

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**ALDON HANS HELMERT**

**COMPLAINANT**

**VS.**

**OPEN MEETINGS CASE NO. M-20-015**

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

**RESPONDENT**

**FINAL ORDER**

This matter came before the Ethics Commission through an Open Meetings Complaint filed by Aldon Hans Helmert against the Board of Trustees for the Harrison County School District (the “board”). The board 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. A Preliminary Report and Recommendation was issued in this matter on March 5, 2021. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 4.6, Rules of the Mississippi Ethics Commission.

**I. FINDINGS OF FACT**

1.1 Aldon Helmert filed a complaint alleging the Board of Trustees for the Harrison County School District violated the Open Meetings Act by failing to provide proper notice prior to a work session meeting held on July 13, 2020 at 4:00 p.m. He attended the regular meeting held on the same day at 5:30 p.m. and found out before the regular meeting began, that the board had held a work session meeting earlier. Mr. Helmert checked the school district’s website on July 11, 2020, and did not see a notice for the July 13, 2020 work session posted on the website. He states that on July 13, 2020, before the regular meeting began, he checked the school district’s website again, but still did not see a notice for the work session. He checked the website once more on July 16, 2020 and “noticed there was a new line that had been added to indicate that there was a workshop.”

1.2 Mr. Helmert also alleges that a notice for the July 13, 2020 work session was not posted on the front door of the Central Office building of the school district. He asserts he and his wife entered the building for the regular meeting on July 13, 2020 through the front door and did not see a notice for the work session posted.

1.3 Mr. Helmert also disputes the validity of the format of the notice for the July 13, 2020 work session that was available on school district’s website on July 16, 2020. He states, “[t]he form is not endorsed, digitally signed, nor does it provide any indication of who called the meeting.” He references the school board’s Policy BCAC<sup>1</sup>, which states:

---

<sup>1</sup> Available online at the school district’s website at <https://harrison.msbapolicy.org/DistrictPolicies/ViewsAdmin/SelectedDocumentReadOnly/tabid/5791/Default.aspx?docId=258535>.

Special meetings of this school board may be held upon the call of the president thereof, or upon the call of a majority of members thereof. '37-6-11

In order for an item to be legally considered at a called meeting of the board, there must be prior notice that the item will be discussed at the meeting. All items to be discussed at the special or called meeting must be included in the call. . . .

- A notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the school board normally meets.
- The copy of the notice shall be made a part of the minutes or other permanent official records of the school board.
- The notice of a called special meeting shall be posted to the school district's website . . . not less than one (1) hour before the meeting.

. . .

1.4 In support of his complaint, Mr. Helmert provided a copy of the notice.<sup>2</sup> The notice does list the place, date, hour and subject matter of the meeting. However, no date is provided on the line: "This notice for this meeting was posted in compliance with the Mississippi Open Meetings Act on \_\_\_\_\_." Additionally, as stated by Mr. Helmert, the notice does not indicate the time and manner that the meeting was called. In his rebuttal, Mr. Helmert argues that the school district's failure to provide any evidence regarding the time and manner in which the meeting was called proves that the meeting was not lawfully called.

1.5 Mr. Helmert further contends that the board's work session was not held as an open meeting, in violation of the Open Meetings Act. He states in his rebuttal:

Since my wife and I were concerned for available seating within the Board Meeting room due to Coronavirus limitations, we arrived extremely early on July 13, 2020, and found the public meeting room empty. We knew that the Board was meeting in the rear of the building where the public is prohibited from freely entering. This was confirmed when Mrs. Trosclair [the superintendent's assistant] entered the room and addressed the occupants of the room. She said "they are just finishing up" with the return to school policy and explained the Board was meeting to discuss policy matters.

1.6 Mr. Helmert also alleges the board violated the Open Meetings Act by adding an item to its regular meeting agenda "without prior public notice." He states that at the July 13, 2020 meeting, the board, on motion of one of its members, voted to add a "return to school plan" to the agenda. He states in his complaint that "[e]ventually, the board considered and approved the

---

<sup>2</sup> Also available online at the school district's website at <https://meetings.boardbook.org/Documents/CustomPublicNoticeForMeeting/2161?meeting=393244>.

“Return to School” matter without giving opportunity for citizen comments or involvement in the process.

1.7 Additionally, Mr. Helmert alleges the board violated the Act by publishing the “Return to School” policy only after the July 13, 2020 regular meeting concluded on the district’s Facebook page. He states that the policy was not available to review prior to or during the meeting. He states, “they waited until after it was ratified to allow the public to see any of the drafts.”

1.8 Finally, Mr. Helmert notes that the school board failed to record meeting minutes for the July 13, 2020 work session. He states in his rebuttal that he requested copies of the minutes for the work session from Superintendent Roy Gill and Ms. Jodi Trosclair (the superintendent’s assistant) on September 17, 2020. He states “I was told by Mrs. Trosclair that there were no minutes because they do not keep minutes on those.” Mr. Helmert goes on to state that, “Mr. Gill also said that they do not keep minutes for those meetings. I asked if they even had notes indicating who was present, the matters discussed, and any actions taken. I was told that they do not have to record that information.”

1.9 In its response, the board denies violating the Open Meetings Act. In support of its response, the board provided two affidavits of Jodi Trosclair, an assistant to the school district’s superintendent. In her first affidavit, she declares that she has personal knowledge that the notice for the July 13, 2020 work session “was posted before 9:00 a.m. on July 13, 2020 on the front door of the Central Office building of the School District” and that, “before 9:00 a.m. on July 13, 2020, I posted the copy of the Notice [for the July 13, 2020 work session] on the Harrison County School District’s website.”

1.10 Ms. Trosclair also states that, for the July 13, 2020 regular board meeting, she “personally made available at the time of the meeting the [revised] agenda . . . which includes as an item the ‘Return to School Plan 2020-20201.’”

1.11 In her second affidavit, Ms. Trosclair explains:

5. After the 4:00 p.m. work session concluded, there was no need to keep a Notice posted on the front door for the work session, and it was removed from the front door before the regular Board meeting began. The School Board then retired to the Superintendent’s office to have a snack before beginning the 5:30 p.m. regularly scheduled School Board meeting.

. . .

7. Just before the beginning of the regularly scheduled 5:30 p.m. School Board meeting, I entered the public meeting room of the Central Office Building to make sure the Agenda for the meeting was available to the public, and I saw Mr. Helmert at that time in the public meeting room. I did not tell Mr. Helmert that the School Board was continuing to have a work session, because the work session had already concluded. The School Board members were then at that time finishing up with a snack before the regularly scheduled School Board meeting began.

8. I was present at the July 13, 2020 work session. There was no motion made at the work session by any School Board member, and there was no official action taken at the School Board's work session that began at 4:00 p.m. on July 13, 2020.

## 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).

2.2 Meetings of a public body must be open to the public; minutes of meetings must be kept; and public notice must be provided. See Sections 25-41-5, 25-41-11 & 25-41-13. Section 25-41-3 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 (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. Official acts may be taken when a quorum of the public body is assembled. Id. The work sessions conducted by the board are meetings as that term is defined by the Act. See Bd. of Trustees at 278.

2.3 Pursuant to Section 25-41-13(2), a public body, such as this school district's board of trustees, “which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after the effective date of this chapter spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.” As such, the board, by way of its bylaws and actions as reflected in its minutes, must establish its own reasonable procedures for the times, places and procedures for all of its meetings, including the manner in which it provides notice for its meetings.

2.4 The school board has established Policy BCBA to govern how to provide notice for its special meetings, which include the board's work sessions.<sup>3</sup> Specifically, this policy requires:

---

<sup>3</sup> Work sessions conducted by public boards are special “meetings” under the Mississippi Open Meetings Act. See, e.g. Hendrix v. Miss. State Bd. of Dental Examiners, Open Meetings Case. No. M-19-003; Seymour v. Miss. Comm. Wildlife, Fisheries and Parks, Open Meetings Case. No. M-16-010 and Op. Miss. Atty. Gen. No. 2007-00562, Brooks, (Oct. 26, 2007).

(1) the board to post a notice, describing the place, date, hour and subject matter of a special meeting, “within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the school board normally meets”; (2) that the notice be placed in the board’s minutes or other permanent official record and (3) that the notice be posted to the school district’s website, “not less than one (1) hour before the meeting.

2.5 The board has provided Ms. Trosclair’s sworn affidavits – which stand in direct opposition to Mr. Helmert’s assertions in his complaint – that the July 13, 2020 work session notice was timely posted publicly on either the school district’s central office building’s front door and on its website. However, Ms. Trosclair’s affidavits are silent as to whether the school district placed the notice in its minutes or other permanent official record, as required by its Policy BCBA. At this point, it is unclear whether the board fully adhered to its Policy BCBA, such that there is insufficient evidence to find that the board has violated the Open Meetings Act.

2.6 Additionally, the format of the notice provided by the school board for its July 13, 2020 work session appears to conform with its adopted policy. Policy BCBA merely requires the board to provide the “place, date, hour and subject matter” of its special meetings in the notice. Policy BCBA does not require the notice to be endorsed, digitally signed, nor indicate who called the meeting.

2.7 For its own recordkeeping purposes, the board should consider keeping records (as many other public bodies do), such as a logbook or pictures, regarding the time, date and manner in which a special meeting is called and noticed. For example, a record log that the special meeting was called by the board president on a certain date and time would make easier to determine whether the notice was timely posted on the central office door and website. Public bodies should ensure that they sufficiently document notices of special called meetings so that they can prove to the Ethics Commission or a court of competent jurisdiction that the notice was actually posted. This is important because, even if a meeting is held openly and publicly, as the board asserts that its July 13, 2020 work session was – in the public meeting room, allowing members of the public to attend – such a meeting fails to meet the requirements of the Open Meetings Act if the public was not aware that a meeting was scheduled because it was not properly noticed.

2.8 However, the board failed to record minutes for its July 13, 2020 work session, as required by Section 25-41-11 of the Open Meetings Act. If the board takes no final actions during its work sessions, then the minutes will simply reflect “the members present and absent; the date, time and place of the meeting; [and] any other information that the public body requests be included or reflected in the minutes.” However, the Open Meetings Act does not restrict a public body to act only on matters that have been initially included on its meeting agenda. Indeed, the board’s Policy BCBD allows for board members to add items to a meeting agenda in two ways. First, “. . . Any board member may suggest, to the board president and/or the superintendent, items of business to be added to the agenda. The inclusion of such items shall be at the discretion of the board president.” Second, “Any board member denied his or her request to add an agenda item may add an item at the board meeting under “Adoption of Agenda” by making the proper motion, by having the motion seconded and by having majority vote. . . .”

2.9 Nonetheless, the Open Meetings Act does require that “[a]n 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.” Section 25-41-5(3). As a result, the district’s “Return to School” Plan and any other materials reviewed by board members at these meetings should have been made available to the public at the time the work session and regular meeting began, not afterwards on the district’s Facebook page.

2.10 Finally, Mr. Helmert states in his complaint that “[t]he primary citizen complaint was [that the public was] provided NO opportunity to have input [on the “Return to School” Plan].” It should be noted that the Open Meetings Act requires public bodies to conduct their business publicly. However, while members of the public have a right to attend these open 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 at 469, quoting Hinds County, 551 So.2d 107 (Miss. 1989). 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. While public bodies are certainly encouraged to allow for public interaction in their meetings, refusing to allow members of the public to speak at a board meeting does not violate the Open Meetings Act.

### III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Board of Trustees for the Harrison County School District violated Section 25-41-11 of the Open Meetings Act by failing to record minutes for its July 13, 2020 work session.

3.2 The Ethics Commission finds that the Board of Trustees for the Harrison County School District violated Section 25-41-4 of the Open Meetings Act by failing to make materials distributed to the school board members available at the time of its July 13, 2020 regular meeting.

3.3 The Ethics Commission orders the Board of Trustees for the Harrison County School District to refrain from further violations and comply strictly with the Open Meetings Act.

SO ORDERED, this the 16<sup>th</sup> day of March, 2021.

---

SONIA SHURDEN, Hearing Officer  
Mississippi Ethics Commission