

January 25th, 2018

Joshua T. McKelvey



Honorable Marcello Banes, Chairman
Newton County Board of Commissioners
1124 Clark Street
Covington, GA 30014

RE: Proposed Removal from Newton County Recreation Commission Board

Dear Mr. Chairman,

I would like to thank you for reaching out to me prior to the news that you were considering my removal from an appointed board position on the Newton County Recreation Commission going public. You could've let that be a surprise to me, but you didn't. I have appreciated our relationship since the day you introduced yourself to me as a candidate running for office, and have always felt that it was built on a mutual respect and desire to set aside differences to achieve our common goals for the City of Covington and Newton County. Out of respect for you and the office you hold, I am writing in response to the letter that was delivered to my home on January 24th, 2018.

I'd like to list the following reasons as justification for withdrawing your consideration of my removal from the Newton County Recreation Commission (NCRC):

- 1) Neither the Chairman, the Board of Commissioners, the Mayor, nor the Covington City Council possesses the authority to remove an appointed board member of the NCRC. Although I do have great respect for your office, I do not believe the Chairman of the Newton County Board of Commissioners (NCBOC) has the authority to remove an appointee from a commission who is afforded a set term by state law. In support of this stance, I offer up O.C.G.A. Section 36-64-5, where members are required to be granted five year terms, and no powers for the removal of appointed board members are delegated by the state nor any procedure for removal set forth. I also would refer you to Hernandez v. St. Mary's, 256 Ga. 356 (1986), where the Georgia Supreme Court expressly left open the question of whether local board members, granted a term by state statute, can be removed for cause.
- 2) The justification for my removal prior to the conclusion of pending litigation is insufficient. Even assuming, for the sake of argument, that a local elected official has the power to remove a board member mid-term, there is certainly no cause for removal here. I have acted at all times in good faith in what I have felt to be the best interest of the NCRC. I did not act in contravention of any legal duty or unethically. Had I fully understood that my motion and vote to terminate Mr. Avery prior to a due process hearing would create the potential for additional litigation, I certainly would not have made the same decision that I made on the night of the vote. Notably, though Newton County now takes the position that our volunteer board was amply advised as to how we should handle this unique situation, no one from the County's human resources department met with us as a board, nor did the County attorney, whom I have always understood also represented the NCRC, attend our meeting or otherwise advise us on the nuances of the situation until after the fact. The failure of Newton County to provide the commission with effective advice prior to the vote is no small matter. Prior to the vote, it was never made clear to me that the Newton County attorney and human resources stated that a due process hearing was required for a County Employee with Civil Servant classification. I was of the understanding that a 90 day correctional process was a request or suggestion. I believe that this position is also shared by Mr. Steven Rhodes, who was one of the four other voting

NCRC board members in attendance that night, and one of the four other NCRC board members that cast their votes with me. Due to the information that by the NCRC's internal investigation on the evening of the vote to terminate Mr. Avery, I, in good faith and like a majority of the other NCRC board members, felt that the best option for the NCRC and Newton County was to terminate Mr. Avery. It was not until the following day after this vote that I received a phone call from the NCRC's former Chairman and became fully aware of the requirements to terminate an employee that had been classified as a Civil Servant.

Mr. Chairman, I realize that we find ourselves in a difficult situation. Unfortunately, it has become highly politicized, and I certainly don't envy the position you're in. In light of the two points I made above, along with others, I ask that you reconsider your position before moving forward with any proceedings aimed at removing me from my appointment to the NCRC. The Newton County Recreation Commission is not in a good place right now, but I believe that it now has a chance at a fresh start. The actions taken by the NCBOC and the NCRC over the next few months will be critical. There is hope that it is possible to turn a difficult situation into an opportunity to restore public trust, improve perception, and provide better recreational programming for our community, and I look forward to playing a role in that effort. Thank you for your time and service to the people of Newton County, and thank you for your willingness to listen.

Respectfully Submitted

Joshua T. McKelvey

Councilman - East Ward Post 3

Covington City Council

