

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**MARGARET A. FUTRAL & NOLA COLBURN**

**COMPLAINANTS**

**VS.                    OPEN MEETINGS CASE NOS. M-17-016 & M-17-018 (CONSOLIDATED)**

**CHICKASAW COUNTY BOARD OF SUPERVISORS**

**RESPONDENT**

**ORDER OF DISMISSAL**

This matter came before the Ethics Commission through two separate Open Meetings Complaints filed against the Chickasaw County Board of Supervisors (hereinafter “the board”), by Margaret A. Futral and Nola Colburn. The complaints involve the same subject matter and are consolidated herein. The board responded to the complaints by and through its attorney. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-41-15, Miss. Code of 1972. The hearing officer presented a Recommendation of Dismissal to the Ethics Commission at its regular meeting held on July 6, 2018 in accordance with Rule 4.6, Rules of the Mississippi Ethics Commission. This Order of Dismissal is entered in accordance with Rule 4.6.

**I. FINDINGS OF FACT**

1.1     The complaints relate to a budget hearing held by the board on September 5, 2017. The complaints allege that the board did not follow the proper procedure for holding a budget hearing by failing to allow public comment and distribute copies of the proposed budget until after the budget was approved. The board filed affidavits from all of the supervisors and the county administrator. The complainants also submitted additional written materials after the affidavits were filed.

1.2     The budget hearing was called to order and County Administrator Norman Griffin began handing out copies of the proposed budget, first to the supervisors and then to local newspaper editor Floyd Ingram. At this point Mr. Griffin announced the proposed budget contained a number of typographical errors. Board President Russel Brooks then asked Mr. Griffin to stop handing out copies of the proposed budget until the errors could be discussed. Mr. Brooks asked Mr. Ingram to return his copy, but Mr. Ingram refused. The board then went through the proposed budget line by line and corrected the errors before voting to approve the corrected budget. Then another member of the public, Mrs. Elizabeth Rish, asked to address the board, and Mr. Brooks allowed her to speak. She took issue with an item in the budget and was told the board would revisit that topic later. Mr. Brooks then asked if anyone else would like a copy of the budget, and copies were handed out to those in attendance, including the complainants. At that point the board concluded the budget hearing and continued with the remainder of its meeting. The complainants were not listed on the agenda.

**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.

A. Conduct of Budget Hearing

2.2 Section 27-39-203(3) of the Advertisement of Proposed Ad Valorem Tax Increases Act requires that during a public hearing to consider budgets and tax levies, a public body must “permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.” The Mississippi Supreme Court has held the statutory advertisement and public hearing requirements in Section 27-39-203 are strictly mandatory, and tax levies that fail to comply with these requirements are void. Tunica County Bd. of Supervisors v. HWCC-Tunica, LLC, No. 2015-CA-01645-SCT (Miss. Dec. 14, 2017). See also Section 27-39-203(9). However, Section 27-39-203 is not part of the Open Meetings Act, and the Ethics Commission has no authority to enforce it. Therefore, if the board did not follow the proper procedure for conducting a budget hearing, then the complainants must look elsewhere for redress.

B. Public Comment

2.3 Section 25-41-9 of the Open Meetings Act allows a public body to “make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.” “A citizen spectator. . . is not a participant. He has no right to intrude or interfere in any manner with the discussion, deliberation or decision-making process.” Gannett River States Pub. Corp., Inc. v. City of Jackson, 866 So.2d 462, 469 (Miss. 2004), quoting Hinds County. A public body may, but is not required to, allow members of the public to address the public body during a public meeting. Shows v. Madison County School Board, Open Meetings Case M-12-032. See also AG Ops. No. 2006-00539 and 2008-00649. While at least one member of the public was allowed to address the board regarding the proposed budget, the Open Meetings Act does not require the board to allow any public comment.

C. Availability of Agenda Materials

2.4 Section 25-41-5(3) of the Open Meetings Act reads, in pertinent part, as follows:

An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to the members of the public body shall be made available to the public at the time of the meeting.

2.5 The facts in this case show that County Administrator Norman Griffin distributed copies of the proposed budget to the board members at the beginning of the meeting and began distributing copies to the public at the same time. After Mr. Griffin gave a copy to newspaper

editor Floyd Ingram, Mr. Griffin announced that the copies contained errors. Board President Russell Brooks asked Mr. Griffin to stop distributing copies of the budget until the errors could be corrected and asked Mr. Ingram to return his copy. Mr. Ingram refused. After the proposed budget was corrected and approved, copies were distributed to other members of the public, including the complainants. These facts present the only valid issue under the Open Meetings Act in this case.

2.6 The Open Meetings Act requires that “materials that will be distributed to members of the public body and that have been made available [for copying] shall be made available to the public at the time of the meeting.” Section 25-41-5(3). In this case, one copy was provided at the beginning of the meeting to a member of the public, newspaper editor Floyd Ingram. Later, after the errors in the proposed budget were corrected, copies of the budget were provided to the complainants and others. These copies were provided immediately after the board voted on the budget and long before the end of the meeting.

2.7 The Open Meetings Act does not require that the board provide each person in attendance with their own separate paper copy of every agenda item. See L’Ecuyer v. Diamondhead Water and Sewer District, Open Meetings Final Order M-14-006. In fact, materials can be made available in a number of different ways, including but not limited to providing one or more paper copies for the public to share or providing an electronic copy which is projected in the meeting room or made available through some other electronic means. The method of providing the materials is left up to the board.

2.8 The fact that the board president delayed distribution of the budget until the errors could be corrected is troublesome since it delays the public’s right to review the materials. However, it is certainly an understandable effort to provide accurate information to the board and the public. Any concerns about the delay are ameliorated by the fact that copies were distributed immediately after the errors were corrected. Therefore, this delay did not violate the Open Meetings Act, and these complaints should be dismissed.

WHEREFORE, the complaint is hereby dismissed this the 6<sup>th</sup> day of July, 2018.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_

TOM HOOD, Executive Director