

MISSISSIPPI ETHICS COMMISSION

Miss. Municipal Attorneys Association
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Centennial Plaza, Gulfport

Ethics in Government & Open Meetings

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MISSISSIPPI ETHICS COMMISSION

Administers and enforces the **Ethics in Government Law** by

- Keeping Statements of Economic Interest;
- Investigating alleged violations of law;
- Issuing written advisory opinions.

The Commission also enforces the

- **Open Meetings Act** and
- **Public Records Act**

The Commission also issues advisory opinions on the **Campaign Finance Law** and levies fines for late filing of campaign finance reports.

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Eight Basic Prohibitions

- Board Member Contracts
- Use of Office
- Contracting
- Purchasing Goods and Services
- Purchasing Securities
- Insider Lobbying
- Post Government Employment
- Insider Information

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Section 109,
Miss. Constitution of 1890

No public officer or member of the legislature shall be

- **Interested, directly or indirectly,** in any
- **contract** with the state, or any district, county, city, or town thereof,
- **authorized** by any law passed or order made by any board of which he may be or may have been a member,
- **during the term** for which he shall have been chosen, **or within one year** after the expiration of such term.

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Advisory Opinion

22-001-E Spouse of alderman may be uncompensated member of Main Street Association which is funded by board, so long as spouse receives no income from association and does not become an officer or director of the association.

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Advisory Opinion

22-026-E Town may complete its obligations under a construction contract with the spouse of a new alderman because the contract was authorized before the new alderman took office, but new alderman must fully recuse from any matter regarding the contract.

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Advisory Opinion

22-029-E Newly elected alderman may continue doing business with municipal separate school district, municipal housing authority and municipal utility commission, since none receive discretionary funding from board of aldermen, but should recuse from making appointments, unless it would result in loss of quorum.

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Advisory Opinion

22-031-E City council may fund specific programs and exhibits at a local museum which employs a member of the city council, since council will not fund employment, but council member must fully recuse from any action by the council which would result in a monetary benefit to the museum.

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Section 25-4-105(1)

(1) No **public servant** shall **use his official position** to obtain, or attempt to obtain, **pecuniary benefit** for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any **relative** or any **business with which he is associated**.

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Section 25-4-105(1)
"Relative" is the public servant's

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

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Advisory Opinion

19-014-E The board of aldermen may not hire the son of the police chief to work under the direct supervision of his father. When an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1) is virtually inevitable.

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Section 25-4-105(1)
'Business with which he is associated' means public servant or his relative is

- officer, director, owner, partner, employee
- holder of more than ten percent (10%) of the fair market value or
- from which he or his relative derives more than \$2,500 in annual income or
- over which such public servant or his relative exercises control.

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Advisory Opinion

22-007-E A city employee, on personal time, may work for a sports team which will rent city facilities. However, the city employee may not use his position with the city to obtain or attempt to obtain any monetary benefit for the team, as proscribed in Section 25-4-105(1).

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Section 25-4-105(3)(a)
The Contractor Prohibition

(3) No public servant shall: (a) Be a **contractor, subcontractor or vendor with the governmental entity** of which he is a member, officer, employee or agent, other than in his contract of employment, **or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity** of which he is a member, officer, employee or agent.

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Advisory Opinion

22-002-E The state and a municipality are separate governmental entities; therefore, an employee of a state agency may also serve as an alderperson for a municipality without violating Section 25-4-105(3)(a).

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Advisory Opinion

19-055-E The spouse of a municipal clerk may be a contractor to the municipality. When the income is that of the spouse and the municipal clerk exercises no control, direct or indirect, over the contract and when the municipal clerk fully recuses herself from any matter that could result in a monetary benefit to her spouse, then no violation of Section 25-4-105(1) or (3)(a) should occur if the spouse serves as a contractor to the municipality.

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Section 25-4-105(3)(e)

Post Government Employment

(3) No public servant shall: (e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

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Advisory Opinion

20-023-E City engineer may retire and work for firm which does business with the city, but he may not work for the firm in relation to any matter in which he was personally or directly involved while employed by the city, as proscribed in Section 25-4-105(3)(e).

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Section 25-4-105(3)(b)
The Purchaser Prohibition

(3) No public servant shall: (b) Be a **purchaser, direct or indirect**, at any sale made by him in his official capacity or by **the governmental entity of which he is an officer or employee**, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

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Advisory Opinion

22-014-E A mayor may not purchase real property which was previously sold by the city to a private individual.

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OPEN MEETINGS ACT

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OPEN MEETINGS
Enforcement

- Complaint is filed with Commission. Complaint is sent to public body, which can respond. Commission may dismiss complaint, make preliminary finding or hold a hearing.
- Ethics Commission may order public body to comply with law.
- **Ethics Commission may impose \$500 fine for first offense, \$1,000 for subsequent offense.**
- Ethics Commission can mediate disputes.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

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OPEN MEETINGS ACT
The Basics

- Public meetings must be open to public.
- Executive session must follow specific procedure and only for certain reasons.
- Notice of meeting must be given, and minutes must be kept.
- Social gatherings are not "meetings" unless official business is discussed.
- Act never requires executive session.

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WHAT IS A MEETING?

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Case No. M-17-002

- Deliberations of a quorum must take place in a proper public meeting.
- When a quorum splits into separate groups and discusses the same matter of city business with the same person, a quorum is deliberating, and a "meeting" has occurred.

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Case No. M-12-020

- ~~Retreats~~ conducted by the Board of Aldermen are meetings subject to the Open Meetings Act
- Even if no official action is taken at a meeting, minutes must be kept
- ~~Committees~~ established by the board to conduct business of the city are subject to the Open Meetings Act

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WHAT ABOUT EMAIL?

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Case No. M-17-012

- Email exchange among a quorum of a board about a matter under their authority can violate the Open Meetings Act.
- A quorum of a board can deliberate board business ONLY in a properly noticed public meeting.
- Board members should avoid using email to communicate with each other about board business.

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Case No. M-16-008 & 009

- One member emailing a quorum about board business can violate law.
- Board members should not forward or copy emails to other members.
- Staff should blind copy (BCC) emails to board members.

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Telephonic Meetings
Section 25-41-5

- All members can participate by phone.
- They can be in different locations, so long as one location is open to the public.
- Equipment (speaker phone) must be located in place where board normally meets and allow members of board and public to hear deliberations.
- Votes must be clearly audible or visible to members of the board and public.

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Telephonic Polling

- Supreme Court has condemned the practice of polling board members outside of a properly noticed public meeting. Board of Trustees of State Insts. of Higher Learning v. Miss. Publishers Corp., 478 So.2d 269, 278 (Miss. 1985).
- Voting by telephone can take place only during a properly noticed telephonic meeting, pursuant to Section 25-41-5.
- Employees may convey information to board members, as long as polling or deliberation do not take place. Case No. M-14-001, Williams vs. Lauderdale Bd. of Supervisors

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EXECUTIVE SESSION PROCEDURE

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Hinds County Bd. v. Common Cause (1989)

The purpose ... is to discourage private meetings of public bodies.... The technical requirements of the Act not only enlighten the public that there exists a specific, valid reason for going into executive session, but also make it somewhat onerous and time consuming for the board to do so. A board required by law to follow the procedure of ... § 25-41-7 will no doubt be less inclined to go into executive session.... [551 So.2d 107, 112]

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Executive Session Procedure:
Hinds County Bd. of Sup. v. Common Cause,
 551 So.2d 107, 110-111 (Miss. 1989).

1. The meeting must begin as an Open Meeting. Miss. Code Ann. § 25-41-7(1).
2. A member must make a motion for the meeting to be closed to determine whether or not the Board should declare an executive session. The statute does not require a second to this motion, but the vote on this motion is taken in open meeting. If majority votes to close meeting to make determination on the question of executive session, the meeting is closed for this purpose. Miss. Code Ann. § 25-41-7(2).

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Executive Session Procedure (continued)

3. No other business during this closed interim shall be considered until a vote has been taken on whether or not to declare an executive session. Miss. Code Ann. § 25-41-7(2). In order to go into executive session, a majority of three-fifths of those present must vote in favor of it. Miss. Code Ann. § 25-41-7(1).
4. The Board must then state in open meeting the reason for going into executive session, and this reason and total vote thereon must thereafter be recorded on the minutes of the meeting. Miss. Code Ann. § 25-41-7(3), (5).
5. The vote to go into executive session is applicable only to that particular meeting on that particular day. Miss. Code Ann. § 25-41-7(6).

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**EXECUTIVE SESSION
REASONS**

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Announce Specific Reasons

- Reasons for executive session must be announced in open meeting and recorded in minutes. Must state a meaningful reason with sufficient specificity so that audience will later be able to check it out.

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.

Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 111 (Miss. 1989).

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Executive Session Reasons

Executive session may be held for these reasons only:

- Personnel matters relating to person in specific position
- Litigation, where open discussion would have detrimental effect on litigating position
- Security matters
- Investigations regarding misconduct or violations of law
- Legislature may enter executive session for any reason
- Extraordinary emergency posing irrevocable harm
- Prospective purchase, sale or leasing of lands
- School board discussions about problems of students, parents or teachers
- Preparation of professional licensing exams
- Location, relocation or expansion of a business
- Budget matter which may lead to termination of employee
- (l), (m) (n) certain PERS investments and hospital matters

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OPEN MEETINGS ACT Notice

- Times and places of regular meetings should be set in statute or ordinance.
- For recess, adjourned, interim or special meetings, notice must be posted in city hall within one hour of calling the meeting.
- Copy of the notice must be placed in the minutes.

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OPEN MEETINGS ACT Notice – Special Meeting

- Must post notice of called special meetings on web site and email or fax notice not less than 1 hour before the meeting to anyone who requests it. (in addition to posting paper notice)
- Does not apply to municipalities with population less than 25,000.

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Minutes

- Minutes must be kept for all meetings, whether in open or executive session.
- Minutes must be "recorded" within 30 days after meeting.
- Minutes must be available for public inspection.

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Content of Minutes

Minutes must show:

- Members present and absent;
- Date, time and place of meeting;
- Accurate recording of any final actions;
- Record, by individual member, of all votes taken;
- Any other information requested by the public body.

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PUBLIC PARTICIPATION

Case No. M-10-007

- Public body may make and enforce reasonable rules for conduct of persons attending meetings, including length of time allowed to comment.
- Public body is not required to allow members of the public to speak at meetings.

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