

**FIRST RECESSED CULLMAN COUNTY
COMMISSION MEETING
April 27, 2010**

Chairman Graves called the recessed meeting back to order at 11:10 a.m. (Still under Public Comments)

The Chairman stated the County Attorney spent most of the recess looking at the Code of Alabama and he asked him to report on what he found.

Attorney Willingham stated he has looked at Code 11-97-1 and sequel. "A utility services facility is basically a utilities board with two purposes, water and sewage. Once it is created it is, to equate, like the City's utility board or a park and rec board. It has a three member board to serve six (6) year terms, the first term ending on January 1 of odd numbered years. I take that to be January 11, 13 and 15. It has the ability to make bonds. It has statutory authority where it can operate, enter into agreements and contracts. There are three pages provisions on powers that it has. It elects its officer through its board of directors. The three member board of directors serves after their staggered terms end. They can be re-elected. They are appointed by the County Commission. After their staggered terms end, they can be reelected for six year terms.

It has standard board policies. You can amend the by-laws. They create their own by-laws on how to operate and that type of thing. It has power over whatever assets it has. It can enter into bonds and borrow money to purchase assets, and mortgage its assets, if it has assets. Right now it has nothing. It's just sitting here."

Chairman Graves, "So basically, it's taking control of the Cullman County Water Department away from the Commission and putting it under an independent board."

Attorney Willingham, "This right now doesn't do anything. It's existing, but it can only exist over whatever you all set it over."

Chairman Graves, "But this is determined by a majority of the commissioners."

Attorney Willingham, "Correct."

Chairman Graves, "Then the board would function as the sole owner, we should say, of the Cullman County Water Department and would function independently from the Commission."

Attorney Willingham, "Yes sir, if it ultimately had those assets that would be correct."

Chairman Graves, "Since Commissioner Williams is fully aware of it and has been involved in it for the past year; I don't see where the benefit is from it. Would you explain that to them? Why are you doing this?"

Commissioner Williams, "The GUSC, the GUSC is the short term for the Utility Service Corporation (Governmental Utility Services Corporation) is three folks from Cullman County. Water users from Cullman County requested to start this board to oversee things, look at things. The forming of the GUSC requires we choose three board members to go forward with looking at taking care of business. You look at the counties across this state, and according to the ACCA, which we are a member of, and look at the water systems in this county, every one of them are under a board except for ours. We have a Cullman Electric Co-op that takes care of the co-op from users of power that oversee the operation of that.

A board of directors overseeing water, in my opinion, is extremely important, very valuable and it takes the politics out of water. Water is a necessity of life and I don't think it should be decided by one or two politicians – how we get our water, where we get our water and so forth.

To add to the conversation earlier, I have a resolution here to elect a board of directors. The terms the attorney described: the first board member going till 1-1-11, the next board member going to 2013 and the next one to 2015. And I would like to make the motion to adopt this resolution and put forth the names of the three gentlemen who wanted to do this; Mr. Wiley Kitchens, Mr. Ron Stone, and Dr. H.D. Haynes and I put that in the form of a motion."

Commissioner Willingham seconded the motion.

Commissioner Williams thanked Commissioner Willingham for his second.

Chairman Graves, "Any discussion on the matter. I might ask, so then, three people, who put their signature to a petition, are going to determine the fate of 80,000 in Cullman County as far as water is concerned - establishing this board.

Commissioner Williams, "No, not at this time. This just gives them the power to investigate and go further. This doesn't give them take over of anything. These three gentlemen are constituents and water users in this County and they brought this to us as a petition."

Commissioner Willingham, "They have a concern over the issue."

Commissioner Williams, "It doesn't put them over the water system at this point, no sir it doesn't."

Chairman Graves, "Not at this point, but eventually that's the intent. To me, it's almost like Obama trying to shove something down people's throats. I know there was a meeting out in Holly Pond recently where the majority was not in favor of going with the Smith Lake proposal and yet you are going to get it if you want it or not is evidentially is what we are looking at."

Commissioner Williams, "No sir. This doesn't say anything about that. And the meeting at Holly Pond, you weren't there so I don't think you can be a fair judge of what was decided in that meeting. But I have a motion and a second on the floor."

Chairman Graves, "Unless you are calling the paper a liar, they pretty much stated in the paper what went on out there."

Commissioner Williams, "I have a motion and a second on the floor."

Chairman Graves, "Any further discussion?"

Attorney Willingham, "The motion as I understand it, you are designating three individuals. The statute says the governing body shall specify for which term each director is elected."

Commissioner Williams, "I can do that. Mr. Kitchens the first term that ends 1-1-11. Mr. Stone the term that end 1-1-13 and Dr. Haynes the term that end 1-1-15. It is stated in the resolution."

A member of the audience asked if there was a salary for the board. Commissioner Williams replied there was not, it is people willing to serve their community. He stated they will set their own by-laws. The gentleman accused the associate commissioner of doing things backhanded.

Commissioner Williams, "I don't feel like I'm doing anything backhanded and I don't feel like I'm having any problems."

The gentleman stated "I'm not crazy about the three men you that you are going to put on the head of this thing."

Chairman Graves, "I might add, I had no input on this what-so-ever. I asked the newspaper if they had been notified of the proposal that was published here in the courthouse. And a little bit of credibility here, Dr. Haynes, nobody notified the newspaper. It was done rather quietly, posted on a board down here. The Chairman was bypassed never informed of anything and now it's a done deal. To me it rather smells, but it has been approved."

Chairman Graves called for a voice vote. Commissioners Williams and Willingham voted "aye".

Chairman Graves, "Very good, I oppose the motion but I don't have a vote at this timeframe."

Commissioner Williams asked the County Clerk to give the resolution a number.

Chairman Graves recognized Mr. Donald M. Wilbanks who stated, "I have a formal request that this commission form a water cooperative to be known as the Cullman Water..." He was unable to give the name. From the documents presented it is the South Cumberland Cooperative District, with the location of the principal office at 2020 Beech Ave. SE, Cullman.

Chairman Graves asked Attorney Willingham to look at the documents to determine what was being presented.

After looking at the documents:

Attorney Willingham, "Chairman, this looks like a combination of the one you just formed and the Cullman County Commission placing it into a cooperative. I have not read this statute yet. It makes it a district. The district is Cullman County, parts of Morgan, parts of Walker, parts of Winston which looks to be the territory wherein the county water system. It looks like it broadens to hem so it covers that whole district. This one, according to this has five (5) board members instead of the three (3) which in essence, it looks as though, combines the two together and takes in the other parts of those counties, but I haven't read this statute yet."

Chairman Graves, "Are we in compliance as far as taking a vote on it?"

Attorney Willingham, "It looks almost like the same as we just looked at on how to establish one."

Chairman Graves, "Does it have to be a plurality of people requesting it?"

Attorney Willingham, "In order to incorporate a district in this chapter any number of natural persons, not less than three, shall file an identical written application with the governing body of each county, municipality and public corporation proposed to be a member of the proposed district. Such application shall contain a 1) statement of each project, 2) a general description of the area 3) a proposed total number of directors which will be at least equal to the total number of counties, municipalities and public corporations with the governing bodies of which such application is filed, 4) the location of the principal office, 5) a statement that each applicant is a duly qualified elector of the county, 6) a request that each governing body adopt a resolution that it is wise expedient and necessary etc. The application may also state a proposed plan for portioning the properties of the district upon its dissolution among the members. I can look back and see, but those items do appear to be in the application."

Chairman Graves, "Is it in order to be accepted?"

Attorney Willingham asked for a moment to review the documents.

Chairman Graves asked Mr. Wilbanks if the newspaper was notified or if this was posted giving notice of their intent.

Mr. Wilbanks, "As far as I know."

Commissioner Williams, "The statute states it has to be posted; it does not say anything about notification to a newspaper."

Chairman Graves, "But the open meeting act requires it."

Commissioner Williams, "There haven't been any closed meetings. There haven't been any meetings other than one on one with me personally with some of these gentlemen. There hasn't been a quorum of anyone together in any other talks or discussions."

Chairman Graves, "I'm talking about the open meeting act requires that if the Commission is going to consider it, it has to be posted and notification given to the newspaper about the schedule."

Commissioner Willingham, "Every meeting is posted Chairman. This is a regular commission meeting sir."

Commissioner Williams, "To go further, I have a resolution that approves the application from these gentlemen, Mr. Kitchen, Mr. Wood and Mr. Wilbanks, to form a cooperative. From everything in here, the resolution to form the cooperative, and I make the motion to allow these men to form a cooperative."

Commissioner Willingham seconded the motion.

Attorney Willingham, "It appears to be in compliance with 11-99-b-3 at first blush. One of the question I have, says, that in order to incorporate a district under this chapter and number of natural persons, not less than three (3), shall first file an identical written application with the governing body of each county, municipality and public corporation proposed to be a member and is the member just to be Cullman County?"

Commissioner Williams, "Yes sir."

Attorney Willingham, "OK, alright. Mr. Chairman, it does appear to be in compliance with Section 3. I take it that it has been posted."

Chairman Graves, "That it has?"

Attorney Willingham, "That's what he was saying. It meets all the statutory requirements as far as this code section is concerned."

Chairman Graves, "Any discussion on the matter?"

Chairman Graves called for a voice vote. Commissioners Williams and Willingham voted "aye".

Chairman Graves, "Whatever it is, and I have no idea yet what we are getting into, what kind of animal we are trying to create here are produce or what is suppose to do or not do."

Commissioner Willingham, "I make a motion we recess for an hour and talk about it."

Commissioner Williams seconded the motion.

Chairman Graves, "You are going to have these people come back in an hour?"

Commissioner Williams, "I'm sorry."

Chairman Graves, "I need more than an hour to really study this and want legal advice also on it and the repercussions. I have not idea what we are talking about here. An hour is not going to do me any good."

Chairman Graves recognized George Benefield from the audience. Mr. Benefield requested the matter be tabled for thirty (30) days to give all the Commission and the county attorney and opportunity to review the documents, for the public to be informed and for the Commission to have "proper discussion in order to properly address the matter in a reasonable fashion."

Commissioner Williams thanked him for his request.

Clarence Benefield was recognized by Chairman Graves. He stated he was in total agreement that the matter needs to be tabled for thirty (30) days "to allow the public to know what's going on."

Commissioner Williams thanked him for his comments.

Chairman Graves, "Do you want to make a motion to table this for thirty days?"

Wiley Kitchens, "Unless these two gentlemen withdraw the motion and second I don't think you can not go forward with anything else."

Commissioner Williams "That's correct. I would ask we go ahead and ask the Clerk to assign a number to this and we can go on down the list and get most of this out of the way for those that are here, then we will recess and get back to it."

Commissioner Williams asked Commissioner Willingham to withdraw is motion for an hour recess. Commissioner Willingham withdrew his motion. Commissioner Williams made a motion for a five (5) minute recess. Commissioner Willingham seconded the motion

Chairman Graves suggested completing the agenda before the recess so county employees could get back to work.

Commissioner Williams and Willingham, on voice vote, voted to take a five (5) minute recess at 11:35 a.m.

James D. Graves, Chairman

J. Douglas Williams
Associate Commissioner

Wayne Willingham
Associate Commissioner