

**BEFORE THE MISSISSIPPI ETHICS COMMISSION**

**THE MISSISSIPPI FREE PRESS and NICK JUDIN**

**COMPLAINANTS**

**VS.**

**OPEN MEETINGS CASE NO. M-22-004**

**HOUSE OF REPRESENTATIVES**

**RESPONDENT**

**FINAL ORDER OF DISMISSAL**

This matter came before the Ethics Commission through an Open Meetings Complaint filed by Mr. Nick Judin, a reporter with an online news publication, The Mississippi Free Press, which subsequently filed a supplemental complaint and other pleadings through counsel. The complaints were filed against the Mississippi House of Representatives. Responses and other pleadings have been filed by Speaker Philip Gunn on behalf of the House and by the House Republican Caucus through their attorneys. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-41-15, Miss. Code of 1972.

**I. PROCEDURAL HISTORY**

1.1 Mr. Nick Judin filed a complaint alleging that on February 1, 2022, he sent an email to the office of House Speaker Philip Gunn asking to attend a meeting of the House Republican Caucus but received no response. Mr. Judin describes the Caucus as “a public body comprising a majority of legislators in the Mississippi House of Representatives that meets regularly to discuss and determine policy and law.” Mr. Judin further alleges he attempted to attend a House Republican Caucus meeting on March 14, 2022, but his entry was blocked, and the meeting was temporarily put on hold. Mr. Judin states he identified himself as a member of the press and informed those present that he was attending under the Open Meetings Act. Mr. Judin also says he “inquired [of] several staffers and legislators, including Speaker Gunn himself, if the meeting was subject to the Open Meetings Act, and their response was that it is not.”

1.2 The Mississippi Free Press later filed a supplemental complaint through counsel, joining with Mr. Judin in the original complaint. The supplemental complaint incorporates all the allegations of the original complaint and explicitly alleges “the Caucus’s membership is composed of a majority of the members of the Mississippi House of Representatives, which is a public body, and these meetings contain a quorum of the House. The meetings include discussions and deliberations regarding legislation coming before the Mississippi House of Representatives.” The supplemental complaint also quotes a news story from a separate publication alleging “[t]he weekly closed-door Republican caucus meetings are usually the first place rank-and-file House Republicans are informed of details about major policies that Gunn and a handful of other House leaders determine privately. In the caucus meetings, Gunn asks the group of Republicans for support.”

1.3 As noted above, responses to the complaints were filed by Speaker Gunn on behalf of the House and by the House Republican Caucus through its attorneys. Subsequent pleadings were filed by the complainant, the House and the Caucus. None of those pleadings allege any additional facts but make purely legal arguments which are discussed below.

## II. CONCLUSIONS OF LAW

2.1 The primary question of law in this case is whether the House of Representatives is a “public body,” as defined in Section 25-41-3(a), Miss. Code of 1972. The respondent also contends the complaints raise “nonjusticiable political questions” which are not within the authority of the Ethics Commission to resolve. Another question of law implied in the pleadings is whether the House Republican Caucus is a public body.

**A. The question of whether the House of Representatives is a “public body” under the Open Meetings Act is a question of law within the authority of the Ethics Commission and the courts to answer and is not a nonjusticiable political question.**

2.2 The House and Caucus also contend this case raises “nonjusticiable political issues” which cannot be addressed by the commission or the courts. They especially rely upon the case of *Gunn v. Hughes*, 210 So.3d 969 (Miss. 2017), in which a member of the House alleged the reading of bills by a computer at high speed violated Section 59 of the Miss. Constitution of 1890, which allows any member to demand bills be read aloud. The Court concluded it did not have authority, under the Separation of Powers Doctrine, to interfere in the internal procedural affairs of the Legislature. Even though we may have questions about the factual bases for the opinion, here we have a statute to interpret, Section 25-41-3 and clearly not internal legislative rules. The Open Meetings Act, including such section, is specifically assigned to the Ethics Commission to interpret and enforce.

2.3 Additionally, the respondents assert that any application of the Open Meetings Act to the House by the Ethics Commission or the courts would also violate the Separation of Powers Doctrine. This question was clearly answered when the Supreme Court held the Board of Trustees of Institutions of Higher Learning was subject to the Open Meetings Act and to judicial review even though it is a Constitutional body. *Board of Trustees of State Insts. of Higher Learning v. Miss. Publishers Corp.*, 478 So.2d 269, 277 (Miss. 1985). Therefore, the contention that this Open Meetings case involves issues outside the authority of the Ethics Commission is meritless.

2.4 The Legislature is required by Section 58 of the Mississippi Constitution to hold public sessions. “[...]the doors of each House, when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy....” Whether this provision applies to a meeting of a quorum of the members of the House of Representatives requires an interpretation of the Mississippi Constitution and is clearly outside of the jurisdiction of the Ethics Commission.

**B. The House Republican Caucus is not a “public body” under the Open Meetings Act.**

2.5 The supplemental complaint names the Speaker of the House and the House Republican Caucus, as well as the House of Representatives, which apparently prompted the Caucus to file its own response through separate counsel. The complainant alleges and the respondents acknowledge that the House Republican Caucus is comprised of all members of the House who are Republicans, which currently includes 75 of the 122 members. See House roster at <http://www.legislature.ms.gov/legislators/house-roster/>.

2.6 As noted in the response filed by the House Republican Caucus, a caucus is “a closed meeting of a group of persons belonging to the same political party or faction usually to

select candidates or to decide on policy.” (<https://www.merriam-webster.com/dictionary/caucus>) Legislative caucuses are common at the federal and state level, and several exist in Mississippi, including the Mississippi House Democratic Caucus (<https://www.facebook.com/mshouse/dems/>), Mississippi Legislative Sportsmen's Caucus (<https://congressionalsportsmen.org/state/ms/>), Mississippi Freedom Caucus (<https://www.freedomcaucus.ms/members/>) and the Mississippi Legislative Black Caucus (<https://msblackcaucus.org/>).

2.7 Section 25-41-3(a) defines a “public body” in pertinent part as follows:

[A]ny executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether the entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature.

2.8 Clearly, a legislative caucus does not meet any of the criteria in the statutory definition. It is not executive or administrative in nature, is not an entity of the state created by law, is not supported by public funds, nor is it a standing, interim or special committee of the Legislature. Consequently, the Caucus is not a “public body” and should not be a party to this case. The Commission will treat its pleadings as *amicus* filings.

**C. The House of Representatives is not a “public body” under the Open Meetings Act.**

2.9 If the House of Representatives is a “public body” as defined in Section 25-41-3(a), then the Open Meetings Act (and all its obligations) applies. § 25-41-3(a) does not expressly include or exclude the House, the Senate, or the Legislature as a whole. It only identifies “any standing, interim and special committee of the Mississippi Legislature”. However, § 25-41-3(a) does refer to “any other policymaking entity” being a public body. Such wording, taken alone, could include the House of Representatives. Consequently, the Commission finds § 25-41-3(a) to be ambiguous on this particular issue.

2.10 When the wording of statutes is found to be ambiguous, the Supreme Court routinely applies rules of statutory construction to discern their meaning. The primary goal in interpreting statutes is to adopt an interpretation that will meet the true meaning intended by the Legislature. *Hall v. State*, 241 So.3d 629 (¶ 5) (Miss. 2018) *Id.* We are charged with carefully reviewing the statutory language and apply its most reasonable interpretation and meaning to the facts of this case. *Id.* The Commission cannot “decide what a statute should provide, but [must] determine what it does provide. *Watson v. Oppenheim*, 301 So.3d 37 (¶ 12) (Miss. 2020). The Commission is “not permitted to add to or take from what the Legislature has plainly stated.” *Id.* at ¶ 16, see also, *Lawson v. Honeywell Int’l, Inc.*, 75 So. 3d 1024 (¶ 17) (Miss. 2011) (“This Court ‘cannot . . . add to the plain meaning of the statute or presume that the legislature failed to state something other than what was plainly stated.’”). In other words, the question before the Commission is not whether the Open Meetings Act *should* apply to the House of Representatives, but whether or not as written it *does* apply.

2.11 Both the Complainants and the House agree the specific language determinative of this legal question is found in the first clause of § 25-41-3(a), i.e., a public body includes “any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi...” The Complainants contend the House falls within the OMA’s statutory definition of a public body since it is a “policymaking entity”. While acknowledging it is a policymaking body in a general sense, the House responds that only a policymaking entity which is “executive or administrative” in character is a “public body” for purposes of the Open Meetings Act. The Complainants reply that “any other” before “policymaking entity” divorces that catch-all from the preceding, conditional words “executive or administrative”.

2.12 When interpreting a statute, “the proper way to determine the real intent of the legislature is to study the words used by it in context.” *Kerr-McGee Chem. Corp. v. Buelow*, 670 So.2d 12, 15 (Miss. 1995). A common tool of statutory construction is the doctrine of *ejusdem generis*:

Where general words follow specific words in statutory enumeration, the general words are construed to embrace only those objects similar in nature to those objects enumerated by the preceding specific words. Where the opposite sequence is found, i.e., specific words following general ones, the doctrine is equally applicable, and restricts application of the general term to things that are similar to those enumerated. *Ejusdem generis* has been called a common drafting technique designed to save the legislature from spelling out in advance every contingency in which the statute could apply.

*Flye v. Spotts*, 94 So.3d 240 (¶10) (Miss. 2012) [emphasis added].

2.13 A broader doctrine than *ejusdem generis* is *noscitur a sociis*, which provides that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. Words capable of an analogous meaning, being associated together, take color from each other. *Evans v. Jackson*, 30 So.2d 315, 317 (Miss. 1947).

2.14 Bringing all those tools to bear, the Commission must evaluate the meaning of “policymaking entity” not only in the context of the conditional, “executive or administrative”, but also the specific entities listed precedingly. The House is not “executive or administrative”, but operates as part of the Legislature, a completely separate branch of government. Likewise, the House cannot be considered to be similar or analogous to a board, agency, department or bureau. The House is a creation of our Constitution, which is the source of its power and obligations, and whose members are elected by Mississippi citizens. With limited exceptions, “departments”, “agencies”, “boards”, etc. exist because of laws passed by Legislature, which determines their obligations and scope of authority, and whose members or directors are usually appointed by elected public officials.

2.15 Finally, the entire statute must be construed together, and effect given to every part, if it can be done without manifestly violating the intent of the Legislature. A construction which will render any part of a statute inoperative, superfluous, or meaningless is to be avoided. *Moore v. State*, 287 So.3d 905 (¶ 53) (Miss. 2019). If the Commission were to find the phrase “any other

policymaking entity” in § 25-41-3(a) included the House of Representatives, then the words “or committee thereof”, which immediately follow that phrase, would make the specific reference at the end of that same sentence to “any standing, interim or special committee of the Mississippi Legislature” superfluous.

2.16 We have considered the Legislative declaration contained in the first section of the Open Meetings Act. “[I]t is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.” Miss. Code Ann. 25-41-1. However, the Commission cannot simply add or change the written words of the Open Meetings Act by citing intent. Any such change would require action by the Mississippi Legislature.

2.17 Based upon the foregoing, the Commission holds the House of Representatives is not included within the definition of a “public body” under the Open Meetings Act.

WHEREFORE, the complaint is hereby dismissed this the 14<sup>th</sup> day of December 2022.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
Tom Hood, Executive Director