

BEFORE THE MISSISSIPPI ETHICS COMMISSION

SHERRY HALL SHEPARD

COMPLAINANT

VS.

OPEN MEETINGS CASE NO. M-22-018

**BOARD OF EDUCATION,
CLEVELAND SCHOOL DISTRICT**

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through an Open Meetings Complaint filed by Sherry Hall Shepard against the Board of Education for the Cleveland School District (the “board”). The board filed a response to the complaint by and through its attorney. 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 presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on December 1, 2023. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived the right to a hearing on the merits. Accordingly, this Final Order is entered in accordance with Rule 4.6 of the Rules of the Mississippi Ethics Commission

I. FINDINGS OF FACT

1.1 Sherry Shepard alleged that the Board of Education for the Cleveland School District violated the Open Meetings Act by holding “secret” School Board Meetings. She states that throughout September 2022, the board held several special meetings via teleconference, zoom or in-person, without providing the public access to those meetings. She states “[s]aid meetings have been held via telephone without providing the public the phone number to dial in; via Zoom without providing a Zoom link; and in meeting locations where no address to the location is provided.” In support of her complaint, Dr. Shepard provided a print-off of the district’s website listing the board’s meeting notices, from June 2021 – October 2022.

1.2 Additionally, Dr. Shepard alleged the board violated the Open Meetings Act at its September 30, 2022 special meeting because it “is not advising the public of actions taken in executive session as required by law.” She attended this special called meeting and states:

... The Board immediately went into executive session stating the reason was for personnel and contracts. It is my belief that contracts are not a legal executive session topic. The Board excused the public from the private executive session deliberations but Reggie Barnes was allowed to stay. When the Board returned from the executive session, they adjourned the meeting without announcing anything to the public.

When I inquired of the Board Attorney as to whether any decisions had been made, he replied the decisions would be announced in an official press release. After reading the press release, I inquired about the vote count of the decisions(s)

made and if anything was done about the Business Manager vacancy. The Board attorney replied as if there was only one vote, 5-0, and shared that action “was” taken on the Business Manager. This information was absent from the press release.

1.3 In response, the board stated that it held three special called meetings in September 2022: September 16, 26 and 30. The board admits that it failed to provide a Zoom link or a physical location for the public to access the September 16 meeting, but states that, “The meeting’s purpose was to go straight into Executive Session to address legal issues pertaining to personnel (possible claims and/or resignation of the current superintendent) and to address the belief that executive session discussions/information was being leaked to the public.” However, the board disputes that it failed to provide public access to the other two special called meetings, and notes that Dr. Shepard attended both the September 26 and 30, 2022 special meetings.

1.4 With regard to the manner in which the board conducted the September 30, 2022 executive session, the board states that:

Complainant Shepard and a guest attended the opening portion of the meeting and exited the meeting once the Board entered into Executive session. After exiting Executive Session (conducted to address the lateral movement of the current superintendent and appointment of an interim superintendent) the meeting resumed and Shepard and her guest were allowed back into the meeting. Although a vote was conducted within Executive Session (which is allowed under Mississippi law), Shepard was informed of the Board’s decision and was even given (via e-mail) a copy of the press release letting the public know of the board’s actions.

1.5 In support of its response the board provided copies of the notices and agendas from the September 30, 2022 special meetings. Upon request of the undersigned hearing officer, the board also provided a copy of the September 30, 2022 board minutes. The September 30, 2022 minutes reflect the board voted, (1) to approve an addendum to the superintendent’s contract, (2) to negotiate a contract with and appoint an interim superintendent, and (3) to issue a press release regarding the superintendent and interim superintendent.

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). In Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107 (Miss.1989), the Supreme Court summarized the Legislative intent of the Open Meetings Act 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.

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). Only in limited circumstances, which are enumerated under Section 25-41-7(4), may a public body enter executive session and exclude the public.

2.2 The Open Meetings Act requires public bodies to take all reasonable means within their power and resources to ensure all members of the public who attend are able to “see and hear everything that is going on” at an open meeting. See Hinds County at 110. Section 25-41-5(2) of the Act allows public bodies to conduct meetings through “teleconference or video means” and mandates that “the equipment allows all members of the public body and members of the public who attend the meeting to hear the deliberations of the public body.” As such, providing the public an opportunity to attend and listen, either remotely through electronic means or by visiting a physical location, satisfies the requirements of Section 25-41-5. Both methods ensure the public has an opportunity to observe an open meeting conducted through teleconference or video means with the equipment utilized by the public body and provides a public body the flexibility to use either method. As the board concedes, it failed to provide either electronic access to or a physical place for the public to attend the September 16, 2022 special meeting in violation of the Open Meetings Act.

2.3 The Act also requires the reason or reasons for holding an executive session to be announced to the public in an open meeting and recorded in the minutes. Section 25-41-7(3). The board must inform the public of the actual matter to be discussed with sufficient specificity in addition to identifying the specific statutory exemption relied upon. It is the responsibility and obligation of a public body to state a genuine and meaningful reason with sufficient specificity so that the audience 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. In Hinds County, the Court stated:

The reason given, of course, must be meaningful. It must be more than some generalized term which in reality tells the public nothing. 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.

Id. at 111.

2.4 In reviewing the evidence submitted in this case, the complainant states the board announced it would be entering executive session to discuss “personnel and contracts” prior to entering executive session. Additionally, the complainant states that in her conversation after the meeting with the board attorney, the board attorney confirmed that the board discussed the school district’s business manager vacancy. It appears that the complainant may have misunderstood both: (1) that the board would be discussing contracts in addition to and not associated with personnel matters; and (2) that the personnel matters discussed involved the business manager, not the superintendent. However, the board’s response and minutes clearly state that the board discussed personnel matters and associated employment contracts regarding

the superintendent and assistant superintendent in executive session, which is allowed pursuant to Section 25-41-7(4)(a) and/or (k).

2.5 Section 25-41-7(4)(a) allows a public body to enter executive session for the “[t]ransaction 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” Section 25-41-7(4)(k) allows a public body to enter executive session for the “[t]ransaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position.... The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees.”

2.6 In a recent case, the Ethics Commission stated that to properly enter executive session to discuss personnel matters, “the board must clearly indicate that ‘a person holding a specific position’ was discussed both in its announcement to the public and as recorded in its minutes. That is, the board must somehow indicate that specific employee(s) were discussed in executive session, in both its public announcement and in its minutes, but need not name the employees discussed or identify them in a way that would defeat the underlying purpose for entering executive session.” Grimes v. Madison County Board of Education, Open Meetings Case M-22-007. In Grimes, the Ethics Commission also stated, “In striving to comply with these requirements, the board should remember that it must quote the applicable paragraph in Section 25-41-7(4) when stating and recording its reason for entering executive session. Quoting the statute is the first of two parts to the law’s requirements. The second part is public bodies should supplement the statutory quotation by providing specific information supporting the reason without giving so much detail that the board defeats the purpose of entering executive session. Hinds County at 112.”

2.7 In this case, the board stated in its response that it entered executive session “to address the lateral movement of the current superintendent and appointment of an interim superintendent.” In other cases, such as an executive session discussion regarding a teacher, to announce to the public that the board will be discussing “personnel and contracts” in executive session would be insufficient. However, because the positions of superintendent and interim superintendent are held by single, easily identifiable persons, to identify these titles in the announcement would have essentially identified these persons in a way that would have defeated the underlying purpose for entering executive session. In balancing the need for confidentiality with the obligation to the public to disclose enough so that the public understands that there is an actual, specific matter which is to be discussed in the executive session, an announcement may be sufficient for the Open Meetings Act in one situation, while insufficient in another situation.

2.8 Due to the difficulty of indicating that a specific person would be discussed without identifying that person in a way that would undermine the underlying purpose of the executive session, the board did not violate the Open Meetings Act in this case. The announcement of “personnel and contracts” was of sufficient specificity that both the complainant and the Ethics Commission have been able to “check it out,” by reviewing the board’s subsequent actions, including the details of the discussion contained in the minutes, and

the issuance of a press release stating that the superintendent was stepping down and an interim superintendent was appointed.

2.9 Moreover, the board need not follow up an executive session with an additional announcement regarding the matters that were discussed after exiting an executive session, so long as an announcement occurred prior to entering executive session. While the Act requires the reason for holding an executive session to be stated in an open meeting, the law does not require a public body to publicly announce any action taken during executive session, only that those actions be recorded in the minutes as required in Section 25-41-11. Boards can have legitimate reasons for declining to share information about their executive session actions until the minutes are recorded. See McKee v. Town of Enterprise, Open Meetings Case M-17-011.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Board of Education for the Cleveland School District violated Section 25-41-5(2), Miss. Code of 1972, by failing to provide either electronic access to or a physical place for the public to attend the September 16, 2022, special called meeting.

3.2 The Ethics Commission orders the Board of Education for the Cleveland School District to refrain from further violations and comply strictly with the Open Meetings Act.

SO ORDERED, this the 25th day of January 2024.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission