



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.

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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.

OPEN MEETINGS

Enforcement

- Any Person may file a Complaint with the Ethics Commission if they believe a violation has occurred
- Ethics Commission will send a copy of the Complaint to the public body
 - The Public Body may respond to the Ethics Commission
- Ethics Commission will investigate the complaint
- Commission may dismiss complaint, make preliminary finding or hold a hearing.

OPEN MEETINGS Enforcement

- Commission may order public body to comply with law.
- Commission may impose \$500 fine for first offense, \$1,000 for subsequent offense.
- Commission can mediate disputes.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

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.
- 2-2-1 Rule for County Government

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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

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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.

WHAT ABOUT EMAIL or TEXT?

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 can deliberate board business ONLY in a properly noticed public meeting.
- Board members should avoid using email to communicate with each other about board business.

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**EXECUTIVE SESSION
PROCEDURE**

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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]

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Executive Session Procedure:

Miss. Code § 25-41-7

1. The meeting **must begin as an Open Meeting.**
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.
 - Does not require a second to this motion
 - The vote on this motion must be made 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.

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Executive Session Procedure:

Miss. Code § 25-41-7

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.
4. In order to go into executive session, a majority of **three-fifths of those present** must vote in favor of it.
5. 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.
6. The vote to go into executive session is **applicable only to that particular meeting on that particular day.**

**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.**

Announce Specific Reasons

- 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

- a) Personnel matters
 - Must be related to the job performance, character, professional competence, or physical or mental health of a person holding a specific position, or matters relating to the terms of any potential or current employment or services agreement with any physicians or other employees of public hospitals, including any discussion of any person applying for medical staff privileges or membership with a public hospital
- b) Litigation
 - Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

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Executive Session Reasons

- c) Security matters
- d) Investigations regarding misconduct or violations of law
- e) Legislature may enter executive
- 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 or Relocation of business
- k) Budget Item provided that involves an employee or personal matter

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Executive Session Reasons

- l) Discussion of Information or Data exempt under Public Records Act
- m) Discussion regarding expanding Hospital services
- n) Discussion regarding Hospital matters that involve personal information

NOTE: What is not listed is discussion or negotiations of CONTRACTS unless its an existing contract that may lead to litigation

OPEN MEETINGS ACT Notice

- Times and places of regular meetings should be set in minutes.
- 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.
- 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.

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.

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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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Ethics Prohibitions

- Two Prohibitions
 - Constitutional Prohibition
 - Section 109
 - Legislative Prohibition
 - Miss. Code Section 25-4-105

Section 109, Miss. Constitution of 1890

- No public officer or member of the legislature shall be
 - **interested, directly or indirectly**, in any
 - **contract** with the state, or any district, county, city, or town thereof,
 - **authorized** by any law passed or order made by any board of which he may be or may have been a member,
 - **during the term** for which he shall have been chosen, **or within one year** after the expiration of such term.

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Section 109

- Section 109 only applies to members of boards and the Legislature.
- There must be some sort of contract but does not have to be a written contract.
- The conflict arises when the board funds or otherwise authorizes the contract.
 - Even if the individual member does not vote, he or she may be in violation.
 - Recusal or absentee does not cure a Section 109 Violation
- The prohibition continues until a board member has been out of office for one year.

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Basic Prohibitions for Public Servants Miss. Code Ann 25-4-105

- Use of Office
- Contracting
- Purchasing Goods and Services
- Purchasing Securities
- Insider Lobbying
- Post Government Employment
- Insider Information

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Use of Office

- No **public servant** shall **use his official position** to obtain, or attempt to obtain, **pecuniary benefit** for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any **relative** or any **business with which he is associated**.

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Use of Office

- No person may intentionally **use or disclose information** gained in the course of or by reason of his official position or employment as a public servant in any way that could result in **pecuniary benefit for himself, any relative, or any other person**, if the information has not been communicated to the public or is not public information.

Use of Office

“**Relative**” is the public servant’s

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

Use of Office

'Business with which he is associated' means public servant or his relative is

- officer, director, owner, partner, employee
- holder of more than ten percent (10%) of the fair market value or
- from which he or his relative derives more than \$2,500 in annual income or
- over which such public servant or his relative exercises control.

Contract Prohibition

- No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member

Contractor Prohibition

- No public servant may be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment
- No public servant may have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

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The Purchaser Prohibition

- No public servant shall be a **purchaser, direct or indirect**, at any sale made by him in his official capacity **or by the governmental entity of which he is an officer or employee**, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.
 - Public Servant may not purchase items at auction of the governmental entity for which they are employed

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Influence of Government Decision

- Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member

Post Government Employment

- No public servant shall perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was **directly concerned or in which he personally participated during the period of his service or employment.**

Exceptions to the Rules

A public servant or his relative:

- May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.

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Exceptions to the Rules

A public servant or his relative:

- May be a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods, services or property involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

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Exceptions to the Rules

A public servant or his relative:

- May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where the primary contract is let to the lowest and best bidder after competitive bidding or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

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Exceptions to the Rules

A public servant or his relative:

- May purchase securities issued by the governmental entity of which he is an officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.

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Exceptions to the Rules

A public servant or his relative:

- May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.

Exceptions to the Rules

A public servant or his relative:

- May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.

Exceptions to the Rules

A public servant or his relative:

- May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.

Exceptions to the Rules

A public servant or his relative:

- If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.

Exceptions to the Rules

A public servant or his relative:

- If a constable, may be employed and receive compensation as a deputy sheriff or other employee of the county for which he serves as constable.
 - Solid Waste Officer may be employed by Sheriff's Department or other law enforcement

Avoidance of Violation

- A public servant **must totally and completely recuse** themselves from the matter giving rise to the conflict.
- A board member must leave the board meeting before the matter comes up for discussion, may only return after the matter is concluded, and must not discuss the matter with anyone.
- An abstention is considered a vote with the majority and is not a recusal.
- The minutes of the meeting should accurately reflect the recusal.
- **Recusal *does not* prevent other violations**

Impact of Violation

- Any contract made in violation of this section may be declared **void** by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and
- The contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

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Impact of Violation

- Upon a finding by clear and convincing evidence that any Person has violated any provision of this article, the commission may:
 - Censure the person or
 - Impose a civil fine of not more than Ten Thousand Dollars (\$ 10,000.00), or both.
 - May further recommend to the Circuit Court for Hinds County that
 - Elected public servant be removed from office.
 - Non-elected public servant be removed from office, suspended, or subjected to a demotion or reduction in pay.

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Impact of Violation

- The commission may order restitution or other equitable or legal remedies to recover public funds or property unlawfully taken, as well as unjust enrichment, although not public funds.
- Any pecuniary benefit received by a public servant in violation of this article may be declared forfeited by the commission for the benefit of the governmental entity injured.

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