

**OPEN MEETINGS COMPLAINT IN THE MATTER OF THE
REPEAL OF THE EQUALITY RESOLUTION
AT THE JANUARY 6, 2015 REGULAR MEETING
OF THE CITY OF STARKVILLE BOARD OF ALDERMEN**

1. I believe that the Mayor and Board of Aldermen of the City of Starkville have participated in a course and pattern of violating the Open Meetings Act 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 January 21, 2014, September 23, 2014, January 6, 2015, and January 20, 2015 (Exhibits 1-4)

The subject matter of the meeting about which the complaint is being filed was initially considered during the recess meeting of January 21, 2014. Reconsideration of this issue was held in the regular and recess meetings of 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 from said agent to the complainant they accurately reflect meeting occurrences and have not been edited or altered. (Exhibit 5)

January 21, 2014 Recess Meeting

2. The agenda for the meeting of January 21, 2014, contains an item under Board business labeled as item X.B. which was highlighted and included in the consent agenda. This agenda is attached and can be found on the City of Starkville website, www.cityofstarkville.org. (Exhibit 6)

The minutes as approved reflect there was no public or Board discussion on the adoption of the equality resolution and the approval of the resolution was unanimous based on its inclusion on the consent agenda. The minutes of the January 21, 2014

meeting are attached and can be found on the City of Starkville website at www.cityostarkville.org. (Exhibit 7)

September 23, 2014 Recess Meeting

4. The agenda for the recess meeting of September 23, 2014 includes an item 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.

It was under this subject heading that Alderman Lisa Wynn went into some depth to explain the Board's consideration and lack of discussion regarding the adoption of this policy resolution.

During the research for this complaint filing, it was noteworthy that as stated by Alderman Lisa Wynn (see Exhibit 2: DVD of September 23, 2014 @ 1:14:00) on or about February 4, 2014, Alderman Ben Carver made a motion in executive session to repeal the "Equality Resolution" with the comment that he wasn't raised that way. The motion died for lack of a second and there was no recording in the minutes presumably because no official action resulted.

This information is relevant to this complaint because it is emblematic of the ingrained belief by the members of the Board that anything goes in executive session. This topic was clearly not a part of the call for executive session as the call was stated "to discuss pending litigation, potential litigation and property acquisition." The minutes of the September 23, 2014 meeting are attached and can also be found on the City of Starkville website at www.cityostarkville.org. (Exhibit 8)

Not only was the call of the executive session for the above referenced meeting inadequate based on the prima facie language, but there was clearly no specific and ostensible or recorded reason for the matter to be taken up in executive session. *Hinds, County Board of Supervisors v. Common Cause of Mississippi*, 551 So.2d 107 (Miss.1989).

January 6, 2015 Regular Meeting

5. The agenda for the regular meeting of January 6, 2015, includes an executive session that lists the following subject matter:

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

This agenda is attached and can be found on the City of Starkville website.

www.cityofstarkville.org. (Exhibit 9)

Upon exiting from executive session the Board of Aldermen through the city clerk announced that it had voted in executive session to rescind the previously enacted “equality resolution” which was adopted unanimously on January 21, 2014.

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 10)

The dictates required by the Mississippi Supreme Court in the Hinds, County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107 (Miss.1989), state that the

call of the executive session for the January 6, 2015 meeting should not be pretext. Hinds Co., supra.

Upon information and belief, there was no known or credible threat of litigation articulated due to the repeal of the enactment of the equality resolution. That policy had been adopted and was in effect as of January 21, 2014. The only reference to the adoption of the equality resolution since its enactment was on September 23, 2014. See the foregoing paragraph 4 citing Exhibit 2.

Since the public and the employees had no hint of a change by the Board of Aldermen to the aforementioned policy, there could have been no threat of litigation and therefore no need for a strategy or negotiating session pertaining to this subject matter. Using the executive session as pretense to avoid discussing substantive issues in full view of the public is contrary to public policy.

In this case, the complainant submits that the Board of Aldermen was attempting to avoid the public scrutiny and discourse they presumed they would be subjected to based on the experiences resulting from the actions taken during the meetings of September, 2014.

Upon information and belief, the potential litigation that was stated as the reason for taking the matter of the repeal of the equality resolution into executive session was not appropriate. Further, there was no discussion of strategy or negotiation which constitute the only statutorily authorized reasons for a potential litigation topic to be placed under executive session under Miss. Code Ann. §25-41-7(4) (b).

The Mayor vetoed the actions taken in the executive session on January 6, 2015. A copy of that veto is attached. (Exhibit 11)

January 20, 2015 Recess Meeting

6. The agenda for the recess meeting of January 20, 2015 include an item labeled as: X.A. Discussion and Consideration of Overriding the Mayor's Veto related to the Recension (sic) of the Equality Resolution. The agenda and the minutes of the January

20, 2015 meeting are attached and can be found on the City of Starkville website at www.cityostarkville.org. (Exhibits 12 -13).

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 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 and he received no answer as to who was the potential litigation created 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.

7. 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.

8. 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.

9. Upon information and belief, the city attorney was in attendance at the executive sessions and did not counsel the Board that their actions were fully supported by the laws addressing the open meetings act and in fact expressed some concern based on a question from an alderman in attendance as to the legality of the topic in executive session.

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

11. 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.

12. There is also a pending complaint before the Ethics Commission against the City of Starkville that alleges a pattern and practice of decision making outside of the public meetings. That complaint did not speak to the use of executive session but instead alleges the decisions as being made prior to the regular and recess meetings of the Board of Aldermen.

13. This complaint alleges that the Board of Aldermen continues to use all means available to them to conceal their discussions and decisions from the public whom they serve including intentional and inappropriate use of the executive session. A violation of the Open Meetings law occurs when the public is excluded from the meeting deliberations via external (prior to the board meetings) or internal means (within the call of executive session). This Board of Aldermen has shown and continues to show a blatant disregard for the spirit and the intent of the Open Meetings act.

14. It is illegal 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.

15. 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.”

16. The complainant respectfully requests that the Mississippi Ethics Commission investigate the decision regarding the repeal of the Equality Resolution made by the Starkville Board of Aldermen on January 6, 2015, which was made in the executive session that was closed to the public.

17. The complainant respectfully requests that the Mississippi Ethics Commission find that there was an open meetings violation and that this finding displays an ongoing lack of respect for the need of the public to be aware of the Board’s deliberations and that this Board of Aldermen contumaciously violates the Open Meetings Act.

18. Upon a finding of a violation of the Open Meetings Act, the Complainant respectfully requests that the commission impose the maximum fine available for a second or subsequent offense as provided in Title 25, Chapter 41, Miss. Code of 1972.

19. In the previously submitted complaint and response by another 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.