

BEFORE THE MISSISSIPPI ETHICS COMMISSION

KIMBERLY MARIE ROLAND

COMPLAINANT

VS.

OPEN MEETINGS CASE NO. M-18-020

**BOARD OF TRUSTEES,
NESHOBA COUNTY SCHOOL DISTRICT**

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Commission through an Open Meetings Complaint filed by Kimberly Marie Roland against the Board of Trustees for the Neshoba County School District (the “board”) which filed a response 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 January 4, 2019, 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 Kimberly Marie Roland alleges the Board of Trustees for the Neshoba County School District violated the Mississippi Open Meetings Act.¹ Specifically, she stated the board violated the Act when (1) she was allowed the opportunity to address the board but was denied the opportunity to ask questions at a board meeting; (2) at another board meeting, she was properly placed on the agenda to participate in the meeting, but when she asked questions of the board, the board attorney advised the board not to answer her questions, and that information responsive to her questions were available as public records.

1.2 Ms. Roland also alleges (3) that the board violated the Act by apparently holding a three hour executive session without providing indoor, air-conditioned facilities to the members of the public who waited for the executive session to conclude. She states, “[w]e all had to wait outside for 3 hours in 98 degree weather with no seating and no restrooms.”

1.3 Finally, Ms. Roland alleges (4) the board discusses information with each other prior to, and after, open meetings. She had no specific details, but generally states:

Nothing is talked about or discussed in front of the public. The topic is stated and asked for votes in favor of the topic. There is a very thick binder on the table at the meeting that has in it everything that is being voted on. It is one copy and there is no way one person in that meeting, especially all that attend the meeting have time to read through the binder to understand everything that is being voted on. The school board also arrives earlier than the meetings and meet in the back in

¹ The complainant’s allegations that do not involve the Open Meetings Act are not addressed herein. Moreover, no legal authority exists for the Ethics Commission to “investigate” an alleged violation of the Open Meetings Act as the complainant requested. See Section 25-41-15, Miss. Code of 1972.

a room prior to coming out for the school board meeting. They also stay afterwards and meet and talk for a while before leaving the building.”

1.4 Ms. Roland also filed a rebuttal, in support of her allegations, including a copy of a Notice of Special Bond Election for the Neshoba County School District dated August 11, 2015, and two newspaper articles from the Neshoba Democrat. In her rebuttal, she essentially restates her allegations and makes additional statements about the board’s alleged misconduct, without providing any additional clarifying details, such as the dates of the meetings on which the alleged violations occurred.

1.5 In its response, the board denies violating the Open Meetings Act. The board provided a copy of two policies that govern how members of the public may address concerns to the board. Policy BCAF authorizes a “Public Comments” item for regular board meetings, allowing individuals who sign up at the beginning of a meeting three minutes to address the board. This policy clearly states “[t]he public comments time is not a forum for in-depth discussion of issues with the board, nor is it a public discussion. . . . The board will not debate any issues raised through public comments . . .” Policy BCBI provides a process for an individual to participate at a board meeting, by submitting a request to the superintendent prior to the meeting, including the reason for the request. If approved by the superintendent, the individual will be placed on the board’s agenda, to speak with the board for 10 minutes, with discussion allowed by the board. It appears that Ms. Roland was placed on the agenda for the first meeting under Policy BCAF, and placed on the agenda at the second meeting under Policy BCBI.

1.6 The board asserts that at their meetings they followed their policies, and Ms. Roland’s first two allegations fail to state any violation by the board. The board further states that Ms. Roland’s intent in addressing the board at their meetings was for “the sole purpose of embarrassment, intimidation and being argumentative with Board members.”

1.7 With regard to the three hour executive session at its meeting on July 9, 2018, the board confirms this executive session lasted approximately three hours because the board members “had to read and consider . . . thousands of pages of testimony and exhibits” regarding the appeals for three teachers who were selected for non-renewal. The board states when the meeting entered executive session on this date, there were approximately 25 members of the public present, and “there is no facility within the Central Office to allow this many people to stay except where they would overhear the discussion of the School Board concerning the appeal.”

1.8 Finally, the board denies the allegation that the board arrives early and meets in the back room. The board states:

Board members arrive at various times and do not convene in any other room than the adjacent meeting room. There is no discussion of the agenda or action to be taken by the Board until in the Board meeting room, where all matters except in executive session are discussed in open meetings. The Board is provided an Agenda prior to the meeting by computer, complete with supporting documents and the items to be discussed. The Board meetings generally last from one hour

up to two or three hours, depending upon what is before it and what needs to take place.

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). The purpose of the Open Meetings Act is to provide notice of meetings conducted by public bodies and to allow the public the opportunity to attend and observe those meetings. See Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107 (Miss.1989).

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.

2.2 However, “[a]ny public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.” Section 25-41-9. Furthermore, “[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, ¶ 25 (Miss. 2004), quoting Hinds County Board of Supervisors v. Common Cause of Mississippi. 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.

2.3 The Board of Trustees for the Neshoba County School District has established policies whereby individuals may request permission to address the board during its public meetings. Ms. Roland requested permission to address the board, and her request was granted pursuant to the board’s procedure at two separate meetings under two separate policies. In the case before the commission, both the policies and the responses by the board to Ms. Roland appear to have been reasonable. The board did not violate the Open Meetings Act by denying Ms. Roland the opportunity to ask the board questions under Policy BCAF. Further, the board did not violate the Open Meetings Act by declining to answer Ms. Roland’s questions under Policy BCBI. At this particular meeting, it appears the board attorney directed Ms. Roland to records which were publicly available pursuant to a public records request.

2.4 The Open Meetings Act also requires public bodies to take all reasonable means within their powers 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 public meeting. Hinds County at 110. However, the Open Meetings Act allows public bodies to exclude members of the public during an executive session and does not require a public body to provide members of the public air-conditioned facilities or restrooms during executive session. The board acted reasonably and

lawfully in excluding people from the meeting room during executive session and did not violate the Open Meetings Act.

2.5 Finally, no evidence was offered to indicate the board members deliberate matters under their authority outside of properly noticed open meetings, as alleged by Ms. Roland. As such, the record in this case does not establish a violation of the Open Meetings Act.

WHEREFORE, the complaint is hereby dismissed this the 4th day of January, 2019.

MISSISSIPPI ETHICS COMMISSION

BY: _____
TOM HOOD, Executive Director