

BEFORE THE MISSISSIPPI ETHICS COMMISSION

ROBERT N. GREGORY

COMPLAINANT

VS.

CASE NO. M-14-002

MAYOR AND CITY COUNCIL, CITY OF COLUMBUS

RESPONDENT

PRELIMINARY REPORT AND RECOMMENDATION

This matter came before the Commission through an Open Meetings Complaint filed by Robert N. Gregory (the complainant) against the Mayor and City Council for the City of Columbus, Mississippi (the council).

The Ethics Commission has jurisdiction over this matter pursuant to Section 25-41-15, Miss. Code of 1972. This Preliminary Report and Recommendation of the hearing officer has been prepared and presented in accordance with Rule 4.6, Rules of the Mississippi Ethics Commission. Within five (5) business days of receiving a copy of this Preliminary Report and Recommendation, any party may file specific written objections to this Preliminary Report and Recommendation. Failure to file such objection waives that party's right to a hearing on the merits.

PROPOSED FINDINGS OF FACT

The City of Columbus is a special charter city whose governing body consists of six councilmen and a mayor. The mayor has the authority to vote only when a quorum of the city council is present and the council's vote results in a tie. A quorum of the city council consists of four members of the council.

The complaint alleges that the mayor for the City of Columbus has organized several "meetings" consisting of three or fewer councilmen (i.e., less than a quorum) at a time behind closed doors during which policy has been discussed. In their response, the council argues the Open Meetings Act does not prohibit non-quorum meetings of the city council. The council asserts that "because less than a majority of the 6 members is not a quorum" there has not been a meeting of the public body at which official acts may be taken. In support of this argument, the council cites Section 25-41-3, Miss. Code of 1972, as well as two opinions issued by the Attorney General and two decisions issued by the Ethics Commission.

The "meetings" at issue in this case involve matters that routinely come before the governing authority of a municipality – economic development and maintenance of public buildings. These meetings are grouped by subject-matter and discussed in more detail below.

A. Meetings concerning economic development.

The first "meetings" identified by the complainant occurred on January 23, 2014. On this date, city officials met with officials with the Golden Triangle Development Link (the Link) to

discuss the city's continued use of the Link for economic development services, including retail recruitment services. The complaint alleges the city council split into two groups of three (less than a quorum of the council) and "[i]n a pair of separate meetings, [the mayor] and three council members met with [a Link official] to discuss the future of retail development in the city." After these meetings, the Link announced it would no longer be providing certain economic development services to the city.

Similar closed meetings were allegedly conducted between the council and Link representatives on February 3, 2014 and February 24, 2017. Again, it is alleged that the mayor conducted meetings on each of these dates "with councilmen in two groups of three . . . to discuss the future of retail development. . . ." The complaint alleges that after the February 24, 2014 meeting the Link and the city announced that they "decided to renew their retail development partnership." Several official meetings of the city council during this time period involved discussion of retail development within the city.

B. Meetings concerning maintenance of a public building.

The complainant also identified "meetings" that occurred on February 27, 2014. On this date, the mayor allegedly conducted two separate meetings with councilmen to discuss the renovation of a public building. Like the meetings discussed above, less than a quorum of the city council attended each of these meetings. In the first meeting, the mayor, an architect, a construction company project manager, and two city employees met with two councilmen to discuss plans for renovation of the building. In the second meeting, three other councilmen attended the meeting with the mayor and other people identified above. These meetings were prearranged and took place in the mayor's conference room at city hall. The complainant requested access to these meetings which was denied by the mayor.

PROPOSED CONCLUSIONS OF LAW

At the outset, it is important to note that this matter involves pre-arranged meetings of the mayor and city council whereby a quorum of the council (albeit in separate meetings of less than a quorum) intended to discuss and determine matters squarely within the control and jurisdiction of the council. The facts of this case, and ultimately the decision rendered herein, are unique in that the mayor and city council divided the council into two separate groups of less than a quorum of the council and conducted separate meetings about the same subject, on the same day. Numerous questions may be raised by this case involving scenarios which are similar to but factually distinguishable from the facts herein. However, the Ethics Commission has no advisory authority under the Open Meetings Act, and this decision is limited only to the specific facts of this case.

The legislative statement in the Open Meetings Act (the "Act") is the standard by which this case must be addressed:

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the

deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

Section 25-41-1, Miss. Code of 1972. “The [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). Recognizing the Legislative intent behind the Act, the Supreme Court has instructed public boards and commissions as follows:

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.

Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 110 (Miss.1989). “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).

Section 25-41-5 directs that all official meetings of public bodies are public meetings and shall be open to the public. The council claims the meetings identified by the complainant do not meet the definition of the term “meeting” in the Act, and the council is not required to conduct such meetings in public or follow the other requirements in the Act. As noted by the council, Section 25-41-3, Miss. Code of 1972, defines a “meeting” as “an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” (emphasis added) “[O]fficial acts’ includes action relating to formation and determination of public policy....” Gannett River States Pub. Corp., Inc. v. City of Jackson, 866 So.2d 462, 466, ¶ 16 (Miss. 2004), quoting Bd. of Trustees at 278. “The Legislature does not indicate that official acts must be taken in order for the gathering to be considered a meeting.” Gannett at 466, ¶ 15. Official acts may be taken when a quorum of the public body is assembled. Id.

In addition to citing Section 25-41-3, the council relies on two opinions issued by the Office of Attorney General and two decisions rendered by the Ethics Commission. While the council’s citations to the Act and opinions are accurate, neither the Act nor these opinions support the council’s arguments that the meetings herein are not subject to Act.

In a January 2014 opinion cited by the council, the Attorney General advised the State Board of Education that no violation of the Open Meetings Act would occur if the Chairman of the Board and perhaps one other board member met with employees of the Office of Educational Accountability to discuss complaints concerning the office’s director who is appointed by the Board of Education. See Miss. Atty. Gen. Op. 2013-00499 (Jan. 10, 2014). The council also cites an April 1999 opinion where the Attorney General advised that less than a quorum of members of the board of supervisors could attend a Council of Governments meeting that included less

than a quorum of mayors and aldermen of various municipalities. See Miss. Atty. Gen. Op. No. 1999-0126 (Apr. 9, 1999). In each of these opinions, the Attorney General “strongly advised” the individuals who attended the meetings to consider the Mississippi Supreme Court’s admonitions in Common Cause:

The philosophy of the Open Meetings Act is that all deliberations, decisions and business of all governmental boards and commissions, unless specifically excluded by statute, shall be open to the public.

Common Cause, 551 So.2d at 109. Neither of the Attorney General’s opinions provide support for the proposition advocated by the council herein – that a mayor and city council may avoid the requirements of the Act when they purposely divide into two groups and meet separately to have similar discussions concerning city business.

The Ethics Commission’s decision in Mason v. Board of Aldermen, City of Aberdeen, M-10-001, involved an impromptu meeting and not a prearranged meeting of the aldermen. The purpose of the meeting was for the mayor, with the vice mayor attending, to suspend an employee. The evidence in that case indicated other aldermen were present during the meeting by chance and that their attendance was not prearranged.

In Griffin v. Board of Mayor and Aldermen, City of Crystal Springs, M-10-012, the Ethics Commission dismissed the complaint where the request by the complainant was that the Commission “open an investigation” based on suspicions of secret meetings that had occurred concerning a beer ordinance. The evidence introduced by the city conclusively established that the mayor and board of aldermen had discussed the ordinance in numerous public meetings and had not conducted any secret meetings concerning the ordinance. Neither of these decisions rendered by the Ethics Commission supports the arguments made by the council herein.

The practice of dividing the council into two separate groups and conducting separate meetings with each group concerning the same subject-matter is much like the use of telephone polls discussed by the Mississippi Supreme Court in Bd. of Trustees, 478 So. 2d at 278-79. In that case, the Court held that “all the deliberative stages of the decision-making process that lead to ‘formation and determination of public policy’ are required to be open to the public.” Id. at 278 (quoting 25-41-1). The Court concluded that polling board members by telephone concerning issues pending before the board illegally circumvented the Act where the use of polls prevented the public from attending the deliberations concerning these issues. Id. The Court explained that all deliberations of public bodies that lead to the formation of public policy must take place in accordance with the Act. Id. at 278-79.

Here, the mayor and city council divided into two groups and conducted meetings involving less than a quorum of the council. These meetings were pre-arranged and, while conducted separately, involved the same subject-matter. These meetings included deliberations by the council members concerning matters specifically under the jurisdiction of the council. These meetings circumvented the Act. By circumventing the Open Meetings Act, the mayor and city council violated Section 25-41-1, Section 25-41-3, and Section 25-41-5.

PRELIMINARY RECOMMENDATIONS

The undersigned hearing officer proposes to make the following recommendations to the Ethics Commission:

1. The commission should find the mayor and council for the City of Columbus violated Sections 25-41-1, 25-41-3, and 25-41-5, Miss. Code of 1972, by: (a) dividing into groups of less than a quorum of the council and shielding their meetings from the definitions in Section 25-41-3 and the requirements of Section 25-41-5; and (b) conducting closed meetings concerning city business on January 23, 2014, February 3, 2014, February 24, 2014, and February 27, 2014.

2. The undersigned hearing officer further proposes to recommend the Ethics Commission order the mayor and city council for the City of Columbus to refrain from further violations and comply strictly with Sections 25-41-1, 25-41-3, and 25-41-5.

NOTICE OF PROPOSED HEARING DATE

In the event either party objects to this Preliminary Report and Recommendation before 5:00 p.m. on Friday, August 22, 2014, as provided in Rule 4.6, the undersigned hearing officer proposes to set this matter for hearing at 10:00 a.m., Wednesday, October 29, 2014, at the offices of the Mississippi Ethics Commission, 660 North St., Jackson, Mississippi.

SUBMITTED this the 8th day of August 2014.



CHRIS GRAHAM, Hearing Officer
Mississippi Ethics Commission

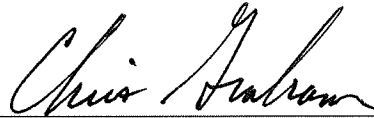
CERTIFICATE OF SERVICE

I do hereby certify that I have this day transmitted a true and correct copy of the foregoing document to the parties by transmitting it by electronic means and by mailing it to the last known address as follows:

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So certified this 14th day of August, 2014.



CHRIS GRAHAM