

BEFORE THE MISSISSIPPI ETHICS COMMISSION

KENNETH EUGENE AASAND

COMPLAINANT

VS.

CASE NO. M-16-006

STARKVILLE MUNICIPAL AIRPORT BOARD

RESPONDENT

FINAL ORDER

This matter came before the Commission through an Open Meetings Complaint filed by Mr. Kenneth Eugene Aasand against the Starkville Municipal Airport Board. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-41-15, Miss. Code of 1972. In accordance with Rule 4.6, Rules of the Mississippi Ethics Commission, the hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on November 4, 2016. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived its right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 4.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Aasand filed an open meetings complaint which contains a number of allegations against the Starkville Municipal Airport Board (the “airport board” or “board”). Aasand is involved in a dispute with the airport board and/or the City of Starkville concerning the termination of a fixed base operator lease held by a corporation owned by Aasand. Under the fixed base operator lease, Aasand’s corporation managed certain operations of the Starkville Municipal Airport. The majority of the allegations made by Aasand in the complaint have nothing to do with potential violations of the Open Meetings Act. The allegations which involve the underlying dispute between Aasand and the airport board will not be addressed specifically herein. The Ethics Commission’s decision in this case is strictly limited to whether the board violated the Open Meetings Act. The only viable allegations concerning the Open Meetings Act relate to a meeting held by the airport board on January 25, 2016.¹

1.2 On January 25, 2016, the airport board conducted a meeting during which board members determined to enter executive session “to discuss possible situations that we need to discuss because of future implications.” The minutes reflect that a motion was made and seconded “that the Chair of the Airport Board contact the City Attorney and verify [the board is] on firm legal ground [under the fixed base operator lease] if the Airport Board sends a letter to Mr. Aasand to terminate [the] lease. . . .” The minutes reflect this motion was made in open

¹ In passing, Aasand mentions that he had a conversation with one board member who “stated he had no idea what the board is doing as the ‘Board officers are holding meetings for officers only.’” The airport board submitted an affidavit explaining the gathering referenced by Aasand included only two board members (less than a quorum) who met one time after the board terminated Aasand’s contract. During this “meeting,” the two board members reviewed fixed base operator standards which had been enacted by the city.

session, and the board in its response, claims the motion passed by unanimous vote. The minutes of the meeting fail to reflect any vote on the motion.

1.3 Because the airport board is advisory, all decisions concerning termination of the fixed base operator lease required action by the Mayor and Board of Aldermen for the City of Starkville. Apparently, the Mayor and Board of Aldermen, in a public meeting, terminated the lease held by Aasand's corporation.

1.4 In response to the complaint, the airport board admits the reason stated in the minutes "does not describe an exception to enter executive session allowed by [Section 25-41-7, Miss. Code of 1972.]" Moreover, the board claims that it inadvertently failed to record the vote in the meeting minutes. The board denies that it acted willfully or knowingly, and points out that the board meets without an attorney present. The board states that its members made a mistake and have not engaged in "a pattern and practice of circumventing the Act." Mr. Aasand filed a rebuttal which states he believes the board went into executive session to keep its "decision" secret and restates many of the other allegations which are unrelated to the alleged violation of the Open Meetings Act.

II. CONCLUSIONS OF LAW

2.1 "The Open Meetings Act was enacted for the benefit of the public and is to be construed liberally in favor of the public." Board of Trustees of State Insts. of Higher Learning v. Miss. Publishers Corp., 478 So.2d 269, 276 (Miss. 1985). The purpose of the Open Meetings Act is to provide notice of meetings conducted by public bodies and to allow the public the opportunity to attend and observe those meetings. See Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107 (Miss.1989).

Every member of every public board and commission in this state should always bear in mind that the spirit of the Act is that a citizen spectator, including any representative of the press, has just as much right to attend the meeting and see and hear everything that is going on as has any member of the board or commission.

Id. at 110. "However inconvenient openness may be to some, it is the legislatively decreed public policy of this state." Mayor & Aldermen of Vicksburg v. Vicksburg Printing & Pub., 434 So.2d 1333, 1336 (Miss.1983).

2.2 Only in limited circumstances, which are enumerated in Section 25-41-7(4) of the Mississippi Code, may a public body enter executive session and exclude the public. The reason or reasons for holding an executive session must be announced to the public in an open meeting and recorded in the minutes. Section 25-41-7(3). Furthermore, the reason provided by a public body to the public must be "meaningful" and stated with "sufficient specificity." Hinds County at 111. The airport board correctly recognizes the reason for entering executive session on January 25, 2016 did not meet any of the executive session reasons set forth in Section 25-41-7(4).

2.3 Moreover, the reason recorded in the minutes is not meaningful and lacks specificity required under the Open Meetings Act. It is the responsibility and obligation of a public body to state a genuine and meaningful reason with sufficient specificity so that any members of the public who are present will understand that there is an actual, specific matter which is to be discussed in the executive session. Hinds County at 113-114. “A meaningful reason is of sufficient specificity that the audience will at some later date be able to check it out.” Id. at 114. The Mississippi Supreme Court has further explained:

A board which only announces “litigation” or “personnel matters” for going into executive session has said nothing. It might as well have stated to the audience ‘Ladies and Gentlemen, we are going into executive session,’ and stopped there. The Act requires that a board cannot use its statutory authority to go into executive session upon certain matters as a device to circumvent the very purposes for which it is under the Open Meetings Act. The purpose of the Open Meetings Act is that the business conducted at all meetings of public boards be wide open.

Id. The reason set forth by the airport board in the minutes lacks specificity required under the Open Meetings Act.

2.4 Additionally, Section 25-41-11 requires boards to maintain minutes of all meetings which reflect, *inter alia*, “an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken. . . .” The airport board accurately recorded the motion concerning the board’s decision to seek termination of Aasand’s lease but failed to record the vote or any other approval of the motion. Even though the airport board only had advisory power concerning the lease, the Open Meetings Act requires the board to make an accurate record concerning all final actions of the airport board.

2.5 Thus, the airport board violated the Open Meetings Act by improperly going into executive session during the January 25, 2016 meeting and by failing to keep minutes reflecting the vote of its members. These violations do not require reversal of the airport board’s actions, nor does the Ethics Commission have any authority to overturn the City of Starkville’s decision to terminate Aasand’s fixed base operator lease under these facts. See Shipman v. North Panola Consol. School Dist., 641 So. 2d 1106

IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Starkville Municipal Airport Board violated Section 25-41-7, Miss. Code of 1972, by improperly entering executive session at its meeting on January 25, 2016;

3.2 The Ethics Commission finds that the Starkville Municipal Airport Board violated Section 25-41-11, Miss. Code of 1972, by failing to keep proper minutes reflecting the vote of its members at its January 25, 2016 meeting;

3.3 The Ethics Commission orders the Starkville Municipal Airport Board to refrain from further violations and comply strictly with Section 25-41-7 and Section 25-41-11, Miss. Code of 1972.

SUBMITTED this the 6th day of December 2016.

CHRIS GRAHAM, Hearing Officer
Mississippi Ethics Commission