



# STEPHEN M. HATCHETT

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June 27, 2023

Mayor Steven Sherlin  
City of Athens  
815 N Jackson St  
Athens, TN 37303

Vice-Mayor Larry Eaton  
City of Athens  
815 N Jackson St  
Athens, TN 37303

Council Member Dr. Dick Pelley  
City of Athens  
815 N Jackson St  
Athens, TN 37303

Council Member Jordan Curtis  
City of Athens  
815 N Jackson St  
Athens, TN 37303

Council Member Frances Witt McMahan  
City of Athens  
815 N Jackson St  
Athens, TN 37303

Re: Ethics Opinion

To the Council,

At the regular Athens City Council meeting held on June 20, 2023, there was an allegation by a citizen during public comments of an ethical violation. The ethical violation alleged was that

Mayor Steven Sherlin and Vice Mayor Larry Eaton had violated Section 1-508 of the Athens Municipal Code by contacting the McMinn County Library Board regarding a display at the E.G. Fisher Library and in doing so were seeking privileges or exemptions for themselves or others that were not authorized by any legal authority. Contained within that allegation was at least a suggestion that the Tennessee Open Meetings Act had also been violated. Mayor Sherlin asked that I address this allegation as the ethics officer for the City of Athens.

### FACTS

There appears to be agreement that the display was in regard to what is known as “Pride Month” and contained books that were written regarding individuals that identified as part of what is commonly referred to today as the “Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning, Intersex, Asexual, Two-Spirit” group or community. Based upon my understanding of events, there was no contact between any member of the City Council and employees of the E.G. Fisher Library regarding the display.

The E.G. Fisher Library is not a part of the City of Athens government. It is governed by the McMinn County Library Board which is made up of members appointed by the Athens City Council and the McMinn County Commission. It does receive taxpayer dollars from the City of Athens and presumably McMinn County but based upon my review of the library by-laws it appears to operate independently from each. I do not know if any issues were raised by any county officials regarding the display. It is my understanding that all communications regarding concerns about the display by any member of the City Council were directed to the Library Board. At the City Council meeting, Vice Mayor Eaton read excerpts from a book that he stated was in the display. I have not found any indication that there is disagreement that the book Vice Mayor Eaton read from was in fact in the display. That book contained details of sexual acts that were detailed and graphic. From my review, it appears that book is directed at and marketed to minors on the open market, including on Amazon. I address this issue further below.

### ANALYSIS

As an initial matter, I cannot find any authority that stands for the proposition that the E.G. Fisher Library has any particular standing, privilege, or right to taxpayer dollars. Whatever funds are approved to go to the library by the City of Athens would go through the same legislative process as any other funds that are disbursed. The law is clear that authorizing, or not, such disbursements rests with the City Council as a whole and must be done in an open meeting. There does not appear to be any indication that the City Council as a body acted nor that there were violations of the Open Meetings Act regarding the display at the library.

Further, there are no privileges or exemptions that the library could bestow upon anyone in this situation nor is there any indication of any privileges or exemptions sought by the Mayor or the Vice-Mayor. The concept of privileges and exemptions are well known and defined in the law. Black’s Law Dictionary defines privileges, and by extension, exemptions, as follows: “That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons.”

An example that comes to mind in this situation would be if a member of the City Council had insisted that because he or she was a council member any overdue fees should be waived. Nothing similar exists here. To express disagreement, particularly in a matter that directly implicates religious beliefs and parental rights, is part of the bedrock of this nation. So is disagreeing about how tax dollars are spent. To the extent there were discussions with the Library Board by any member of the City Council regarding future positions on future funding, such discussions, though perhaps ill-advised, do not create any ethical issues. The federal courts have recognized that the unconstitutional conditions doctrine prohibits restrictions on government funding that interfere with First Amendment rights. In this instance, neither the Mayor nor the Vice Mayor had the ability to limit or restrict funding to the library based on keeping or removing the display without taking the matter before the entire City Council. But they certainly can express their individual concerns which brings me to my last point.

The Tennessee Code prohibits any person providing to a minor “[a]ny book, pamphlet, magazine, printed matter, however reproduced,.... that contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to a minor.” T.C.A. § 39-17-911(a)(2). In the State of Tennessee, absent authority to the contrary, parents determine what is or is not harmful to their minor children. And in point of fact, it is a defense to prosecution under T.C.A. § 39-17-911(a)(2) that the minor obtained access to the material while accompanied by a parent or legal guardian or someone with written permission of a parent or legal guardian. T.C.A. § 39-17-911(d).

The United States Supreme Court has ruled in *United States v. American Library Association* that restricting children’s access to sexually explicit material does not violate the First Amendment if use of taxpayer dollars is tied to restricting the access. Assuming that Vice Mayor Eaton was correct that the book he read at the City Council meeting was in the display and that book is directed at minors, then there is no question in my mind that requiring future taxpayer dollars be tied to keeping materials that are prohibited by Tennessee law from being made available to children would pass constitutional muster. Further, any person, member of the City Council or otherwise, has the ability to question whether the actions of any person or entity violate Tennessee law or parental rights. A reasonable person could perceive a distinct difference between having books in a library and creating a display to attract minor children to read the books in the display without permission from a parent or legal guardian or someone acting with written permission of a parent or legal guardian.

To be clear, I do not say that the E.G. Fisher Library or any of its staff violated Tennessee law. The display has been removed so any such determination or suggestion at this point would be speculative and therefore inappropriate. My opinions herein are directed solely at the issue at hand and the law as it currently exists.

In closing, I will make the following observations. Thomas Jefferson once said, “Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others.” It was clear from the City Council meeting that parents, grandparents, and other legal guardians in the City of Athens expect their right to raise the children in their care and custody

according to the dictates of their individual faith and beliefs to be respected and protected. It was also clear that we have people in our community who feel that their right to live as they choose with no harm to others is not being respected and protected. The rest of Jefferson's quote from above, which is often left out in these sorts of discussions, is this: "I do not add 'within the limits of the law' because law is often but the tyrant's will, and always so when it violates the rights of the individual." There are laws on the books that deal with the concerns from both of these groups. The role of government is to simply enforce the law fairly and equally. To do otherwise is in fact to become the tyrant's will.

#### CONCLUSION

Based upon my review and for the reasons stated, it is my opinion as City Attorney for the City of Athens that no ethical violation occurred, that no violation of the Open Meetings Act occurred, and that the City Council took no action regarding the display at the E.G. Fisher Library. If any of you have any questions or concerns regarding this opinion, please do not hesitate to reach out to me.

With kindest regards I remain,

Yours Truly,

A handwritten signature in black ink, appearing to be "Stephen M. Hatchett", with a stylized, flowing script.

Stephen M. Hatchett, Esq.