

**OPEN MEETINGS COMPLAINT IN THE MATTER OF REPEALING
EMPLOYEE PLUS ONE ADULT INSURANCE COVERAGE
AT THE BOARD MEETING OF JANUARY 6, 2015**

1. I believe that the Mayor and Board of Aldermen have participated in a course and pattern of violating the Open Meetings Act, Mississippi Code §25-41-7 through the inappropriate use of the Executive Session. The specific violation about which this complaint is being filed occurred on January 6, 2015. In support of this allegation, I submit the following DVDs of September 2, 2014, September 16, 2014, September 23, 2014, January 6, 2015, and January 20, 2015. (Exhibits 1-5)

The chronology of events supporting this complaint is outlined below.

The subject matter of the meetings generating this complaint was initially considered during the regular meeting of City of Starkville Board of Aldermen on September 2, 2014. Reconsideration of this issue was held in the special call, regular and recess meetings of September 9, 2014; September 16, 2014; September 23, 2014; January 6, 2015 and January 20, 2015.

These DVDs were created in the regular course of business. Members of the public can purchase a DVD of any recorded meeting for \$5.00. The agent of the station (Channel 5) whose responsibility it is to video the meetings has certified as to the veracity of the recordings and that as submitted they accurately reflect meeting occurrences and have not been edited or altered. (Exhibit 6)

There is no DVD available for the special call meeting of September 9, 2014.

September 2, 2014 Regular Meeting

2. The agenda for the regular meeting of September 2, 2014, shows a topic labeled under Board Business. Item X.C. Consideration of the Proposal for Renewal of Services for the Medical Insurance Benefit Plan and for the Dental Insurance Benefit Plan for the Employees of the City of Starkville as presented. This item was unanimously approved after questions and answers and an ensuing discussion by Alderman Roy Perkins and Alderman Scott Maynard (see Exhibit 1, DVD @ 2:00:49-2:07:53). The Agenda and the

minutes for the meeting of September 2, 2014 are included and can be found on the City of Starkville website, www.cityofstarkville.org. (Exhibits 7-8)

There was no suggestion during the discussion that the matter should be taken up in executive session. The subject matter was discussed and evaluated and voted on in full view of the public.

September 9, 2014 Special Call Meeting

3. The agenda for the special call meeting of September 9, 2014, includes an item under Board business labeled X. A. Consideration of Amending City's Medical Insurance Benefit Plan and/or Dental Insurance Benefit Plan and Discussion of Personnel Issues related thereto and an item under Executive Session labeled XIV. A. Potential Litigation. This agenda is attached and can also be found on the City of Starkville website, www.cityofstarkville.org. (Exhibit 9)

The minutes of the September 9, 2014 special call meeting reflect that the discussion of the "Plus one coverage" was brief and the Board then went into a closed determination session followed by an executive session. The call of the executive session was stated as "Consideration to enter executive session to discuss potential litigation and personnel issue related to the consideration of amending the city's medical insurance benefit plan and/or dental insurance benefit plan." The minutes are attached and can be found on the City of Starkville website, www.cityofstarkville.org. (Exhibit 10)

Upon exiting executive session, Mayor Parker Wiseman announced there had been no action taken in executive session.

Alderman Ben Carver then made a motion to rescind the City of Starkville Board Order of September 2, 2014, relating to the renewal and expansion of the City's Medical Insurance Benefit Plan to remove the "employee plus one adult" coverage provision of the insurance package approved by the Board on September 2, 2014, and for the provision to take effect immediately. There was no second to the motion and Mayor Wiseman declared the motion failed.

Upon information and belief the personnel issue was not in compliance with the requirements of Mississippi Code § 25-41-7 (4) (a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.

Upon information and belief, there was no discussion of a particular individual or employee holding a specific position as required in the foregoing code section.

The complainant submits that this agenda item was a ruse to take the matter up in executive session so as not to allow the public a view into the decision-making process. This use of executive session represents the ongoing pattern and practice of removing deliberations and decisions from the view of the public in direct contradiction to the requirements of Mississippi Code § 25-41-7.

As further evidence of the desire to limit the visibility and reduce the public scrutiny of their discussions and decisions, this meeting was taken up as a special call meeting. There was no emergency or situation that would have created a disadvantage to the City if the subject matter of this meeting had waited until the regularly scheduled recess meeting 7 days following on September 16, 2014.

September 16, 2014 Recess Meeting

4. The agenda for the recess meeting of September 16, 2014 included an item under Board business labeled: X.H. Discussion and Consideration of the Health Insurance for the City of Starkville related to Plus One Coverage. The City of Starkville offers a time at each regular and recess meeting before the conduct of Board business for any citizen to come to speak to the Board on any subject matter for a maximum of 3 minutes. On this date there was a lengthy citizen comment period that included many citizens speaking passionately on both sides of the matter of the proposed repeal of the insurance coverage (see Exhibit 2, DVD @ 20:25-1:22:48).

The motion was made by Alderman David Little to amend the Employee Plus One Adult coverage provision under the City's Medical Insurance Benefit Plan that was approved by the Board of September 2, 2014, to include coverage only for legally married

spouses as defined in Article 14, Section 263A of the Mississippi Constitution effective immediately. The motion was seconded by Alderman Ben Carver. There was a full and thorough discussion by the members of the Board of Aldermen on this agenda item (See Exhibit 2 @ 2:25:10-3:23:10). The vote resulted in approval of the motion with a 4-2-1 vote. The agenda and the minutes of the recess meeting of September 16, 2014, are attached and can also be found on the City's website at www.cityofstarkville.org. (Exhibits 11-12).

There was no proposal or discussion of entering executive session for considering the Plus One Coverage during this meeting.

6. Mayor Wiseman vetoed the Board's action to rescind the Plus One Coverage. Mayor's veto is attached (Exhibit 13).

September 23, 2014 Recess Meeting

7. The agenda for the recess meeting of September 23, 2014 included an item under Board business labeled: X.A. Discussion and Consideration of Overturning the Mayors Veto of the Boards Amending and Redefinition of the Plus One Major Medical Health Insurance. The agenda and the minutes of the recess meeting of September 23, 2014, are attached and can be found on the City's website at www.cityofstarkville.org. (Exhibits 14-15).

Once again there were many citizens who used the available 3 minutes that are provided under the agenda heading of citizen comments. The majority of the citizens speaking under that heading spoke on the matter of the Plus One coverage both for and against.

The Board discussion of the Plus One coverage occurred while considering the override of the Mayor's veto. There was a lengthy and detailed presentation by Alderman Lisa Wynn of the deliberations by the Board on this agenda topic (See DVD, Exhibit 3 @ 1:02:30). She then recused herself from the meeting (See DVD, Exhibit 3 @ 1:29:10).

Mayor Parker Wiseman also provided a lengthy presentation on the Board's previous deliberative process on this matter (See DVD, Exhibit 3 @ 1:36:32).

There was no discussion or consideration of entering Executive Session on any provision of this subject matter during this meeting.

Alderman Little made a motion pursuant to Mississippi Code § 21-3-15, to override the Mayor's veto dated September 19, 2014, to Amend the Employee Plus One Adult Coverage provision under the City's Medical Insurance Benefit Plan to include coverage for only legally married spouses as defined in the Article, 14, Section 263A of the Mississippi Constitution. The motion was seconded by Alderman Carver.

The Board voted 4-2; with the recusal by Alderman Wynn, the Mayor declared the motion failed for lack of the required veto override total of 5 affirmative votes.

January 6, 2015 Regular Meeting

8. The agenda for the meeting of January 6, 2015, included an executive session listing the following subject matter:

- A. Potential Litigation
- B. Pending Litigation
- C. Property Acquisition
- D. Personnel.

This agenda is attached and can also be found on the City of Starkville website. www.cityofstarkville.org. (Exhibit 16)

The minutes of the January 6, 2015, regular meeting show that the call of the Executive Session was as follows: A Motion to Enter Executive Session to Consider a Personnel Matter of an Employee Grievance in the Fire Department, Discuss a Personnel Matter relating to Administration of the Park Funds by a City Employee, **Consider the Rescission of the Equality Resolution and Employee + 1 Insurance Coverage under Prospective Litigation**, a Personnel Matter concerning the job performance of an Employee in the Mayor's Office, an Update on the Carver Drive Drainage Improvement Project Construction Dispute under Prospective Litigation, and the Consideration of

Acquiring easements to facilitate the City's Southwest Sewer Expansion under Property Acquisition. The item highlighted in the above paragraph is the subject of this complaint. The minutes are attached and can be found on the City of Starkville website at www.cityofstarkville.org. (Exhibit 17)

The minutes reflect that upon exiting Executive Session, the Mayor announced that the Board had taken action in Executive Session and the City Clerk announced the actions taken by the Board.

The minutes reflect that there was discussion but there was no indication of the specific nature of discussion that would create the need for an executive session.

Upon information and belief, the prospective litigation listed as the repeal of the Plus One health care insurance provision was not appropriate for an executive session as stated under *Miss. Code Ann. § 25-41-1 et. seq.* The executive session discussion did not address the elements of negotiation or strategy as required by the *Miss. Code Ann. § 25-41-1 et. seq.* for any threatened prospective or potential litigation.

Upon information and belief the Starkville Board of Aldermen took up the matter of the adult plus one health insurance in executive session in order to avoid the public scrutiny and discord that they had been subjected to in the month of September, 2014, when this matter had been fully considered and had been voted on multiple times.

9. The Mayor vetoed the action taken in the executive session on January 6, 2015. A copy of that veto is attached. (Exhibit 18)

January 20, 2015

10. The Board of Aldermen then took up the matter of overriding the Mayor's veto at the meeting of January 20, 2015 under Board Business, agenda item labeled X.B. Discussion and Consideration of Overriding the Mayor's Veto related to the Recension (sic.) of the Plus One Insurance Coverage. The agenda and minutes of the September 20, 2015 recess meeting are attached and can be found on the city's website at www.cityofstarkville.org. (Exhibits 19-20)

In that meeting (see DVD, Exhibit 5 @ 2:24:45) Alderman Scott Maynard stated that part of the discussion that occurred in the executive session of January 6, 2015, that is the subject of this complaint was about delaying the decision to rescind the repeal of the Plus One Adult health insurance coverage and the equality resolution awaiting a determination by the Supreme Court on the status of same sex marriage. However appropriate and compelling for the reasoning behind matter being considered, the discussion of what the Supreme Court may or may not do does not inform a session that should be devoted to negotiation or strategy regarding a legitimate and imminent matter of potential/prospective litigation.

In that same meeting (see DVD, Exhibit 5 @ 2:28:36) Aldermen Walker stated that the most pertinent argument was about questioning the process. He stated that he believed the use of potential litigation was a “fabrication” (see DVD, Exhibit 5 @ 2:29:54). He further stated that he specifically asked about the potential litigation. He received no answer as to who the potential litigant was creating the need for executive session. He went on to say that you “don’t hide in executive session” (see DVD, Exhibit 5 @ 2:30:24) to discuss matters that should be part of a community discussion.

At this meeting the Board of Aldermen with little to no discussion from those who were voting in favor overrode the Mayor’s veto with the necessary vote of 5 affirmative votes. This would indicate that all discussions relevant to this topic had illegitimately occurred in the executive session at the meeting that is the subject of this complaint, January 6, 2015.

11. The Open Meetings Act was enacted for the benefit of the public and is to be construed liberally in favor of the public.

12. Moreover, the City of Starkville has been cautioned previously about violations of the Open Meetings Act. See William McGovern v. City of Starkville, Ethics Commission No. M-12-020.

13. It is inappropriate for aldermen to meet or in any other way communicate to make decisions or policy that affect the citizens of the City of Starkville in violation of the Open Meetings Act.

14. An examination of the meetings of the Board of Aldermen of the City of Starkville will reflect a pattern and practice of board members making motions, seconding the motions and voting without discussion on matters which are significant enough that discussion would be reasonable, but for the fact that the decisions have been made prior to the board meeting and in private. The complainant believes that this pattern is continued through the use of the executive session as a means to evade public scrutiny and comment and that the meeting of January 6, 2015, is the most blatant example of that use. This belief was confirmed by the statements of both Alderman Maynard and Alderman Walker at the meeting in which the Mayor's veto was overridden (see Paragraph 10 above).

15. Alderman Roy A. Perkins, Ward 6, is a licensed attorney in the State of Mississippi and has been in practice for over 20 years. Alderman Perkins has also been on the Starkville Board of Aldermen in excess of 20 years and knew or should have known the constraints of the Open Meetings Act and the executive session limitations.

16. The remaining Aldermen of the City of Starkville have attended numerous sessions of the educational seminars held at the annual summer Mississippi Municipal League conference at taxpayer expense and knew or should have known of the constraints of the Open Meetings Act and the executive session limitations.

17. As stated by the Mississippi Supreme Court in *Mayor and Aldermen of Vicksburg v. Vicksburg Printing & Pub.*, 434 So. 2d 1333, 1336 (Miss. 1983): "However inconvenient openness may be to some, it is the legislatively decreed public policy in this state."

18. The complainant respectfully requests that the Mississippi Ethics Commission find that there was an open meetings violation at the Board of Aldermen meeting of January 6, 2015, and that this finding displays an ongoing lack of respect for the right and need of the public to be aware of the Board's deliberations and that this Board of Aldermen contumaciously violates the Open Meetings Act.

19. Upon a finding of a violation of the Open Meetings Act, the Complainant respectfully requests that the commission impose on the offending members of the

Board of Aldermen the maximum fine available for a second or subsequent offenses and reasonable costs for filing this complaint as provided in Title 25, Chapter 41, Miss. Code of 1972.

20. In a previously submitted complaint and response from a different individual, the City Attorney referenced the complainant as a disgruntled failed mayoral candidate.

In the interest of full disclosure, as the complainant I am a former employee of the City of Starkville and was the sole employee not reinstated at the first meeting in the term of this Board of Aldermen in July, 2013.

I have been a full time resident of the City of Starkville for the past 10 years. I am a Starkville native and attended school through to my Bachelor of Science degree from Mississippi State University. I received a Masters of Public Administration from the Andrew Young School of Policy Studies from Georgia State University.

I served at the will and pleasure of the two previous administrations and did so for the personal satisfaction of the service. I am not interested in or concerned with retribution for the actions taken that negatively affected me. My sole purpose is for this Board to cease and desist their ongoing pattern of flagrant disregard for the value and sanctity of the process of open government.

To attest to the support of other members of the community for the concerns expressed in this complaint I have attached a supplementary sheet of signatures from citizens who are joining me in this complaint that is being filed and is accompanied by three other complaints. (Addendum A)

I believe that some members of this Board of Aldermen will not be influenced or dissuaded from their continued course of action by any finding other than that of a second violation and personal accountability requested in paragraph 13 herein.

Much of the information in the four complaints is duplicative in nature based on the foundation being laid, the chronology of events and the agenda items that were considered by the Board of Aldermen on multiple occasions with multiple results.

This complaint is a stand-alone document but it is accompanied by the three others that have been filed as stand-alone complaints. Each one is capable of supporting the individual complaint as presented.