

MISSISSIPPI ETHICS COMMISSION

Miss. School Boards Association
Admin. Assistants & Board Clerks
May 3, 2021

The Open Meetings Act

MISSISSIPPI ETHICS COMMISSION

Administers and enforces the **Ethics in Government Law** by

- Keeping Statements of Economic Interest;
- Investigating alleged violations of law;
- Issuing written advisory opinions.

The Commission also enforces the

- **Open Meetings Act** and
- **Public Records Act**

The Commission also issues advisory opinions on the **Campaign Finance Law** and levies fines for late filing of campaign finance reports.

OPEN MEETINGS ACT

**OPEN MEETINGS
Enforcement**

- Complaint is filed with Commission. Complaint is sent to public body, which can respond. Commission may dismiss complaint, make preliminary finding or hold a hearing.
- Ethics Commission may order public body to comply with law.
- **Ethics Commission may impose \$500 fine for first offense, \$1,000 for subsequent offense.**
- Ethics Commission can mediate disputes.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

**OPEN MEETINGS ACT
The Basics**

- Public meetings must be open to public.
- Executive session must follow specific procedure and only for certain reasons.
- Notice of meeting must be given, and minutes must be kept.
- Social gatherings are not "meetings" unless official business is discussed.
- Act never requires executive session.

WHAT IS A MEETING?

Columbus v. Commercial Dispatch
Miss. Sup. Ct.; Sept. 7, 2017

- Deliberations of a quorum must take place in a proper public meeting.
- When a quorum splits into separate groups and discusses the same matter of city business with the same person, a quorum is deliberating, and a "meeting" has occurred.

Case No. M-12-020
McGovern vs. Starkville

- Retreats conducted by the Board of Aldermen are meetings subject to the Open Meetings Act
- Even if no official action is taken at a meeting, minutes must be kept
- Committees established by the board to conduct business of the city are subject to the Open Meetings Act

Case No. M-12-023
Gilmore v. Holmes Co. Sch. Dist.

- A panel established by the superintendent to assist the superintendent in performing his or her job is not a "public body" subject to the Open Meetings Act
- While the school board of trustees and any committee thereof qualify as a "public body" under the Open Meetings Act, there was no evidence the panel was created by the board or at the direction of the board.

WHAT ABOUT EMAIL?

Case No. M-17-012
Neely vs. Yazoo County CVB

- Email exchange among a quorum of a board about a matter under their authority can violate the Open Meetings Act.
- A quorum of a board should deliberate board business ONLY in a properly noticed public meeting.
- Board members should avoid using email to communicate with each other about board business.

Case No. M-16-008 & 009
Oliver vs. Bay St. Louis Council

- One member emailing a quorum about board business can violate law.
- Board members should not forward or copy emails to other members.
- Staff should blind copy (BCC) emails to board members.

**Telephonic Meetings
Section 25-41-5**

- All members can participate by phone.
- They can be in different locations, so long as one location is open to the public.
- Equipment (speaker phone) must be located in place where board normally meets and allow members of board and public to hear deliberations.
- Votes must be clearly audible or visible to members of the board and public.

Open Meetings Act and COVID-19

- Statement posted at www.ethics.ms.gov
- Follow all public health recommendations.
- Comply with the Open Meetings Act as best you can.
- Take all measures within your means to ensure transparency AND protect public health.
- Use teleconference or videoconference.
- Equipment used should be located in public meeting place and should allow members of the board AND members of the public to hear deliberations.
- Record the open portion of meetings and make recordings available to the public.
- Agenda must be "made available to the public at the time of the meeting" via internet or social media.

**EXECUTIVE SESSION
PROCEDURE**

Hinds County Bd. v. Common Cause (1989)

The purpose ... is to discourage private meetings of public bodies.... The technical requirements of the Act not only enlighten the public that there exists a specific, valid reason for going into executive session, but also make it somewhat onerous and time consuming for the board to do so. A board required by law to follow the procedure of ... § 25-41-7 will no doubt be less inclined to go into executive session.... [551 So.2d 107, 112]

Executive Session Procedure:

Hinds County Bd. of Sup. v. Common Cause,
551 So.2d 107, 110-111 (Miss. 1989).

1. The meeting must begin as an Open Meeting. Miss. Code Ann. § 25-41-7(1).
2. A member must make a motion for the meeting to be closed to determine whether or not the Board should declare an executive session. The statute does not require a second to this motion, but the vote on this motion is taken in open meeting. If majority votes to close meeting to make determination on the question of executive session, the meeting is closed for this purpose. Miss. Code Ann. § 25-41-7(2).

Executive Session Procedure (continued)

3. No other business during this closed interim shall be considered until a vote has been taken on whether or not to declare an executive session. Miss. Code Ann. § 25-41-7(2). In order to go into executive session, a majority of three-fifths of those present must vote in favor of it. Miss. Code Ann. § 25-41-7(1).
4. The Board must then state in open meeting the reason for going into executive session, and this reason and total vote thereon must thereafter be recorded on the minutes of the meeting. Miss. Code Ann. § 25-41-7(3), (5).
5. The vote to go into executive session is applicable only to that particular meeting on that particular day. Miss. Code Ann. § 25-41-7(6).

**EXECUTIVE SESSION
REASONS**

Announce Specific Reasons

- Reasons for executive session must be announced in open meeting and recorded in minutes. Must state a meaningful reason with sufficient specificity so that audience will later be able to check it out.

To simply say, "personnel matters," or "litigation," tells nothing. The reason stated must be of sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the board had determined should be discussed in executive session.

Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 111 (Miss. 1989).

Executive Session Reasons

Executive session may be held for these reasons only:

- (a) Personnel matters relating to person in specific position
- (b) Litigation, where open discussion would have detrimental effect on litigating position
- (c) Security matters
- (d) Investigations regarding misconduct or violations of law
- (e) Legislature may enter executive session for any reason
- (f) Extraordinary emergency posing irrevocable harm
- (g) Prospective purchase, sale or leasing of lands
- (h) School board discussions about problems of students, parents or teachers
- (i) Preparation of professional licensing exams
- (j) Location, relocation or expansion of a business
- (k) Budget matter which may lead to termination of employee
- (l), (m) (n) certain PERS investments and hospital matters

Executive Session Reasons
Case No. M-19-012
Comm. Disp. vs. Lowndes Co. Sch. Bd.

- Board may enter executive session under personnel reason to conduct job interviews.
- Board may allow select members of the public to remain in executive session to help conduct and observe job interviews.

OPEN MEETINGS ACT
Notice

- Times and places of regular meetings should be set in minutes. (no statute)
- For recess, adjourned, interim or special meetings, notice must be posted in building where board normally meets within one hour of calling the meeting.
- Copy of the notice must be placed in the minutes.

Minutes

- Minutes must be kept for all meetings, whether in open or executive session.
- Minutes must be "recorded" within 30 days after meeting. (Section 37-6-9 requires minutes be "adopted by the board at the next regular meeting, or within thirty (30) working days, whichever occurs later.")
- Minutes must be available for public inspection.

Content of Minutes

Minutes must show:

- Members present and absent;
- Date, time and place of meeting;
- Accurate recording of any final actions;
- Record, by individual member, of all votes taken;
- Any other information requested by the public body.

Case No. M-12-012

Rody vs. Pearl River Co. Bd. Of Sup.

- The minutes of a public body may, but are not required to, reflect discussions occurring in open session when no action was taken.
- Minutes are not transcripts. The purpose of the minutes is to record what actions were taken at the meeting, not to record everything that was discussed.

PUBLIC PARTICIPATION

Case No. M-10-004

Cockrell vs. Canton Bd. of Ald.

- Public body may not ban cameras or other recording devices from an open meeting.
- Public body may make and enforce reasonable rules for conduct of persons attending meetings, including placement and use of recording devices.

PUBLIC PARTICIPATION

Case No. M-10-007

Townes vs. Leflore Co. Sch. Bd.

- Public body may make and enforce reasonable rules for conduct of persons attending meetings, including length of time allowed to comment.
- Public body is not required to allow members of the public to speak at meetings.

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