want you to answer the question as a candidate as opposed to something that is before the board, in a business context, that might be voted on by the board, or is being considered by the board, that would be an improper question.”

Commissioner Swanger - “Thank you”. **\*\*\* END\*\*\***

Evidently, questions and concerns in the Public Comment Session during the prior April 5<sup>th</sup> meeting left the commissioners reeling, and they must have requested the County Attorney to express some **opinions**.

It should be noted that **the County Attorney never referenced any NC General Statute**, only **opinions** for the commissioners guidance for these two issues.

### **Issues Concerning Referendum.**

His first **opinion** had the words, the “general assembly” and “full faith and credit”, and somehow he drew the conclusion that “...debts that do not require a vote of the people. But more importantly not only is it not required, it is not even authorized.” Then there was a reference to a court case, Tucker vs. State Board of ABC, which related to “...that vote such as this, sometimes known as straw votes...” No public speaker was ever talking about straw votes, they were referring to a real vote.

We have already passed the County Attorney’s transcribed comments and **opinions** to some other organizations throughout the state (Haywood County and Raleigh) so that we might get some additional **opinions** on issues regarding referendums, debt, voters rights and the NC Constitution.

### **Issues Concerning Political Statement.**

Again, **no NC General Statute was referenced**, rather an **opinion**: “I’m going to discuss this issue more from the standpoint of what I know the law would be if a case came before a court.” Additionally, supporting the **opinion** was advice from someone that used to be the lieutenant governor of North Carolina.

It is interesting to note that after I posed a question at the April 5<sup>th</sup> meeting, and asked the incumbent candidates to answer as if they were candidates, **Kirkpatrick** (who happens to be a lawyer) answered, while **Upton** (who is not a lawyer) did not answer. You would think that **Kirkpatrick** would have known about the County Attorney’s **opinions** already and simply not answered, as **Upton** did not. If they don’t like the question, they don’t have to answer, as **Upton** did not.

One of the County Attorney’s comments which was somewhat intimidating was “Now if something doesn’t involve the county, the chairman will call that speaker out of order, because that’s not what the purpose of the meeting is.” During the entire time I have spent attending these county commission meetings since last August, I don’t believe that anyone has come before the board on an issue that didn’t involve the county. If the Chairman decides to rule a citizen out of order simply because doesn’t like the question, such as a candidate question, but it is related to county business, I’m fairly sure that all hell will break loose.

I agree with the County Attorney that the general rule has been that only the Chairman respond to public comments. So Commissioner Curtis and Commissioner Swanger were both out of order when they interrupted the Public Comment Session [re: Curtis asking me if I knew Marc Pruett and what I had against him - forcing me to come back to the podium and answer during the Public Comment Session, and Swanger responding directly to Reverend Kilby when Reverend Kilby asked Swanger directly if he referred to citizens of Haywood County as the Taliban].

Since both of these instances don’t appear to conform to the “informal rules of procedure” in place during the commission meeting Public Comment Sessions, you can count on me to call a point of order at the next occurrence [re: Robert’s Rules of Order, **G.S. §153A-41**]. The meeting will stop, the point of order will be resolved, then the meeting will resume.

You know, it’s taken me a lifetime to come up with the following observation: **Lawyers can only give opinions - Judges make the rulings**. If you would like to see an example of this, take another look at minutes of the last Closed Session the commissioners had regarding the Cameron Lawsuit [re: Released closed minutes - Cameron Lawsuit, [www.haywoodtp.net](http://www.haywoodtp.net) ]. Go to the minutes for 9/21/2009, the one heavily marked with **bright yellow highlight marker**, and observe the chaos that ensued at that meeting. Every lawyer there (even **Kirkpatrick**, who happens to be a lawyer) was of the **opinion** the case was a slam-dunk. However, Judge Laura Bridges ruled “**That Haywood County’s application of its Sediment and Pollution Control Ordinance to the land-disturbing activity on the Cameron’s property is erroneous as a matter of law**”. Why? Marc Pruett trampled on Cameron’s due process rights. This ruling, of course, cost the county over \$360,000.

Monroe A. Miller Jr.,  
Haywood County Taxpayer  
19 Big Spruce Lane  
Waynesville, NC 28786