

# Commission rules need clarification

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By **Sylvia Cooper** | *Staff Writer*

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Last week, lawyers for plaintiff Woody Merry and defendant Mayor Pro Tem Marion Williams took depositions and got their paperwork ready for Superior Court Judge Carlisle Overstreet to peruse before the Feb. 16 hearing that could change the way the Augusta Commission operates.

Mr. Merry, the founder of CSRA Help, has gone to court in an attempt to oust Mr. Williams from the mayor pro tem seat and have a judge declare that unless a commissioner has a valid reason for abstaining on a vote, an abstention would count as a no vote.

Mr. Merry and his attorney Joe Neal Jr. had been making a big issue of a missing section in the Augusta Commission's Rules and Procedures concerning abstentions, the suggestion being of potential foul play. Well, that mystery was cleared up last week when section 1.09.06 was located in a vault at city hall.

The missing section stated that abstentions without valid reasons be counted as "no" votes. However, when commissioners adopted the rules of procedure in July 1996, that provision was dropped when a motion to that effect was made by then-Commissioner Moses Todd and approved on a 6-3-1 vote, with Commissioners Ulmer Bridges, Bill Kuhlke and J.B. Powell voting no. And, of all things, Commissioner Jerry Brigham abstaining.

VIEW FROM THE LEGAL EAGLES' NEST: The petitions Mr. Merry and Mr. Neal chose to file - a writ of mandamus and quo warranto - are unusual and extreme remedies. At least, that's the prevailing consensus among some Augusta lawyers.

Obtaining a mandamus would involve going into Mr. Williams' motives for abstaining on the mayor pro tem votes, and it's hard to prove what was behind them. Also, when the commission first started operating, it authorized an abstention for any reason. So it's hard to say the judge should order Mr. Williams to do something the commission says he has the right to do.

The case would be strengthened if one of the sitting commissioners or the mayor were to intervene on the side of Mr. Merry to seek a declaratory judgment, which is easier to get.

(A declaratory judgment is where you go to the court and say, "Some people say the law is X. Some people say the law is Y. Judge, we need to know what it is. Please tell us.")

Every state court that has considered what effect an abstention has on the right of a presiding officer to vote in the case of a tie has held that the abstention is counted as a vote against the proposition, thus creating a tie and allowing the presiding officer the tie-breaking vote.

And the theory behind it is the charter here or in other places envisions that when the legislative body can't reach agreement, when it's evenly split, the mayor gets to vote. You should not be able to circumvent that policy in the charter through an abstention.

BLACK'S LAW DICTIONARY SEZ:

- A quo warranto is a common law writ designed to test whether a person exercising power is legally entitled to do so.
- A mandamus is a writ asking a court to force the government to do what it is supposed to do.

There now, don't you feel better just knowing?

**JAMES BROWN, UP OR DOWN?:** Artist Annette Bush found it interesting that some Augusta commissioners want to put James Brown's statue on a pedestal.

She said she made the motion at the Downtown Development Authority meeting for funds to be used for the statue.

"It was my understanding that Mr. Brown did not want a pedestal because he wanted to be where the people are," she said. "That is where he is in Augusta - not on a pedestal, but down with the people handing out toys and turkeys, giving words of encouragement, giving back. One of the things people love the most is that they can stand next to the statue for their photos.

"Why doesn't someone just ask James?"

What a novel idea.

**IT'S NO SECRET AMONG THE FAITHFUL ... :** That Richmond County Republican party Chairman Dave Barbee was a little miffed (maybe a lot miffed) about Sonny Pittman's account of the recent party breakfast in last week's City Ink.

Mr. Barbee said he didn't mind the references to him, but he objected to Mr. Pittman saying "he has loaded up the executive committee with every damn old yellow dog Democrat - turned born again 'Republican' - in the county."

When reminded that Mr. Pittman had not named a single soul on the committee, Mr. Barbee said, "No he didn't, but everybody knows who they are."

**HE WON'T DRAG THEM INTO IT:** Mr. Williams refused to discuss son-in-law Mark Pugh's forming Drag Snacks LLC, a corporation that could sell concessions at a drag racing track in Augusta.

Although Mr. Williams has been pushing for the city to build a track in south Augusta, he said he sees no conflict of interest in the corporation or in his pushing for Mr. Pugh to be a partner in the business. Yet, he said Commissioner Don Grantham should have abstained from voting on hiring Cherry Bekaert & Holland to do the 2005 city audit because that firm keeps the books for Mr. Grantham's business.

The difference, according to Mr. Williams, is that Cherry Bekaert was not the low bidder and there is no prohibition on sons-in-law doing business at a city-owned entity.

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